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SELECT DOCUMENTS ON ASIAN AFFAIRS

INDIA 1947-50

VOLUME TWO

EXTERNAL AFFAIRS

THE INDIAN COUNCIL OF WORLD AFFAIRS

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GENERAL EDITOR—S. L. POPLAI

INDIA 1947-50

VOLUME TWO

EXTERNAL AFFAIRS

EDITED BY
S. L. POPLAI

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INDIAN COUNCIL OF WORLD AFFAIRS



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INTRODUCTION

INDIA'S FOREIGN POLICY, 1947–50[1]

SINCE 1945 many countries of Asia have become independent and assumed control of their foreign relations which, during the previous hundred years or more, were determined by the imperial interests of Western powers; but it is only the foreign policy of India, as evolved by Nehru, which has aroused world-wide interest and controversy. One reason for this is, of course, the geo-political significance of the Indian State. Because of India's size and population, and her geographical location, her foreign policy is significant and has been criticized or applauded by other nations according to their own interests and policies. But the intensity of discussion provoked by Nehru's policies cannot be explained solely by the fact that Nehru is speaking on behalf of a large, populous and strategically located country; nor is it solely on account of the puzzling confidence[2] of the Indian Government—puzzling in the light of the underdeveloped state of the economy and the country's small military power—, nor even by Nehru's heterodox views on military alliances and ideological conformity. The clue to the meaningfulness of Indian policy is to be found elsewhere: it is to be found in ' the sense of history ', in the habit of looking at contemporary international conflicts through ' the glass of history '. It is this habit which characterizes Nehru's approach to current disputes and which has bred in him the conviction that ' we who are so deeply engaged in an age of conflict, are under an obligation not to be too blindly secure, too wilfully confident, in the contemporary ways of formulating that conflict '[3]; that ' in so far as international conflicts are concerned . . . we shall find at the heart of everything a kernel of difficulty which is essentially a problem of diplomacy as such '[4].

[1] For a factual survey of Indian foreign relations see K. P. Karunakaran, *India in World Affairs*, 1947–50 (Oxford University Press, 1952).

[2] ' We are not citizens of a weak or mean country and I think it is foolish for us to get frightened, even from a military point of view, of the greatest of the Powers today. Not that I delude myself about what can happen to us if a great Power in a military sense goes against us.' Jawaharlal Nehru, *Independence and After* (New Delhi, 1949), p. 213.

[3] M. A. Fitzsimons and others, *The Image of Man* (University of Notre Dame, 1959), p. 171. Compare with, ' Now, I imagine it is a common human failing to imagine that we are right and others are wrong. But, of course, apart from being right or wrong, it may be both are right and both are wrong.' Nehru, op. cit., p. 260.

[4] Fitzsimons, op. cit., p. 177.

During 1948–9, Nehru in his speeches frequently struck this historical note:

'The Indian Union is an infant State, infant free State, a year and a half old, but remember that India is not an infant country. *India is a very ancient country with millenia of history behind her* —history in which she has played a vital part not only within her own vast boundaries, but in the world and in Asia in particular. *India* now, in this last year or more, *emerges again into the main trend of human affairs.*

'*Now, that is something of great historical significance.*'[1]

'When we talk of Asia, remember that *India*, not because of any ambition of hers, but because of the force of circumstances, because of geography, *because of history and because of so many other things, inevitably has to play a very important part in Asia.*'[2]

'*India is a country with a tremendous vitality which it has shown throughout its history.* It has often enough imposed its own cultural pattern on other countries not by force of arms, but by the strength of its vitality, culture and civilization. There is no reason why we should give up our way of doing things, our ways of considering things. . . . We should be flexible in mind and we should be receptive, but I have also no doubt at all that we should not allow . . . we must not allow any wind from anywhere to sweep us off our feet.'[3]

'Now, India is very curiously placed in Asia and her history has been governed a great deal by the geographical factor plus other factors. Whether you think of China or the Middle East or South-East Asia, India immediately comes into the picture. *It is so situated that because of past history, tradition, etc.*, in regard to any major problem of a country or a group of countries of Asia, *India has to be considered.* . . . She cannot be ignored because of her actual or potential power and resources. *Whatever her actual strength may or may not be, India is potentially a very powerful country* and possesses the qualities and factors that go a long way to make a country strong, healthy and prosperous.'[4]

'We are today rather overwhelmed with the recent history of 200 years of European domination. But *if we look at the long process of history, going back more than a few hundred years, we get a truer perspective.* . . . And now, the foreign domination of most Asian countries has ended, and it will no doubt end soon, *there is a certain process of finding oneself*, which each of the Asian countries is going through . . . *there is this looking into oneself*, finding oneself, *feeling a*

[1] Nehru, op. cit., pp. 230–31. (Editor's italics.)
[2] ibid., p. 231. (Editor's italics.)
[3] ibid., p. 241. (Editor's italics.)
[4] ibid., p. 248. (Editor's italics.)

certain assurance, self-confidence, fear also it may be in the case of some countries, because of economic and other weaknesses—but on the whole finding oneself.'[1]

'. . . with all our failings *we are a very ancient people, and we have gone through thousands and thousands of years of human experience: we have seen much wisdom, and we have seen much folly*, and we bear the traces of both that wisdom and that folly around us. We have to learn much and we shall learn much; and perhaps we have to unlearn a great deal too. But it is curious when people, not even trying to understand what we are, seek to improve us. We do not mind very much, but it does not help.'[2]

It was the knowledge that India had been a great country in the past—great in the arts and sciences, great in religion and in philosophy, rich in statesmen and in administrators—and the conviction that one day it would again become great and powerful which made Nehru and the Indian people evolve a heterodox, independent foreign policy. The chancelleries of the world expected that India, being poor and underdeveloped, lacking the latest production techniques, would play a part proper to a small and weak country. Nehru and his countrymen, however, surprised them by refusing to ride on the coat-tails of the great powers or to take the back bench in international forums. The role which Nehru selected was that of a potentially great and powerful country. A great country does not like to be told what it should or should not do: it considers things for itself, takes its own decisions and acts in its own way. This explains Nehru's impatience with the advice, the black-and-white analyses and the cut-and-dried solutions offered by others.[3] The one situation in which India can exercise the maximum of political activity while lacking in corresponding military power, is 'the world situation in which force as a factor in international affairs will be reduced to the absolute minimum and no concentrations of power built up around the militarily strong nations. It is in this situation that India's *influence* could be at a maximum of effectiveness'[4].

Lacking military power, India can only use its *influence* in the game of diplomacy. And in a world divided sharply between 'the

[1] ibid., p. 250. (Editor's italics.)

[2] ibid., p. 261. (Editor's italics.)

[3] 'It surprises me to see some of our friends from abroad coming here and doling out good advice to us, which we listen to patiently realizing that the advice that is given to us is not necessarily very wise advice, and that the manner of giving it is also perhaps not very wise; nor does it show much profundity of thought. . . .' ibid., p. 261; see also pp. 200, 216 and 241.

[4] Poplai, S. L., and Talbot, P., *India and America* (Oxford University Press, 1958), p. 60. (Editor's italics.)

Free world ' and ' the Socialist countries ', the pre-condition for the diplomatic use of this influence is that India must be unaligned, unallied and uncommitted. It is suggested here that the real clue to Nehru's foreign policies is to be found in his habit of looking far beyond the present—at the past and to the future—in historical perspective. Nehru's policy of non-alignment is certainly not a result of any anti-European or anti-white prejudice, of ideological neutrality, of isolationism or pacifism, of sitting on the fence, of ' lack of moral courage to stand up and be counted ', or of any fear of international communism.

This habit of historical perspective can produce two opposite types of effect. When India used it to examine the stalemate created by the immobility of the ' muscle-bound ' giants—the United States and the Soviet Union—she gave warning against the ' dead-end ' approach of building up ' positions of strength ' and suggested the possibility of diplomatic movement by means of negotiation and mediation. In the case of the Indo-Pakistani stalemate, on the other hand, memories of the mutual distrust and frustration of the 'thirties and the 'forties only served to embitter the disputes over Junagadh, Kashmir and Hyderabad, over the rehabilitation of displaced persons, over evacuee property and the breakdown of trade and rail communications between the two Bengals in 1948–9. It is almost as if what Nehru said in a different context were true of this conflict: ' we cannot easily get rid of the curse of our past *karma*; it pursues our country in various ways '[1]. Pakistan is the field in which the record of our diplomacy is the least satisfactory, for we have conspicuously failed to break through the stalemate.

It is natural, also, that in many other matters our foreign policy should reflect the political and economic legacies of our immediate past. For example, the Indian Government's decision in 1949 to continue membership of the (British) Commonwealth was taken as a direct result of the century-old association with the British people. Many eyebrows were raised at this decision both at home and abroad, but it is not difficult to see why the statesmen at the helm of India's affairs considered it advantageous for their country to continue her association with the Commonwealth. Again, during the long-drawn struggle for independence, the Indian leaders developed certain affinities[2] and antipathies which influenced their early essays in foreign relations. Mahatma Gandhi, father of the nation, had first tested the technique of *satyagraha* in South Africa—the technique which

[1] ibid., p. 251.

[2] *The Background of India's Foreign Policy* (Indian National Congress, New Delhi, 1952).

he later used to win India's freedom—, and it was natural for the Indian leaders to acknowledge their debt to their compatriots in South Africa by drawing the attention of the world, in the very first session of the United Nations General Assembly, to the shameful racialist policies of the South African Government. Similarly, the sympathy and support that the Indian freedom movement had received from the people of America, China and the Soviet Union were acknowledged by the Nehru Government through the exchange of diplomatic missions with these countries first, even before 15 August 1947. It is equally natural that having won our own independence, the Indian Government should take up the cause of freedom of other colonial peoples in Asia and Africa: hence our policies in Korea and Palestine, in Indonesia and Indo-China, and our efforts to aid the Indians in Portuguese and French settlements in India.

In summary, the suggestion made here is that the direction and content of India's foreign policy since 1947 have been conditioned not by the whim and fancy of Nehru, nor even by his idealism, but by his sense of history; that our policies are indicative of our hopes and aspirations; and that, in revealing these elements, Nehru has put into words the urges that are today moving millions of people in Asia and Africa.

CORRIGENDA

p. 62. The heading to read COMMONWEALTH CITIZENSHIP, ETC.

p. 90. Document 35 to be dated 12 *May* 1949

p. 176. Document 55 to be dated 4 *May* 1948

p. 372. The source of Document 89 to read UNCIP, Report, S/1100, Annex 6

SECTION I

LAWS, ORDERS AND COMMUNIQUÉS

1 14 *August* 1947

INDIAN INDEPENDENCE (INTERNATIONAL ARRANGEMENTS) ORDER, 1947

WHEREAS the agreement set out in the Schedule to this Order has been reached at a meeting of the Partition Council on the 6th day of August, 1947.

AND WHEREAS it is intended that, as from the 15th day of August, 1947, the said agreement shall have the force and effect of an agreement between the Dominions of India and Pakistan.

NOW THEREFORE in exercise of the powers conferred upon him by section 9 of the Indian Independence Act, 1947 and of all other powers enabling him in that behalf, the Governor-General hereby orders as follows:—

(1) This Order may be cited as the Indian Independence (International Arrangements) Order, 1947.

(2) The agreement set out in the Schedule to this Order shall, as from the appointed day, have the effect of an agreement duly made between the Dominion of India and the Dominion of Pakistan.

SCHEDULE

Agreement as to the Devolution of International Rights and Obligations upon the Dominions of India and Pakistan

(1) The international rights and obligations to which India is entitled and subject immediately before the 15th day of August, 1947, will devolve in accordance with the provisions of this agreement.

(2) (i) Membership of all international organisations together with the rights and obligations attaching to such membership, will devolve solely upon the Dominion of India.

For the purposes of this paragraph any rights or obligations arising under the Final Act of the United Nations Monetary and Financial Conference will be deemed to be rights or obligations attached to membership of the International Monetary Fund and to membership of the International Bank for Reconstruction and Development.

(ii) The Dominion of Pakistan will take such steps as may be necessary to apply for membership of such international organisations as it chooses to join.

(3) (i) Rights and obligations under international agreements having an exclusive territorial application to an area comprised in the Dominion of India will devolve upon that Dominion.

(ii) Rights and obligations under international agreements having an exclusive territorial application to an area comprised in the Dominion of Pakistan will devolve upon that Dominion.

(4) Subject to Articles 2 and 3 of this agreement, rights and obligations under all international agreements to which India is a party immediately before the appointed day will devolve both upon the Dominion of India and upon the Dominion of Pakistan, and will if necessary, be apportioned between the two Dominions.

OIIA, 1947, pp. 130-1.

2 20 *December* 1947

UNITED NATIONS (SECURITY COUNCIL) ACT, 1947 (ACT NO. XLIII OF 1947)

An Act to enable effect to be given to certain provisions of the Charter of the United Nations

WHEREAS it is expedient to enable effect to be given to certain provisions of the Charter of the United Nations;

It is hereby enacted as follows:—

(1) *Short title*:—This Act may be called the United Nations (Security Council) Act, 1947.

(2) *Measures under Article 41 of the Charter of the United Nations*:—If, under Article 41 of the Charter of the United Nations signed at San Francisco on the 26th day of June 1945 the Security Council of the United Nations calls upon the Central Government to apply any measures, not involving the use of armed force, to give effect to any decision of that Council, the Central Government may, by order published in the official Gazette, make such provisions (including provisions having extra-territorial operation) as appear to it necessary or expedient for enabling those measures to be effectively applied, and without prejudice to the generality of the foregoing power, provision may be made for the punishment of persons offending against the order.

Gazette, 20 December 1947.

3 20 *December* 1947

UNITED NATIONS (PRIVILEGES AND IMMUNITIES) ACT, 1947

(ACT NO. XLVI OF 1947)

An Act to give effect to the Convention on the Privileges and Immunities of the United Nations

WHEREAS it is expedient to give effect to the Convention on the Privileges and Immunities of the United Nations, and to enable similar privileges and immunities to be enjoyed by other international organisations and their representatives and officials;

It is hereby enacted as follows:—

(1) *Short title*:—This Act may be called the United Nations (Privileges and Immunities) Act, 1947.

(2) *Conferment on United Nations and its representatives and officers of certain privileges and immunities*:—(i) Notwithstanding anything to the contrary contained in any other law, the provisions set out in the Schedule to this Act of the Convention on the Privileges and Immunities, adopted by the General Assembly of the United Nations on the 13th day of February 1946, shall have the force of law in India.

(ii) The Central Government may, from time to time, by notification in the official Gazette, amend the Schedule in conformity with any amendments, duly made and adopted, of the provisions of the said Convention set out therein.

(3) *Power to confer certain privileges and immunities on other international organisations and their representatives and officers*:—Where in pursuance of any international agreement, convention or other instrument it is necessary to accord to any international organisation and its representatives and officers privileges and immunities in India similar to those contained in the provisions set out in the Schedule, the Central Government may, by notification in the official Gazette, declare that the provisions set out in the Schedule shall, subject to such modifications, if any, as it may consider necessary or expedient for giving effect to the said agreement, convention or other instrument, apply *mutatis mutandis* to the international organisation specified in the notification and its representatives and officers, and thereupon the said provisions shall apply accordingly and, notwithstanding anything to the contrary contained in any other law, shall in such application have the force of law in India.

(4) *Power to make rules*:—The Central Government may make rules for carrying out the purposes of this Act.

THE SCHEDULE

(See sections 2 and 3)

Article I

Juridical Personality

Section 1. The United Nations shall possess juridical personality. It shall have the capacity

(*a*) to contract;

(*b*) to acquire and dispose of immovable and movable property;

(*c*) to institute legal proceedings.

Article II

Property, Funds and Assets

Section 2. The United Nations, its property and assets wherever located and by whomsoever held, shall enjoy immunity from every form of legal process except in so far as in any particular case it has expressly waived its immunity. It is, however, understood that no waiver of immunity shall extend to any measure of execution.

Section 3. The premises of the United Nations shall be inviolable. The property and assets of the United Nations, wherever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation and any other form of interference, whether by executive, administrative, judicial or legislative action.

Section 4. The archives of the United Nations, and in general all documents belonging to it or held by it, shall be inviolable wherever located.

Section 5. Without being restricted by financial controls regulations or moratoria of any kind,

(*a*) the United Nations may hold funds, gold or currency of any kind and operate accounts in any currency;

(*b*) the United Nations shall be free to transfer its funds, gold or currency from one country to another or within any country and to convert any currency held by it into any other currency.

Section 6. In exercising its rights under Section 5 above, the United Nations shall pay due regard to any representations made by the Government of any Member in so far as it is considered that effect can be given to such representations without detriment to the interests of the United Nations.

Section 7. The United Nations, its assets, income and other property shall be:

(*a*) exempt from all direct taxes; it is understood, however, that the United Nations will not claim exemption from taxes which are, in fact, no more than charges for public utility services;

(*b*) exempt from customs duties and prohibitions and restrictions on imports and exports in respect of articles imported or exported by the United Nations for its official use. It is understood, however, that articles imported under such exemption will not be sold in the country into which they were imported except under conditions agreed with the Government of that country;

(*c*) exempt from customs duties and prohibitions and restrictions on imports and exports in respect of its publications.

Section 8. While the United Nations will not, as a general rule, claim exemption from excise duties and from taxes on the sale of movable and immovable property which form part of the price to be paid, nevertheless when the United Nations is making important purchases for official use of property on which such duties and taxes have been charged or are chargeable, Members will, whenever possible, make appropriate administrative arrangements for the remission or return of the amount of duty or tax.

Article III

Facilities in Respect of Communications

Section 9. The United Nations shall enjoy in the territory of each Member for its official communications treatment not less favourable than that accorded by the Government of that Member to any other Government including its diplomatic mission in the matter of priorities, rates and taxes on mails, cables, telegrams, radiograms, telephotos, telephone and other communications; and press rates for information to the press and radio. No censorship shall be applied to the official correspondence and other official communications of the United Nations.

Section 10. The United Nations shall have the right to use codes and to despatch and receive its correspondence by courier or in bags, which shall have the same immunities and privileges as diplomatic couriers and bags.

Article IV

The Representatives of Members

Section 11. Representatives of Members to the principal and subsidiary organs of the United Nations and to conferences convened by the United Nations, shall, while exercising their functions and during

their journey to and from the place of meeting, enjoy the following privileges and immunities:

(*a*) immunity from personal arrest or detention and from seizure of their personal baggage, and, in respect of words spoken or written and all acts done by them in their capacity as representatives, immunity from legal process of every kind;

(*b*) inviolability for all papers and documents;

(*c*) the right to use codes and to receive papers or correspondence by courier or in sealed bags;

(*d*) exemption in respect of themselves and their spouses from immigration restrictions, aliens registration or national service obligations in the state they are visiting or through which they are passing in the exercise of their functions;

(*e*) the same facilities in respect of currency or exchange restrictions as are accorded to representatives of foreign governments on temporary official missions;

(*f*) the same immunities and facilities in respect of their personal baggage as are accorded to diplomatic envoys; and also

(*g*) such other privileges, immunities and facilities not inconsistent with the foregoing as diplomatic envoys enjoy, except that they shall have no right to claim exemption from customs duties on goods imported (otherwise than as part of their personal baggage) or from excise duties or sales taxes.

Section 12. In order to secure, for the representatives of Members to the principal and subsidiary organs of the United Nations and to conferences convened by the United Nations, complete freedom of speech and independence in the discharge of their duties, the immunity from legal process in respect of words spoken or written and all acts done by them in discharging their duties shall continue to be accorded, notwithstanding that the persons concerned are no longer the representatives of Members.

Section 13. Where the incidence of any form of taxation depends upon residence, periods during which the representatives of Members to the principal and subsidiary organs of the United Nations and to conferences convened by the United Nations are present in a state for the discharge of their duties shall not be considered as periods of residence.

Section 14. Privileges and immunities are accorded to the representatives of Members not for the personal benefit of the individuals themselves, but in order to safeguard the independent exercise of their functions in connection with the United Nations. Consequently a Member not only has the right but is under a duty to waive the immunity of its representative in any case where in the opinion of the

Member the immunity would impede the course of justice, and it can be waived without prejudice to the purpose for which the immunity is accorded.

Section 15. The provisions of Sections 11, 12, and 13 are not applicable as between representatives and the authorities of the state of which he is a national or of which he is or has been the representative.

Section 16. In this article the expression 'representatives' shall be deemed to include all delegates, deputy delegates, advisers, technical experts and secretaries of delegations.

Article V

Officials

Section 17. The Secretary-General will specify the categories of officials to which the provisions of this Article and Article VII shall apply. He shall submit these categories to the General Assembly. Thereafter these categories shall be communicated to the Governments of all Members. The names of the officials included in these categories shall from time to time be made known to the Governments of Members.

Section 18. Officials of the United Nation shall:

(*a*) be immune from legal process in respect of words spoken or written and all acts performed by them in their official capacity;

(*b*) be exempt from taxation on the salaries and emoluments paid to them by the United Nations;

(*c*) be immune from national service obligations;

(*d*) be immune, together with their spouses and relatives dependent on them, from immigration restrictions and alien registration;

(*e*) be accorded the same privileges in respect of exchange facilities as are accorded to the officials of comparable ranks forming part of diplomatic missions to the Government concerned;

(*f*) be given, together with their spouses and relatives dependent on them, the same repatriation facilities in time of international crisis as diplomatic envoys;

(*g*) have the right to import free of duty their furniture and effects at the time of first taking up their post in the country in question.

Section 19. In addition to the immunities and privileges specified in Section 18, the Secretary-General and all Assistant Secretaries-General shall be accorded in respect of themselves, their spouses and minor children, the privileges and immunities, exemptions and facilities accorded to diplomatic envoys, in accordance with international law.

Section 20. Privileges and immunities are granted to officials in the interests of the United Nations and not for the personal benefit of the individuals themselves. The Secretary-General shall have the right and the duty to waive the immunity of any official in any case where, in his opinion, the immunity would impede the course of justice and can be waived without prejudice to the interests of the United Nations. In the case of the Secretary-General, the Security Council shall have the right to waive immunity.

Section 21. The United Nations shall co-operate at all times with the appropriate authorities of Members to facilitate the proper administration of justice, secure the observance of police regulations and prevent the occurrence of any abuse in connection with the privileges, immunities and facilities mentioned in this Article.

Article VI

Experts on Missions for the United Nations

Section 22. Experts (other than officials coming within the scope of Article V) performing missions for the United Nations shall be accorded such privileges and immunities as are necessary for the independent exercise of their functions during the period of their missions, including the time spent on journeys in connection with their missions. In particular they shall be accorded:

(*a*) immunity from personal arrest or detention and from seizure of their personal baggage;

(*b*) in respect of words spoken or written and acts done by them in the course of the performance of their mission, immunity from legal process of every kind. This immunity from legal process shall continue to be accorded notwithstanding that the persons concerned are no longer employed on missions for the United Nations;

(*c*) inviolability for all papers and documents;

(*d*) for the purpose of their communications with the United Nations, the right to use codes and to receive papers or correspondence by courier or in sealed bags;

(*e*) the same facilities in respect of currency or exchange restrictions as are accorded to representatives of foreign governments on temporary official missions;

(*f*) the same immunities and facilities in respect of their personal baggage as are accorded to diplomatic envoys.

Section 23. Privileges and immunities are granted to experts in the interests of the United Nations and not for the personal benefit of the individuals themselves. The Secretary-General shall have the right and the duty to waive the immunity of any expert in any case where,

in his opinion, the immunity would impede the course of justice and it can be waived without prejudice to the interests of the United Nations.

Article VII

United Nations Laissez-passer

Section 24. The United Nations may issue United Nations laissez-passer to its officials. These laissez-passer shall be recognized and accepted as valid travel documents by the authorities of Members, taking into account the provision of Section 25.

Section 25. Applications for visas (where required) from the holders of United Nations laissez-passer, when accompanied by a certificate that they are travelling on the business of the United Nations shall be dealt with as speedily as possible. In addition, such persons shall be granted facilities for speedy travel.

Section 26. Similar facilities to those specified in section 25 shall be accorded to experts and other persons who, though not the holders of United Nations laissez-passer, have a certificate that they are travelling on the business of the United Nations.

Section 27. The Secretary-General, Assistant Secretaries-General and Directors travelling on United Nations laissez-passer on the business of the United Nations shall be granted the same facilities as are accorded to diplomatic envoys.

Section 28. The provisions of this article may be applied to the comparable officials of specialized agencies if the agreements for relationship made under Article 63 of the Charter so provide.

Article VIII

Settlement of Disputes

Section 29. The United Nations shall make provisions for appropriate modes of settlement of:

(*a*) disputes arising out of contracts or other disputes of a private law character to which the United Nations is a party;

(*b*) disputes involving any official of the United Nations who by reason of his official position enjoys immunity, if immunity has not been waived by the Secretary-General.

Section 30. All differences arising out of the interpretation for application of the present convention shall be referred to the International Court of Justice, unless in any case it is agreed by the parties to have recourse to another mode of settlement. If a difference arises between the United Nations on the one hand and a Member on the

other hand, a request shall be made for an advisory opinion on any legal question involved in accordance with Article 96 of the Charter and Article 65 of the Statute of the Court. The opinion given by the Court shall be accepted as decisive by the parties.

Gazette, 20 December 1947.

4 23 *December* 1948

PRESS COMMUNIQUÉ

In view of the military action taken by the Dutch Government against the Republic of Indonesia, the Government of India have decided to suspend the rights of operation of KLM in or in transit across India. Necessary instructions are being issued to the Aerodrome Authorities not to clear KLM aircraft to any Indian airport or flights in transit over Indian territory. No fuel will be issued to KLM aircraft at Indian airports with effect from 1 a.m. (Indian Standard Time), 24 December 1948.

PIB Release.

5 18 *March* 1949

PRESS COMMUNIQUÉ

There is no truth in the report that the Government of India are negotiating a commercial agreement with the French Settlement replacing the Customs Union Agreement. From April 1, this year, the French Settlements will be treated as foreign territories and they will revert to the pre-war position.

The Customs Union Agreement with the French Settlement was signed in 1941 to meet the special circumstances created by the war at the end of which they ceased to exist. In order to review the position, the Government of India gave notice of termination of the Agreement to the French Government in March last year. In June last year, the French Government issued a declaration to the effect that the future of the French Settlements would be decided by the people of the Settlements through a referendum.

The Municipal elections which constituted the preliminaries to the holding of the referendum have been held in the French Settlements and the Government of India have been assured by the French

Government that the referendum will be held as soon as possible. In view of this and to avoid unnecessary inconvenience to the people of the French Settlements, the Government of India were willing to consider the continuance of the Customs Union Agreement, if the French Government wished it, until the future of the French Settlements was decided. Representatives of the French Government conveyed to the Government of India the desire to continue the Customs Union Agreement with certain modifications. As it is the policy of the Government of India not to cause unnecessary hardships to the people of the settlements they have given very serious and sympathetic consideration to these proposals. At this late stage however, two weeks before the termination of the Customs Union Agreement, the Government of India are unable to entertain any modification of the Customs Union Agreement and they have accordingly informed the representatives of the French Government.

The Termination of the Agreement involves the adoption of major administrative and economic measures which do not admit of any modification. Unless therefore, the French Government wish the Customs Union Agreement to continue in force unchanged, the French Settlements will cease to be treated as part of India from April 1.

Hindu, Madras, 6 July 1947.

6 28 *March* 1949

PRESS COMMUNIQUÉ

Consequent on the termination of the Customs Union Agreement with the French Settlements in India from April 1, 1949, it has been decided to cancel from that date the exemption granted under the Indian Passport Rules, 1921, to persons domiciled in India, proceeding from the French Establishments of Pondicherry and Karikal and persons domiciled in foreign possessions in India proceeding to India from those Establishments.

Such persons will, therefore, be subject to the provisions of the Indian Passport Rules, 1921 with effect from April 1, 1949 and will have to obtain a travel document validated by the competent authority for entry into India or the French Establishments of Pondicherry and Karikal, as the case may be. To avoid inconvenience and expense, a special type of identity document has been prescribed for which a fee of Re 1 will be charged.

The above action has been decided upon to facilitate the checking and detection of smuggling and other evasions of import and export control regulations.

Ministry of Home Affairs, New Delhi, 28 March 1949.
PIB Release.

7 11 *June* 1949

PRESS COMMUNIQUÉ

With the expiry of the Customs Union Agreement of 1941, the usual customs measures applicable to a foreign territory were introduced on the frontiers of Pondicherry and Karikal. Simultaneously, for reasons of security, certain restrictions affecting the movement of persons between the Indian Union and French territory were also introduced. In order not to cause undue inconvenience by sudden imposition of these measures they were not made operative from the 1st of April but, at the request of the French India authorities, were brought into force only about three weeks later.

As a result of complaints received from the French Government that these restrictions were making conditions of life in the Settlements difficult, the Government of India offered to revert to the Customs Union Agreement of 1941 until after the referendum. This offer was not accepted by the French Government. In answer to further complaints that these measures were unduly harassing to the people of the Settlements and constituted an economic blockade, the Government of India made it clear that they had no intention of exerting any such pressure and that certain inconvenience would inevitably result from the existence of controls required to regulate export and import of commodities and to ensure security measures. To satisfy themselves that no avoidable hardship was being caused by these measures, the Government of India deputed Mr P. A. Menon, Joint Secretary in the External Affairs Ministry to visit Pondicherry to review their working on the spot.

Mr Menon arrived in Pondicherry on 4 June and left on the 7th. During his stay he visited several customs posts and made a study of the whole situation. He also had a number of discussions with M. Chambon, the Commissioner of the French Republic in Pondicherry, with India's Consul General and with Indian officials responsible for the administration of the Customs and the permit regulations.

While satisfied that complaints against the working of the customs and permit arrangements were exaggerated, Mr Menon found that,

owing to the interlacing of Pondicherry and its enclaves with Indian territory, goods and individuals moving across Indian territory between Pondicherry and the enclaves did suffer inconvenience which, in certain instances, was considerable. He accordingly recommended:—

(i) that goods moving between the enclaves of Pondicherry be exempted from import and export regulations and customs duties, subject to certain minor safeguards;

(ii) that no identity certificates be required of persons moving between enclaves.

In addition, Mr Menon recommended:—

(iii) that goods in transit between Pondicherry and Karikal by rail be exempted from import and export regulations and customs duties if conveyed under Customs Seal. This is designed to accelerate traffic between those two Settlements which had been unnecessarily slowed down by the new arrangements.

(iv) that all goods destined for Pondicherry or Karikal for which firm contracts had been entered into before the 1st of April when the Customs Convention of 1941 terminated, be exempted from the operation of the new regulations. This is in conformity with the normal practice in such cases.

The Government of India have accepted these recommendations after careful examination. It was never their intention that the inhabitants of French India should suffer avoidable hardship. The termination of the 1941 Customs Union necessitated the introduction of certain measures in the ordinary course of administration. Experience alone could demonstrate how they would work. The changes now made reflect the result of that experience; they are being made with the desire and in the hope that they will remove all cause for legitimate complaint.

PIB Release.

8 30 *December* 1949

PRESS COMMUNIQUÉ

In October last, the Government of India received a communication from the Foreign Minister to the Government of the People's Republic of China, expressing their desire to enter into diplomatic relations with India on the basis of the principles of equality, mutual interests and mutual respect for sovereign and territorial rights.

Having considered this communication and taken note of subsequent developments, the Government of India have intimated to the new Government of China their willingness to establish diplomatic relations with them.

PIB Release.

SECTION II

PANDIT NEHRU ON FOREIGN POLICY

9 4 *December* 1947

SPEECH: PANDIT NEHRU (EXTRACT)

. . . coming to other subjects, the main subject in foreign policy today is vaguely talked of in terms of ' Do you belong to this group or that group? ' That is an utter simplification of issues and it is all very well for the Honourable Maulana to hold forth that India will go to war under this banner or that banner. But that surely is not the way that a responsible House or a responsible country views the situation.

We have proclaimed during this past year that we will not attach ourselves to any particular group. That has nothing to do with neutrality or passivity or anything else. If there is a big war, there is no particular reason why we should jump into it. Nevertheless, it is a little difficult nowadays in world wars to be neutral. Any person with any knowledge of international affairs knows that. The point is not what will happen when there is a war. Are we going to proclaim to the world, taking the advice of Maulana Hasrat Mohani, that when war comes, we stand by Russia? Is that his idea of foreign policy or any policy? That shows to me an amazing ignorance of how foreign affairs can be conducted. We are not going to join a war if we can help it: and we are going to join the side which is to our interest when the time comes to make the choice. There the matter ends.

But talking about foreign policies, the House must remember that these are not just empty struggles on a chess board. Behind them lie all manner of things. Ultimately, foreign policy is the outcome of economic policy, and until India has properly evolved her economic policy, her foreign policy will be rather vague, rather inchoate, and will be groping. It is well for us to say that we stand for peace and freedom and yet that does not convey much to anybody, except a pious hope. We do stand for peace and freedom. I think there is something to be said for it. There is some meaning when we say that we stand for the freedom of Asian countries and for the elimination of imperialistic control over them. There is some meaning in that.

Undoubtedly it has some substance, but a vague statement that we stand for peace and freedom by itself has no particular meaning, because every country is prepared to say the same thing, whether it

means it or not. What then do we stand for? Well, you have to develop this argument in the economic field. As it happens today, in spite of the fact that we have been for some time in authority as a Government, I regret that we have not produced any constructive economic scheme or economic policy so far. Again my excuse is that we have been going through such amazing times which have taken up all our energy and attention that it was difficult to do so. Nevertheless, we shall have to do so and when we do so, that will govern our foreign policy, more than all the speeches in this House.

We have sought to avoid foreign entanglements by not joining one bloc or the other. The natural result has been that neither of these big blocs looks on us with favour. They think that we are undependable, because we cannot be made to vote this way or that way.

Last year when our delegation went to the United Nations, it was the first time that a more or less independent delegation went from India. It was looked at a little askance. They did not know what it was going to do. When they found that we acted according to our own will, they did not like it. We were unpopular last year at the United Nations. I do not mean individually, but in regard to our policy. They could not quite make out what we were or what we were aiming at. There was a suspicion in the minds of the first group that we were really allied to the other group in secret though we were trying to hide the fact, and the other group thought that we were allied to the first group in secret though we were trying to hide the fact.

This year there was a slight change in this attitude. We did many things which both the groups disliked, but the comprehension came to them that we were not really allied to either group, that we were trying to act according to our own lights and according to the merits of the dispute as they seemed to us. They did not like that, of course, because the position today is that there is so much passion and so much fear and suspicion of each other between these great rival Powers and groups that anybody who is not with them is considered against them. So they did not like what we did in many instances: nevertheless, they respected us much more, because they realized that we had an independent policy, that we were not going to be dragooned this way or that, that we might make a mistake just like anyone else, nevertheless, we were going to stick to our own policy and programme, so that while possibly we irritated some of our friends even a little more than last year, we got on much better with everybody, because they understood that we did stand for something.

To give the House an instance of how we acted, take the Palestine affair which has given rise and will give rise to a great deal of trouble. We took up a certain attitude in regard to it which was roughly a

Federal State with autonomous parts. It was opposed to both the other attitudes which were before the United Nations. One was partition which has now been adopted: the other was a unitary state. We suggested a Federal State with, naturally, an Arab majority in charge of the Federal State but with autonomy for the other regions —Jewish regions.

After a great deal of thought we decided that this was not only a fair and equitable solution of the problem, but the only real solution of the problem. Any other solution would have meant fighting and conflict. Nevertheless, our solution—which as the House will remember was the solution given in the minority report of the Palestine Committee—did not find favour with most people in the United Nations. Some of the major Powers were out for partition; they, therefore, pressed for it and ultimately got it. Others were so keen on the unitary State idea and were so sure of preventing partition at any rate or preventing a two-thirds majority in favour of partition that they did not accept our suggestion.

When during the last few days somehow partition suddenly became inevitable and votes veered round to it owing to the pressure of some of the great Powers, it was realized that the Indian solution was probably the best and an attempt was made in the last 48 hours to bring forward the Indian solution, not by us but by those who had wanted a unitary State.

It was then too late. There were procedural difficulties and many of the persons who might have accepted this solution had already pledged themselves to partition. And so ultimately partition was decided upon by a two-thirds majority, with a large number abstaining from voting, with the result again of trouble now and a great deal of trouble in the future in the Middle East.

I point this out to the House as an instance, that in spite of considerable difficulty and being told by many of our friends on either side that we must line up this way or that, we refused to do so and I have no doubt that the position we had taken was the right one and I still have no doubt that ours would have brought about the best solution.

This applies to many other things. But inevitably it means that to some extent we have to plough a lonely furrow in the United Nations and at international conferences of this type. Nonetheless, that is the only honourable and right position for us to take and I am quite sure that by adopting that position, we shall ultimately gain in national and international prestige, that is to say, when we take a long view of the situation, not a short view of getting immediately a vote here or there.

I have no doubt that fairly soon, in the course of two or three years, the world will find this attitude justified and that India will not only be respected by the major protagonists in the struggle for power, but a large number of the smaller nations which today are rather helpless will probably look to India more than to other countries for a lead in such matters.

May I in this connection say that during this last session of the United Nations General Assembly, many very difficult and very controversial issues were raised, and our delegation had to face extraordinarily intricate situations? I should like to pay a tribute to our delegation, especially to the leader of the delegation. The Honourable Members often put questions about the appointment of Ambassadors, members of delegations and the like and rightly so, because the House should be interested in such important appointments. May I say to the House that nothing is more difficult than to make these appointments, because they are not just appointments of able persons, but appointments of particular persons to particular places where they must fit in, which is an extraordinarily difficult thing?

In the key places of the world the ideal Ambassador must be some kind of a superman. It is so difficult not only to understand the intricacies,—that is not difficult,—but to remain friends with everybody and yet to advance your cause. After all we have in the past discussed foreign affairs from the outside, in other assemblies, or here perhaps, rather in an academic way, rather as in a college debating society. That is, we talked of high policies, but we did not come to grips with them when we had to say ' yes ' or ' no ' to a question and face the consequences.

If the House will forgive my saying so, even in today's debate many of the speeches were of an academic kind which did not take into account the vital questions which concern the world today, which may mean peace or war. But when the House does have to face the question and take a decision which may lead to war or peace, when one comes face to face with realities, then one cannot rely merely on idealistic principles.

Foreign affairs are utterly realistic today. A false step, a false phrase, makes all the difference. The first thing that an Ambassador of ours has to learn is to shut his mouth and give up public or even private speaking. It is not a habit which we have developed in our past careers —that of being completely silent. Yet this habit has to be developed, and in private one has to be silent lest what one says injures the cause of the nation, creates international ill-will.

It is in this background that I should like the House to consider international affairs—this realistic background, this notion that it

is not merely some naughty men playing about and quarrelling with one another, some statesmen in America and the USSR or British imperialism lurking behind the curtain in the distance. We have talked so much about British imperialism that we cannot get rid of the habit.

To come to grips with the subject, in its economic, political and various other aspects, to try to understand it, is what ultimately matters. Whatever policy you may lay down, the art of conducting the foreign affairs of a country lies in finding out what is most advantageous to the country. We may talk about international goodwill and mean what we say. We may talk about peace and freedom and earnestly mean what we say. But in the ultimate analysis, a government functions for the good of the country it governs and no government dare do anything which in the short or long run is manifestly to the disadvantage of that country.

Therefore, whether a country is imperialistic or socialist or communist, its Foreign Minister thinks primarily of the interests of that country. But there is a difference, of course. Some people may think of the interests of their country regardless of other consequences, or take a short distance view. Others may think that in the long-term policy the interest of another country is as important to them as that of their own country. The interest of peace is more important, because if war comes everyone suffers, so that in the long distance view, self-interest may itself demand a policy of co-operation with other nations, goodwill for other nations, as indeed it does demand.

Every intelligent person can see that if you have a narrow national policy it may enthuse the multitude for the moment, just as the communal cry has done, but it is bad for the nation and it is bad internationally, because you lose sight of the ultimate good and thereby endanger your own good. Therefore, we propose to look after India's interests in the context of world co-operation and world peace, in so far as world peace can be preserved.

We propose to keep on the closest terms of friendship with other countries unless they themselves create difficulties. We shall be friends with America. We intend co-operating with the United States of America and we intend co-operating fully with the Soviet Union. We have had, as the House knows, a distinguished Representative of the United States here for some time past. Within a week or two we shall have a distinguished Representative of the Soviet Union here, in the Soviet Embassy which is being opened in New Delhi.

I do not want to say much more at this stage about foreign affairs partly for lack of time, partly because it is a little difficult to discuss these matters. Some of the Honourable Members might, perhaps,

want to talk about what should be done in China, Japan, Siam and Peru, but I fear it would be a little irresponsible of me to talk about these various matters. Naturally India is interested in Asian countries even more than the rest of the world. We have had an Asian Conference, and at this moment we have a distinguished visitor here, the Prime Minister of Burma.

May I say in this connection that some people are under a misapprehension? They think that we are conducting special negotiations with the Burmese delegation here. That is not quite true. It is primarily a visit of courtesy. At the same time, of course, we have broadly explored various questions, discussed various matters of common concern, not with the idea of suddenly coming to decisions in regard to these intricate matters now, but rather with a view to laying the foundations for future talks. May I also say that the Prime Minister of Burma is interested, as many of us have been, in closer association, not only between Burma and India, but between various other countries of Asia also? We have discussed that also, again not with a view to coming suddenly to decisions, because these things take a little time to grow. It all indicates the new spirit of Asia which wants Asian countries to draw closer together in their own defence and to promote world peace.

Coming to another part of this cut motion in regard to Indians in the British Commonwealth, this is an old subject and a painful subject. I entirely agree with any criticism that may be made that we have not been able to do anything substantial in this direction. Something has been done in Canada and elsewhere, but nothing substantial has yet been done. Now, the odd thing is that this subject becomes more and more difficult to deal with and not easier. Indians have gone to the British Colonies and Dominions in the past in various capacities, as merchants, traders, workers, indentured labourers and the rest.

The history of Indian emigration abroad, including that of the humblest of those who went from India, reads almost like a romance. How these Indians went abroad! Not even citizens of a free country, working under all possible disadvantages, yet they made good wherever they went. They worked hard for themselves, and for the country of their adoption. They made good themselves and profited the country they had gone to.

It is a romance and it is something which India can be proud of, and may I say most of all of those poor indentured labourers who went out under unhappy conditions, through their labour, gradually worked their way up? It is also true that India is a country, which in spite of everything, has abounding vitality and spreads abroad. It rather

frightens our neighbour countries, just as China which is also a country with abounding vitality and an abounding population. We spread. We tend to overwhelm others both by virtue of our numbers, and sometimes by virtue of the economic position we might develop there.

That naturally frightens others who may not have that vitality in them, and they want to protect themselves against it. Questions then arise of vested interests which India has developed or Indians have developed there. Such questions have arisen, and while on the one hand we are obviously intent on protecting the interests of Indians abroad, on the other hand we cannot protect any vested interests which injure the cause of the country they are in. There is that difficulty. Nevertheless, undoubtedly we shall try to do our best to protect all legitimate interests . . . .

Nehru, Jawaharlal, *Independence and After*, 1949, pp. 199-209.

10 8 *March* 1948

SPEECH: PANDIT NEHRU (EXTRACT)

. . . In criticizing the foreign policy of the Government of India during the last year, I should like this House for an instant to turn its mind to any country today and think of its foreign policy—whether it is the USA, the United Kingdom, the USSR, China or France. These are supposed to be the great Powers. Just think of their foreign policy and tell me if you would say that the foreign policy of any one of those countries has succeeded from any point of view, from the point of view of moving towards world peace or preventing world war, succeeded even from the mere opportunist and individual point of view of that country.

I think if you will look at this question from this point of view, you will find that there has been a miserable failure in the foreign policy of every great Power and country. It is in that context that we shall have to view these matters. It is not really the failure of the foreign policy of any particular Power, though perhaps two or three major Powers do influence foreign policy greatly.

Now, surely the responsibility for the deterioration of the international situation might lie with some Powers. In India, our responsibility is very little. We may have acted well or badly on the international stage, but we are not, frankly speaking, influential enough to affect international events very much. Therefore, if a great deterioration has taken place in the international sphere it is not due

to our policy. We suffer from it just as every other nation suffers from it and I think it is this vague feeling that we have suffered that induces the members of the House to search for reasons why we have suffered.

I think that is a very right approach, because we must find the reasons for our having erred, how we might have bettered our lot and so on and so forth. Nevertheless, I think the real reason is that the causes lie entirely outside any policy that we have pursued. There are bigger and deeper causes affecting the world and we, like the strongest of nations, are pulled hither and thither by these forces. That is one fact that I should like the House to bear in mind.

Another factor—and that is more applicable to us—is that owing to the unfortunate events that have happened in India since 15 August 1947, anything we did in the world outside suddenly lost weight or lost weight for a time. We counted for something, not very greatly, of course, more potentially than in actuality, indeed, potentially we counted for a great deal, though actually we need not have counted for much. But the events that occurred after 15 August in India and Pakistan,—Pakistan I might say naturally did not count for much because it had no background; it was a newcomer; it was we who counted—those events suddenly brought down our credit in the international domain tremendously.

It affected the United Nations when they met last October to consider the South Africa issue. Undoubtedly the events in India affected the decision of the United Nations General Assembly in regard to the South Africa issue; so also in regard to other matters. All these facts have nothing to do with foreign policy.

The point I wish to make before the House is this, that it may be desirable for us to adopt this or that foreign policy one of which is called a policy of neutrality or, as Pandit Kunzru said, a more positive one.

But all this has no relationship, it has nothing to do, with what has happened. Other factors govern it. If you like, it was a fault, but we have been rather passive about all these matters, and where we have been somewhat active are the very things in which some of the Honourable Members desire us to be more active. We are asked to collect the smaller nations of the world round us....But the point is the very activity—call it idealistic; I do not think it is purely idealistic; I think it is, if you like, opportunist in the long run—this policy that we have so far pursued before we became a Government, and to some extent after we became a Government, that is, standing up, in so far as we could, for the weak and the oppressed in various continents, is not a policy which is to the liking of the great Powers

who directly or indirectly share in their exploitation. It is this that puts us in the wrong with them.

There has been a lot said about other matters. Here is Indonesia. It is a clear issue before this House. We have done precious little in the way of actual active help; we are not in a position to do so. But we have sympathy for the Indonesians and we have expressed it as publicly as possible. Because we give our sympathy and some degree of help to Indonesia and because this offends and irritates some of the major Powers of the world, are we to withdraw that help? Are we to submit tamely and say, 'No, this might irritate this Power or that', because it does irritate this or that Power and there is no doubt about it?

Naturally, we cannot as a Government go as far as we might have done as a non-official organization in which we can express our opinions as frankly and as aggressively as possible. Speaking as a Government we have to moderate our language. We have sometimes to stop doing things which we might otherwise do. Nevertheless, the fundamental thing is, do we sympathize and openly sympathize with a country like Indonesia in her struggle for freedom, or do we not? That applies not to Indonesia only, but to several other countries, In each case, we have to face the passive hostility of various interests. not only the direct interests involved, but also the indirect interests involved, because the direct and the indirect interests hang together in such matters.

It has been an astonishing thing to see how for many months, the Good Offices Committee functioned in Indonesia—all good people—and as it happens the Secretary of the Committee was an Indian. The way it has functioned and the results it has produced are not at all satisfactory. If this House is dissatisfied with what the Security Council has done this year or considered in regard to Kashmir, they would be still more dissatisfied, I think, if they considered the Indonesian Good Offices Committee's work. Unfortunately, their approach to such problems is an approach with which this House cannot agree, on account of our past traditions, on account of our ideals.

Now, I am not talking in terms of this bloc or that bloc; I am talking independently of the blocs as they have appeared on the world stage. We have either to pursue our policy generally within limitations—because we cannot pursue it wholeheartedly, nevertheless openly—or give it up. I do not think that anything could be more injurious to us from any point of view—certainly from an idealistic and high moral point of view, but equally so from the point of view of opportunism and national interest in the narrowest sense of the word—than for us to give up the policies that we have pursued, namely, those

of standing up for certain ideals in regard to the oppressed nations, and trying to align ourselves with this great Power or that and becoming its camp-followers in the hope that some crumbs might fall from their table.

I think that would undoubtedly be, even from the narrowest point of view of national interest, a bad and harmful policy.

I can understand some of the smaller countries of Europe or some of the smaller countries of Asia being forced by circumstances to bow down before some of the greater Powers and becoming practically satellites of those Powers, because they cannot help it. The power opposed to them is so great and they have nowhere to turn. But I do not think that that consideration applies to India.

We are not citizens of a weak or mean country and I think it is foolish for us to get frightened, even from a military point of view, of the greatest of the Powers today. Not that I delude myself about what can happen to us if a great Power in a military sense goes against us; I have no doubt it can injure us. But after all in the past, as a national movement, we opposed one of the greatest of World Powers. We opposed it in a particular way and in a large measure succeeded in that way, and I have no doubt that if the worst comes to the worst—and in a military sense we cannot meet these great Powers—it is far better for us to fight in our own way than submit to them and lose all the ideals we have.

Therefore, let us not be frightened too much of the military might of this or that group. I am not frightened and I want to tell the world on behalf of this country that we are not frightened of the military might of this Power or that. Our policy is not a passive policy or a negative policy.

Two or three instances that were given perhaps gave an indication of what was working in the minds of some of the Honourable Members, although they have not had the time or the desire to say it clearly. I shall give one instance. It was stated . . . that we supported the veto in the United Nations presumably because we did not wish to offend the Soviet group.

Now, I want to place the facts before the House as far as I remember them. The veto was put there, as the House will remember, by the common consent of all the great Powers belonging to every group. It was put there because they felt—and may I say that the Soviets felt that way, the United States also felt that way,—because these huge and great Powers did not like the idea of half a dozen little countries just telling them to do this or that.

Both felt that way and neither of these was prepared to submit to a kind of majority voting of the little nations put together, so that it

was put there in the Charter right at the beginning. Whether the veto was used or misused, I am not going into that question, but now the question arose that the veto should be removed. This was not liked by several great Powers. It was not a question of supporting this bloc or that bloc. Neither bloc liked the removal of that veto.

Now, the problem before us was that if that veto was removed by a vote or decision of the United Nations, there was little doubt that the United Nations would cease to be that very instant. That was the choice. It was not a question of liking the veto. On behalf of India, as on behalf of many countries, it was stated openly that we disliked the veto and that it should go. It was pointed out, however, that this could only come about by some kind of general agreement.

Now, we agree with what Mr Santhanam said that the United Nations, in spite of its failings and weaknesses, is something that is good. It should be encouraged and supported in every way, and should be allowed to develop into some kind of world government or world order. Therefore, we instructed our delegates not to press the question of the veto to the breaking point and to say that, although we did not like it, it should remain there so long as it could not be removed by some kind of agreement among the major groups involved.

In that way various questions come up and each question has to be considered on its merits. I do not know if any Honourable Member has analyzed our voting at these international conferences. It would help them perhaps to appreciate the scene better if they took up any one of the major issues during the last year at the United Nations or its various Committees and Councils and found out what India had done.

It is certainly true that our instructions to our delegates have always been firstly, to consider each question in terms of India's interest, secondly, on its merits—I mean to say if it did not affect India, naturally, on its merits and not merely to do something or give a vote just to please this Power or that Power, though, of course, it is perfectly natural that in our desire to have friendship with other Powers, we avoid doing anything which might irritate them.

As a matter of fact, we go as far as possible to try and win them over. It is not our purpose to enter into other people's quarrels. Our general policy has been to avoid entering into anybody's quarrels. If I may say so, I have come more and more to the conclusion that the less we interfere in international conflicts the better, unless, of course, our own interest is involved, for the simple reason that it is not in consonance with our dignity just to interfere without producing any effect. We should either be strong enough to produce some effect or we should not interfere at all. I am not anxious to put my finger

into every international pie. Unfortunately, sometimes one cannot help it. One is dragged into it. For instance, there is the Korea Committee. Well, not only are we in that Committee, but ultimately our representative becomes the Chairman of that Committee.

Now, this leads to another matter, to which reference has been made by an Honourable Member. It is an odd contrast today that while in the official councils of the United Nations we may not perhaps pull the weight we ought to, nevertheless, in the unofficial councils outside, our weight has considerably increased. Why is this so? Because progressively, people see that within the United Nations things are done far from idealistically or morally, or in terms of the underdog, the smaller nations, or the Asian nations, and so more and more of these people try to find someone else and in their search for someone else who might perhaps give a lead in these matters, almost automatically their eyes turn towards India.

Now, I do not wish to enter into any comparisons with other countries, and certainly we have done nothing in India to merit leadership of anybody. It is for us to lead ourselves, then only can we lead others properly and I do not wish to place the case of India at any higher level. We have to look after ourselves. . . .

. . . I have no doubt at all, as I said right at the beginning of my remarks, that in the long run, it is to the great advantage of India to try to attract to itself the sympathy and the hope of millions of people in the world without offending others. It is not our purpose to offend others or to come into conflict with others. The world, however, is in a pretty bad way and it is easy enough for people to tell me, ' Oh, you talk idealistically, you should be practical.'

May I remind the House that we have seen, these many years, the results of persons and things being very practical? I have had about enough of this practicalness, which leads to incessant conflict and which leads to all the misery and suffering that we have seen. If that is the meaning of being practical, the sooner we are not practical, the better.

But that is not being practical. That is being grossly impractical. To march without looking to the left or to the right, each group just contracting into an ever smaller circle, full of danger for the other group, trying to win over other small or big nations by offering some immediate advantage. I do not say that this is good enough for this country and we really are not even compelled by circumstances to submit to it. We might have been compelled by circumstances, but we are not compelled by circumstances to give up, because it does amount to giving up our independence in order to gain the goodwill of this country or that country.

I think that not only in the long run, but also in the short run, independence of opinion and independence of action will count. This again does not mean that we should not associate with particular countries in certain activities. Pandit Kunzru referred to the necessity for our developing economically, militarily and otherwise. Surely this House realizes that nothing is more important in the opinion of this Government than to make India economically strong and militarily—not strong in the Big Power sense, because that is beyond our capacity,—but as strong as we can to defend ourselves if anybody attacks us.

We want to do that. We want the help of other countries; we are going to have it and we are going to get it too in a large measure—I am not aware of this having been denied to us to any large extent. Even in accepting economic help, or in getting political help, it is not a wise policy to put all your eggs in one basket. Nor should one get help at the cost of one's self-respect. Then you are not respected by any party; you may get some pretty benefits, but ultimately even these may be denied you.

Therefore, purely from the point of view of opportunism, if you like, a straightforward honest policy, an independent policy is the best. What that policy should be at a particular moment, it is very difficult for me or for this House to say, because things change rapidly from day to day. It may be that we have to choose what might be a lesser evil in certain circumstances—we must always choose the lesser evil.

We stand in this country for democracy, we stand for an independent sovereign India. Now obviously, anything that is opposed to the democratic concept—the real, essentially democratic concept, which includes not only political but economic democracy—we ought to oppose. We will resist the imposition of any other concept here or any other practice.

But there was a curious confusion in the speeches of some Honourable Members when on the one hand, they talk about our standing up for the weak and the oppressed against imperialism, and on the other hand, they ask us more or less to side with a Power here or there which may stand for imperialism. It may be that sometimes we have to side with this Power or that Power. I can quite conceive of our siding even with an imperialist Power—I do not mind saying that; in certain sets of circumstances that may be the lesser of the two evils. Nevertheless, as a general policy it is not a worthy policy or a worthwhile policy.

May I state another fundamental difficulty before us? Because of our past record in India, that is the anti-imperialist record, we have not been *persona grata* with many groups and peoples outside. We have

not yet overcome their antipathy. With the best will in the world, those people do not like us. Those people govern opinion elsewhere, they govern the Press. It is amazing how a certain section of the Press, say in the United Kingdom, deliberately and offensively misrepresents us. Now, as I was sitting here, a telegram came to me, a telegram from a foreign correspondent in this country, sending a long message to his paper in London, which is the most offensively false thing that I have seen. It amazes me that any person who has been here for some months should have the temerity to send such false messages and it is about time that the Government of India dealt with this matter more firmly.

We have been extraordinarily lenient towards the Press, Indian and foreign. We have gone out of our way to tell them that we will not do anything even if they send messages which are extremely disagreeable to us. But there is a limit to falsehood and that limit has been reached, I think, in regard to some messages.

Well, it is in this context that I should like Honourable Members to see the picture. Mr Kamath said in a kind of peroration that we must join this bloc or that. He said, ' I do not know which, but join this bloc or that.' I remember later he inclined towards one bloc, but that was his first statement—evidently in the course of his speech he changed his mind.

What does joining a bloc mean? After all it can only mean one thing: give up your view about a particular question, adopt the other party's view on that question in order to please it and gain its favour. It means that—it means nothing else as far as I can see, because if our view is the view of that party, then there is no giving up and we do go with that bloc or country. The question only arises when we are opposed to it on that point ; therefore we give up our viewpoint and adopt the other one in order to gain a favour.

Now, I am prepared to agree that on many occasions, not only in international conferences, but in this House, one gives up one's point to gain a compromise, and I am not prepared to rule out the possibility of our subordinating our viewpoint in international conferences in order to gain something worthwhile. That is perfectly legitimate, and it is often done. But this general approach is the worst possible approach to get anything from another country. I should like this House to realize that even if we wanted to adopt that policy, this approach is the worst approach to get a thing done.

The fact of the matter is that in spite of our weakness in a military sense—because obviously we are not a great military Power, we are not an industrially advanced Power—India even today counts in world affairs, and the trouble that you see in the United Nations or

the Security Council is because she does count, not because she does not count. That is a fact you should remember. If we had been some odd little nation somewhere in Asia or Europe, it would not have mattered much. But because we count, and because we are going to count more and more in the future, everything we do becomes a matter for comment, and many people do not like our counting so much. It is not a question of our viewpoint or of attaching ourselves to this or that bloc; it is merely the fact that we are potentially a great nation and a big Power, and possibly it is not liked by some people that anything should happen to strengthen us. . . .

Now, may I apologize to the House for not dealing with so many matters that have been mentioned, especially by my honourable friend, Seth Govind Das, about Indians overseas? I should like the House to consider this question again in this background that it is not a question of the External Affairs Department or this House turning a switch this way or that way and everything will be all right. It is far more complicated than that, and when the time comes, if necessary, we are prepared to switch over to this or that policy, provided we are firmly convinced that it is for the good of the country.

As for the Indians overseas, I will just say one or two words. Many of these difficulties continue and they are likely to continue. I am sorry to say that we do not get much help from the British Colonial Office. Not only do we not get much help, but it astonishes me, used as I am to the delays of the Government of India—and they are pretty remarkable—but the delays of the British Colonial Office are, indeed, a revelation.

I remember that we sent it some urgent letters and also reminders by cable. It took us exactly ten months to get a reply. The matter was about sending a deputation to some of the British colonies just to see the Indians there. It was a very simple matter, with no great principle involved, but still it took them ten months to reply, and during that period, events happened and nothing could be done. So we come up against this bureaucratic red tape in all these offices, here as well as there.

But the real difficulty is the question of citizenship. Now, these Indians abroad, what are they? Are they Indian citizens? Are they going to be citizens of India or not? If they are not, then our interest in them becomes cultural and humanitarian, not political. That interest of course remains. For instance, take the Indians in Fiji or Mauritius. Are they going to retain their nationality or will they become Fiji nationals or Mauritians? The same question arises in regard to Burma and Ceylon. It is a difficult question. This House wants to treat them as Indians and in the same breath, wants complete franchise

for them in the countries where they are living. Of course, the two things do not go together. Either they get franchise as nationals of the other country, or you treat them as Indians minus the franchise and ask for them the most favoured treatment given to an alien.

Finally, right at the beginning, Prof. Ranga asked a question about India being in the British Commonwealth. Apparently, he has been misled by some newspaper reports that have been appearing recently that a delegation has gone from here to London to discuss this matter. It surprises me how people give rein to their imagination. I suppose, the delegation referred to is the Defence Ministry delegation led by Mr H. M. Patel. It had nothing to do with this matter; it was concerned entirely with defence matters and certain materials that we wanted to purchase in England and elsewhere. No such question has been discussed.

As to our general position, however, that was defined in this Constituent Assembly in the early stages and it will finally be decided by the Constituent Assembly itself. There is no question of any committee or any individual discussing it or even coming to preliminary conclusions about it. Whatever the final decision may be, it is quite certain, I believe, that India will be a completely independent and sovereign Republic or Commonwealth or State or whatever you may like to call it.

Now, that does not do away with the consideration of the problem of what our relations should be with England or the British Commonwealth or any other group. That is not merely a theoretical question, but a very practical one. Again in regard to citizenship, it affects all Indians abroad in the various British colonies. Exactly what type of relationship should we have, what type of citizenship, so that they may not become aliens? All these questions must be considered, but apart from that politically and otherwise, India must be a completely independent country.

Nehru, Jawaharlal, *Independence and After*, 1949, pp 210-22.

11 8 *March* 1949

SPEECH: PANDIT NEHRU (EXTRACT)

This House is no doubt interested in the many aspects of our foreign policy and foreign affairs and how they affect India. Probably, in the course of the debate today, attention will be drawn to many of these factors, but with your permission, Sir, and the indulgence of the House,

I should like to deal with the general aspects of foreign affairs and foreign policy as they affect India and as we look at them rather than say much about the smaller aspects of the main problem. . . .

One of the major questions of the day is the readjustment of the relations between Asia and Europe. When we talk of Asia, remember that India, not because of any ambition of hers, but because of the force of circumstances, because of geography, because of history and because of so many other things, inevitably has to play a very important part in Asia. And not only that; India becomes a kind of meeting ground for various trends and forces and a meeting ground between what might roughly be called the East and the West.

Look at the map. If you have to consider any question affecting the Middle East, India inevitably comes into the picture. If you have to consider any question concerning South-East Asia, you cannot do so without India. So also with the Far East. While the Middle East may not be directly connected with South-East Asia, both are connected with India. Even if you think in terms of regional organizations in Asia, you have to keep in touch with the other regions. And whatever regions you may have in mind, the importance of India cannot be ignored. . . .

The Indian Union is an infant State, infant free State, a year and a half old, but remember that India is not an infant country. India is a very ancient country with millennia of history behind her—history in which she has played a vital part not only within her own vast boundaries, but in the world and in Asia in particular. India, now, in this last year or more, emerges again into the main trend of human affairs.

Now, that is something of great historical significance. I could have said that Asia emerges in this main trend of history. Asia, in the long millenia of her history, has played a very important part. So has India, of course; but during the last two hundred years or so, certain developments of science and technology in Europe, and in America a little later, led to the domination of Asia by Europe and to a restriction of her activities in the world at large. She became confined and restricted. Various changes took place I believe, a considerable recognition of these changes now, but it is not enough yet. Even in the Councils of the United Nations, the problems of Asia, the outlook of Asia, the approach of Asia have failed to evoke the enthusiasm that they should. There are many ways of distinguishing between what may be called the approach of Asia and the approach of Europe. Asia today is primarily concerned with what may be called the immediate human problems. In each country of Asia—underdeveloped countries more or less—the main problem is the problem of food, of clothing, of education, of health. We are concerned with these

problems. We are not directly concerned with problems of power politics. Some of us, in our minds, may perhaps think of that.

Europe, on the other hand, is also concerned with these problems, no doubt, in the devastated regions. Europe has a legacy of conflicts of power, and of problems which come from the possession of power. They have the fear of losing that power and the fear of someone else getting greater power and attacking one country or the other. So that the European approach is a legacy of the past conflicts of Europe.

I do not mean to say that we in Asia are in any way superior, ethically or morally, to the people of Europe. In some ways I imagine we are worse. There is, however, a legacy of conflict in Europe. In Asia, at the present moment at least, there is no such legacy. The countries of Asia may have their quarrels with their neighbours here and there, but there is no basic legacy of conflict such as the countries of Europe possess. That is a very great advantage for Asia and it would be folly in the extreme for the countries of Asia, for India to be dragged in the wake of the conflicts in Europe. We might note that the world progressively tends to become one—one in peace and it is likely to be one, in a sense of war. No man can say that any country can remain apart when there is a major conflagration. But still one can direct one's policy towards avoiding this conflict and not being entangled in it.

. . . we were bred in a high tradition under Mahatma Gandhi. That tradition is an ethical tradition, a moral tradition and at the same time it is an application of those ethical and moral doctrines to practical politics. That great man placed before us a technique of action which was unique in the world, which combined political activity and political conflict and a struggle for freedom with certain moral and ethical principles. Now, I dare not say that any of us, not all of us, lived up to those ethical and moral principles but I do dare to say that in the course of the past 30 years or so all of us, in a smaller or greater degree, and the country itself in a smaller or greater measure, was affected by those ethical and moral doctrines of the Great Master and Leader.

And with that idealism and ethical background we now face practical problems and it becomes an exceedingly difficult thing to apply that particular doctrine to the solution of these problems. That is a conflict which individuals and groups and nations have often had to face. It came to us in very peculiar circumstances and it was intensified by those circumstances and so there has been this travail of the spirit in most of us. We have not often thought enough of Gandhiji and his great doctrine, of his great message, and while we praised it often enough, we felt: 'Are we hypocrites, talking about it and being

unable to live up to it? Are we deluding ourselves and the world? ' Because if we are hypocrites, then surely our future is dark. We may be hypocritical about the small things of life, but it is a dangerous thing to be hypocritical about the great things of life. And it would have been the greatest tragedy if we exploited the name and prestige of our Great Leader, took shelter under it and denied in our hearts, in our activities, the message that he had brought to this country and the world. So we have had these conflicts in our minds and these conflicts continue and perhaps there is no final solution of these conflicts except to try continually to bridge the gulf between the idealism and the practice which is forced upon us by circumstances. We cannot and I am quite positive that our great leader would not have had us behave as blind automatons just carrying out what he had said without reference to the changes in events. On the other hand, we have to keep in mind those very ideals to which we have pledged ourselves so often. . . .

It was a curious thing that we who carried on the struggle for freedom in a non-violent and peaceful way should immediately have had to be confronted with violence of the intensest form, civil violence, as well as, what may be called, military violence, that we should have had to undertake a kind of war in a part of the country. The whole thing seemed to be a complete reversal of all that we stood for; and yet circumstances were such that I am quite convinced that we had no other way and that the way we took was the right one.

May I mention to the House that towards the end of October, 1947, when the question of Kashmir suddenly came upon us, when we heard that raiders had come into Kashmir and were destroying and looting, it was a very difficult question for us to decide ! It was difficult enough from the military point of view, because we were isolated and far away and the sending of arms or troops by air was no light undertaking from the purely military point of view. But the real difficulty before us arose from within us, it was a difficulty of the spirit. What would this land us in? On the other hand, there was the powerful call of the people of Kashmir, those people who were being attacked and destroyed. We could not say ' No ' to them. On the other hand, we did not quite know where it would lead us. And in that difficulty of spirit I went—as I often did—to Mahatma Gandhi, for his advice. It was not natural for him to give advice about military matters. What did he know about them? His struggles were struggles of the spirit. But listening to me, if I may with all respect say so, he did not say ' No ' to the course of action that I proposed. He saw that a government, as we were, had to follow its duty even to military obligations when certain circumstances arose. And throughout those few months, before

he was taken from us, I conferred with him on many occasions about Kashmir and it was a great happiness to me that I had his blessings in the steps we took!

So looking back on this year and a half, we have built up India as a single organized political unit, and in this, as the House knows, my respected colleague, the Deputy Prime Minister, has played a supremely vital part. We have a little further to go in this matter. But I hope these further problems also will be settled very soon. There is the problem of Kashmir; there are the problems of what are called foreign possessions in India, Pondicherry, Chandernagore, Goa and the rest. And all along we have stated that we wanted a peaceful solution in regard to these foreign possessions. But it is quite clear that there is only one future for these possessions and that is complete integration with India. We are prepared to wait a little for it, to avoid conflict. We want peaceful solutions of these and other problems. But it is an inconceivable thing that in this new, resurgent India, bits of territory should belong to Powers far away. . . .

Then the main question that troubles this House often enough is the position of Indians abroad. Now, that question has to be viewed in a different light from the one it was viewed in the past. In the past our main effort was to persuade the British Colonial Office to interest itself in bettering the conditions of Indians abroad. We as an independent nation have to deal with other independent nations. Naturally, we try to do our best. I believe the conditions of Indians abroad are being bettered, but the main thing that has happened is that the status of Indians abroad has gone up tremendously in the eyes of the world.

The problems we have to face in world affairs at the present moment bear a great deal of relation to the conflicts that are going on. We have stated repeatedly that our foreign policy is one of keeping aloof from the big blocs of nations—rival blocs—and being friendly to all countries and not becoming entangled in any alliances, military or other that might drag us into any possible conflict. Some people have criticized and suggested to us that that is not a good enough policy; and that we are losing what we might get by a closer association or alliance. Others, on the other hand, criticized us by saying that while we say one thing, we act secretly or otherwise in another way. It is a little difficult, of course, to give an answer to an imputation of motives, but as a matter of fact we have very strictly followed the policy of not getting entangled in any kind of commitment, certainly not military commitment with any other Power or group of Powers, and we propose to adhere to that policy, because we are quite convinced that that is the only possible policy for us at present and in the future.

That does not, on the other hand, involve any lack of close relationships with other countries.

The House will remember that some time back I mentioned the question of India's possible relationships with the Commonwealth and I informed the House of the broad lines of our approach to this problem and I gathered that the House agreed with it. Subsequently, the question was considered by the National Congress at its Jaipur Session and in broad lines they also laid down the policy to be pursued. As far as we are concerned, we propose strictly to adhere to those directions. Of course, changing circumstances have to be understood and interpreted in different ways, but the broad lines of policy have been laid down and the broad lines of policy are these:

(*a*) that India will naturally and inevitably in the course of a few months become an Independent Republic;

(*b*) that in our external, internal or domestic policy, in our political policy, or in our economic policy, we do not propose to accept anything that involves in the slightest degree dependence on any other authority.

Subject to that, we are prepared to associate ourselves with other countries in a friendly way. We are associated today in the United Nations with a great number of countries in the world. Anything else that we might do will naturally have to be something that does not go against our association with the United Nations. It is only in terms of independent nations co-operating together that we can consider the problem of our association with the Commonwealth. There may be, as some people have suggested, alliances with this or that nation. Alliances usually involve military and other commitments and they are more binding. Other forms of association which do not bind in this manner, but which help in bringing together nations for the purpose of consolidation and, where necessary, of co-operation, are, therefore, far more preferable than any form of alliance which does bind. What the outcome may be I do not know. As soon as I know, I shall inform the House, but what I am placing before the House today is this: that our policy in regard to this matter is going to be strictly determined by the Jaipur Congress resolution.

Recently there was the Conference on Indonesia held at India's instance in New Delhi and many countries from Asia attended it, besides Egypt, Ethiopia, Australia and New Zealand. That conference forcibly brought several matters before the world's eye and at that Conference one of the resolutions passed was that we should explore methods of closer co-operation. We are pursuing that line of enquiry and perhaps in the course of a month or two or perhaps more we may have some more definite results to consider; possibly we might have another conference to consider the possible lines of co-operation.

Again, that co-operation can only be the co-operation of independent nations without the least commitment of one to the other. But it is a fact that there are so many matters in common between us that it is helpful for us to co-operate with one another. We have not yet decided what the region of co-operation might be, because, as I said a little while ago, India is interested in several regions in Asia. Whether all should be grouped together or separately, I do not know. That is for us to consider together and to decide what is more feasible, but in any event two facts have to be borne in mind. One is that whatever structure of co-operation we may build up will be entirely within the scope of the Charter of the United Nations. Secondly, there will be no binding covenant in it, and this will largely be an organization for the consultation and co-operation that naturally flow from common interests.

So our policy will continue to be not only to keep aloof from Power-alignments, but try to make friendly co-operation possible. Fortunately we enter upon our independence as a country with no hostile background in regard to any country. We are friendly to all countries. Our hostility during the last 200 years was mainly directed towards the dominating power here and because of India's independence that hostility has largely vanished, though it may survive in some people's minds. So we approach the whole world on a friendly basis and there is no reason why we should put ourselves at a disadvantage, if I may say so, by becoming unfriendly to any group. I think that India has a vital role to play in world affairs.

The various ideologies that confront the world today, the various isms which threaten conflict repeatedly may have a great deal, I think, to commend themselves, but all of them have been derived, if I may say so, from the background of Europe. Well, the background of Europe is not something apart from the background of the world and there is much in the background of Europe which is present in India or in other countries. Nevertheless, it is true that the background of Europe is not completely the background of India or the world and there is absolutely no reason why we should be asked to choose between one ideology or the other *in toto*.

India is a country with a tremendous vitality which it has shown through its history. It has often enough imposed its own cultural pattern on other countries not by force of arms, but by the strength of her vitality, culture and civilization. There is no reason why we should give up our way of doing things, our way of considering things, simply because of some particular ideology which emanates from Europe. I have no doubt at all that we have to learn a great deal from Europe and America and I think that we should keep our eyes and ears

completely open. We should be flexible in mind and we should be receptive, but I have also no doubt at all that we should not allow ourselves, if I may use the words of Gandhiji, 'we must not allow any wind from anywhere to sweep us off our feet'.

So we should approach these problems, whether domestic or international problems, in our own way. If by any chance we align ourselves definitely with one Power group, we may perhaps from one point of view do some good, but I have not the shadow of a doubt that from a larger point of view, not only of India but of world peace, it will do harm. Because then we lose that tremendous vantage ground that we have of using such influence as we possess (and that influence is going to grow from year to year) in the cause of world peace. What are we interested in world affairs for? We seek no domination over any country. We do not wish to interfere in the affairs of any country, domestic or other. Our main stake in world affairs is peace, to see that there is racial equality and that people who are still subjugated should be free. For the rest we do not desire to interfere in world affairs and we do not desire that the other people should interfere in our affairs. If, however, there is interference, whether military, political or economic, we shall resist it.

So it is with this friendly approach that we look at the world. It is true that in doing so we are often likely to be misunderstood, because passions have been roused all over the world and sometimes each country thinks that if you are not completely lined up with it you are its enemy or opponent. It is unfortunate if people think so ; we cannot help it. We may sometimes even lose some petty advantage because of this fear and suspicion in other people's minds. But even now other countries are beginning to realize that we are playing an independent role, that we are not tied up to anybody, that we consider problems dispassionately and objectively in so far as we can judge them on their merits and not from that other point of view, which is becoming very common, that is to say from the point of view of a certain manoeuvring for a possible future war. That is the point of view from which problems are dealt with today. . . .

The supreme question that one has to face today in the world is, how can we avoid a world war? Some people seem to think that it is unavoidable and, therefore, they prepare for it and prepare for it not only in a military sense, but in a psychological sense and thereby actually bring the war nearer. Personally, I think that is a very wrong and a very dangerous thing. Of course, no country dare take things for granted and not prepare for possible contingencies. We in India must be prepared for all possible danger to our freedom and our existence. That is so. But to think in terms of the inevitability of world

war is dangerous thinking. I should like this House and the country to appreciate what a world war means, what it is likely to mean. It just does not matter who wins in the world war, because it will mean such utter catastrophe that for a generation or more everything that we stand for in the way of progress and advancement of humanity will be put an end to. That is a terrible thing to contemplate and everything should be done to avoid this catastrophe.

I feel that India can play a big part, and maybe an effective part, in helping to avoid war. Therefore, it becomes all the more necessary that India should not be lined up with any group of Powers which for various reasons are full of fear of war and preparing for war. That is the main approach of our foreign policy and I am glad to say that I believe that it is more and more appreciated.

We are at the present moment on friendly terms with all countries. With our neighbour, Pakistan, I think the situation is improving from day to day. It is much better than it was a few months ago. I hope it will improve more. With Afghanistan and Nepal we are on the friendliest terms. With other countries in Asia and in Europe our relations are getting closer and closer, our trade is extending.

We should utilize this position, I think, in the United Nations and elsewhere to fulfil the cause of peace, and it is possible that a number of other countries which are not happy at the prospect of war may also support the attitude that India may take up. We have dealt with questions in the United Nations as individual separate questions,—for instance, in regard to Korea, in regard to Palestine, in regard to some other matters too, and we have displeased people, because we have dealt with individual questions and gave our opinion on their merits. Of course, the merits cannot be divorced from various other possible consequences. I think people have realized often enough that the advice that India gave and which was not accepted then was the right advice and that the trouble would have been far less if the advice had been accepted then. There are many aspects of this question which I can speak about, but I have already taken a great deal of the time of the House.

I would beg the House to look upon the matter from the wider point of view that I have placed before it, that is the emergence of India and Asia in the modern trend of human affairs, the inevitability of India playing an important part by virtue of her tremendous potential, by virtue of the fact that she is the biggest political unit in terms of population today and is likely to be in terms of her resources also. She is going to play that part. If we have to play that part we have to look upon this question from this bigger point of view and not from the small difficulties and problems that may face us and that

part must essentially be one of promoting peace and freedom in the world, of removing racial inequalities.

And may I in this connection say that it has been a matter of deep grief to us to learn of the racial riots that took place at Durban in South Africa? I do not wish to say much in regard to this except that if racialism is encouraged anywhere it is bound to yield such trouble. But it is a matter of deep grief to us that Indians and Africans should be involved in such rioting. It has been, not today but over years past, our definite instruction to our envoys in Africa and elsewhere that we do not want Indians to have any special interests at the cost of the Africans anywhere. We have impressed upon them the need for co-operation with the Africans in order to gain freedom for these Africans and we have repeated these instructions again. I hope that after the unfortunate experience of Durban, Indians and Africans will come together again. Indeed, there is evidence from East Africa and elsewhere of a great measure of co-operation between Indians and Africans. . . .

Nehru, Jawaharlal, *Independence and After,* 1949, pp. 229-44.

12 28 *November* 1949

SPEECH: PANDIT NEHRU (EXTRACT)

. . . I should like to say a few words in regard to our relations with Pakistan and foreign affairs generally. I am sorry to say that these relations continue to be strained and with all the efforts that we have made to improve them we have not succeeded in doing so in any large measure. Recently of course since devaluation came and Pakistan followed a different policy other points of strain and conflict have arisen. They have arisen not because we chose to raise them but simply because of the facts of the situation. Pakistan has accused us of deliberately trying to bring pressure upon them, to affect their economy or force them to do this or that in regard to devaluation of their rupee. This charge has been made, more especially I believe, in regard to the jute situation. As a matter of fact the facts are quite simple. The price of jute rose so much that those who were buying it in India could not afford to buy it. They simply could not afford it. It was not an economic price for them to buy. This was pointed out to the Pakistan Government, that we could not buy it at their rate and they have to make some other arrangements. The Pakistan Government apparently thinks that this is a deliberate move to coerce them in regard to their

economic policy. We do not wish to coerce anybody nor do we wish to be coerced by anybody. They can go their own way but it is quite impossible for us to accept prices in regard to certain commodities if they are too high. This is the simple proposition. I believe my colleague, the Finance Minister, repeatedly approached Pakistan and suggested that the whole matter should be reviewed and talks should take place but thus far no conference has definitely been arranged.

There are other matters of importance, matters in regard to which there has been a continuing dispute with Pakistan. One very important matter is evacuee property. I need not say much about it except that as far as I can see the only right way to settle it—apart of course from coming to a settlement ourselves, if there is no settlement—there can be discussion and consideration by experts on both sides and further if there is no agreement there may be a reference, if you like to some high judicial authority. The only other way seems to me to be to carry on this dispute shouting at each other without any settlement at all. Whether it is the question of evacuee property or the canal water dispute the matter can be examined technically by experts on both sides and thus the areas of dispute should be limited. Then that can be considered in a normal way.

Then, finally there is the question of Kashmir. The House knows that this matter is going to be considered by the Security Council in the course of the next few weeks. I do not know when it will be considered because the United Nations Commission has been writing its report in Geneva and they are supposed to go to Lake Success some time in the second week of December. After that they will present their report. It may be considered soon after that, that is in the month of December. Or, if it is delayed, it may be considered early in January. Since the 1st of January last, cease-fire has subsisted in Kashmir. There have been a number of 'incidents', but generally speaking there has been no resumption of operations. We hope, of course, there will be no such resumption. We have repeatedly made it quite clear that we want this problem of Kashmir, as all problems, settled by peaceful methods without recourse to warfare because we are convinced that warfare leads to disastrous consequences and should be avoided as far as possible. Nevertheless, it cannot be avoided if another party starts it, or if there is aggression one has to meet that. That is why originally we had to go to Kashmir; that is why we have stayed on—that is, our armed forces have stayed on—and we have given assurances not only to the people of Kashmir but to our own people that we will not withdraw our forces from there so long as there is any danger left of aggression from outside. Now, that is the position in Kashmir. We propose to stay where we are and to protect Kashmir in accordance

with our pledged word, to give every help to the people of Kashmir and at the same time to seek ways of solving this problem by peaceful methods. But on the other side, in Pakistan, I regret to say, passions are continually roused on religious grounds, there is a continual talk of *jehad*, etc., and it is even said by people—responsible leaders—that there is bound to be war and they will have war. Well, I suppose all this talk is perhaps partly due to a feeling of frustration on the other side. I am sorry for that. But so far as we are concerned, as a government we do not propose to move this way or that way, either to be moved to anger by the hysteria on the other side or to be moved to any weakness by any threats on the other side. We shall proceed on our even course, always trying for a peaceful settlement of this, trying to help the United Nations which has been in charge of it to find a peaceful settlement and at the same time not surrendering to anything that we consider wrong. That is the position in Kashmir. We shall have to send a deputation, or delegation rather, to Lake Success when this matter is considered by the Security Council.

I should like to inform the House in regard to the question of Indians in South Africa. When I say ' Indians ' I should like to make it clear that I am not referring to Indian nationals but Indians by descent who are really South African nationals. We have been for some time past in communication with the Government of South Africa about the holding of a conference to consider these questions. That was the recommendation of the United Nations to us and to all the parties concerned, and immediately after that we suggested the holding of this conference. But there has been great delay in this correspondence. Ultimately the South African Government suggested that before we held the conference itself there should be a preliminary conference to consider what the conference is about and how the conference should proceed. We agreed to that also. Again there has been delay, but now finally a date has been fixed, that is February 6th, when this preliminary conference can take place in Cape Town, and representatives will go to it from India—and Pakistan I presume—to consider these matters.

The House may have also noticed in the press the announcement that the Conference of the Foreign Ministers of the Commonwealth countries is going to be held in Colombo early in January. I believe the 9th has been fixed as the date for it. Now, this Conference was fixed long ago, about a year ago, in fact a little over a year ago. In October 1948 it was decided to hold a conference of Foreign Ministers of the Commonwealth countries sometime in 1949, and Colombo was suggested then. But other things have happened since then and there was an emergent meeting in London in April last of Prime

Ministers and so it was decided not to hold another conference too soon. I mention this fact because people think that the Colombo meeting of Foreign Ministers has been suddenly called to meet a new emergency in South-East Asia or in China or elsewhere. In fact it has nothing to do with it. It is the normal conference that was decided to be held over a year ago. Of course it will consider the general situation as it is today. An Hon. Member asked me if the question of the recognition of China is on the agenda of that conference and I told him that it was not. We discuss matters generally—each government deals with such questions independently as it chooses.

Now, may I say a few words in regard to my visit to America and Canada and the United Kingdom? I need not say very much because a great deal of publicity has been given to it in this country. But I would like to say this, that the objective which I had in going to America—both the United States and Canada—was achieved to my complete satisfaction. I did not go there for deals and for bargains and for intrigues. I did go there to create a friendly impression, if I may say so a friendly interest in our problems, and generally to create an atmosphere of goodwill between the two countries. I believe we succeeded in doing that, and I believe that the responsible people in the United States thoroughly appreciated, if I may say so, the frank way in which I explained our position in world affairs. They appreciated it. Some of them may have liked it to be somewhat different, perhaps. But they appreciated in the end that that was the only right position that India could have and should have. That is a position in which India pursues her foreign policy without any commitments to other countries, without any binding ties, but in friendly co-operation with all the countries that co-operate with her. Indeed, it was largely in consonance, to give a historical parallel, with the policy which the great founder of their own nation had pursued in the early days of the American Republic. Reading history, past events may seem to us quite not so important as the events that surround us today—wars and revolutions—but what happened in the early days after the American Republic came to be founded was big enough in the context of that world, and soon after came the revolutionary wars in Europe and then the Napoleonic wars. Big revolutions and big changes were taking place all over the world. Washington and the other founders of the Republic definitely and deliberately tried to keep away from alignments in these struggles for world mastery as they were considered then. So, it is not difficult for an American, bred in that tradition, to understand that this new Republic of India should not commit itself or align itself with any particular country or policy but should keep on friendly terms with all countries and decide each question

on the merits as it arises. Naturally, we have our viewpoint, naturally apart from any particular viewpoint in regard to a particular question, we have a certain approach to questions. That approach is conditioned by the geographical fact of where we are, by our historical background, by the background of our struggle for freedom during the last thirty years or so—it is very much conditioned by that and by various other factors. For us, and I think personally for the world, the most important factor today is not what is happening in Asia and various parts of Asia. I think it is undoubted that when history comes to be written about this period, these enormous changes that are taking place in Asia will probably be the most important part of that narrative.

So, our whole perspective necessarily is different from that of a person possibly in Europe or possibly in America. That does not mean that we see things differently or that we necessarily must differ, but that our approach is somewhat different; the emphasis that we lay might be different and possibly sometimes our judgment of a situation would be different. Nevertheless, I am convinced that it is necessary for us to seek the largest measure of co-operation and not to live in isolation. When we say that we shall try to follow our own policy, it does not mean a policy of isolation, it does not mean, as I made it clear, just a barren neutrality or a passivity. We think in active terms of how we can help in such measure as we can the maintenance of world peace. I am not conceited enough to imagine that we can control the fortunes of the world or prevent something happening that otherwise would happen. But there can be little doubt that we can occasionally at least make a difference. Well, I hope that this country will make that difference whenever it has the chance, and that difference will be in favour of peace.

So, this is the general line that I adopted in other countries in regard to our foreign policy, and I laid special stress, of course, on Asia as she is emerging after several hundred years of colonial domination because that is the most important problem of the age. There has been a great deal of talk about the possibility of war—world war I mean. So far as I can judge, such possibilities as there were have receded. I don't think there is any great chance of any war on a big scale, on a world scale, in the near future. Certainly the position in Europe is much quieter from that point of view although very serious problems remain. In Asia, in spite of the big changes that have taken place, I don't see any probability of military conflict, apart from the local conflicts that are going on, on a world scale. Therefore, I think on the whole it may be said that in spite of the various crises and upheavals and difficulties, there is more chance of avoidance of any

great world struggle than there was during the past year or two, and India and other countries if they try hard enough can perhaps help still further in avoiding war.

This House must have followed with interest and with a certain degree of satisfaction the progress that was made in the settlement of the conflict in Indonesia. It is a little difficult to say anything now finally as to what will emerge, but I think one may say with a certain measure of certainty that a very big step forward has been taken in the way of that settlement and in Indonesia becoming a completely free country. I should like, on behalf of this House, to congratulate the great leaders of the Indonesian Republic, the President of the Republic, the Prime Minister and others, on the part they have played which has been a part not only of remarkable courage but of remarkable wisdom and restraint. During these two or three years, Indonesia and India have come very close to each other. The public may know something of this by occasional messages, etc., but as a matter of fact the measure of mutual understanding and friendship that has arisen between us has been far greater than even perhaps this House realises. It has been a very great pleasure to me to deal on an official basis and sometimes even on a personal basis with these leaders of the Indonesian Republic, and may I say that some of those leaders, especially the President, know more about the culture and the history of India and even the recent history of our struggle for freedom than perhaps many of our politicians in India itself.

May I also refer to Africa, rather East Africa. Now, if Asia is dynamic today and turbulent and changing, there is little doubt that Africa also is on the eve of great changes. It is a matter of great distress that some parties in Africa should add to the racial problem there instead of trying to solve it, and to make it worse because nothing can be so bad and so dangerous in the future as a big eruption in Africa on the racial basis. So far as we are concerned, it has been our policy and it was the Congress policy long before we came into the Government, that Indians in Africa should develop close contacts and should try to serve the people of Africa and we had always made it clear that we want no privileges, no interests in Africa which come in the way of the indigenous inhabitants of Africa. At the present moment, apart from the South African problem which is a different one, we have to deal chiefly with the African races in East Africa where there are a considerable number of Indians in business or in some professions. I am happy to say that our relations there have progressively improved and our representative there has done extraordinarily good work in this behalf. One gesture of ours has been to give some scholarships

to African students to come to India. It was greatly appreciated there and helped in bringing those Africans nearer to the Indians.

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13 3 *November* 1948

ADDRESS: PANDIT NEHRU (EXTRACT)

I am grateful for the opportunity that has been given to me to address this great Assembly. I feel a little embarrassed and a little overwhelmed by this occasion, because this Assembly represents the world community, and, whether we who are present here are big men and women or small, we represent a mighty cause and something of the greatness of that cause falls upon us too, and makes us, for the moment, greater perhaps than we are.

Therefore, in venturing to address this Assembly, I feel embarrassed. You have been dealing with intricate and difficult problems, and I do not, and I would not venture on this occasion to say anything about those great problems that confront you. You can carry the burdens and sorrows of the world. But I have often wondered whether, in dealing with those problems, the approach that is normally made to them is the right one or not. The Charter of the United Nations, in noble language, has laid down the principles and the purposes of this great organisation. I do not think it would be possible to improve upon that language.

The objectives are clear; your aim is clear; and yet, in looking at that aim, we lose ourselves often, if I may venture to say so, in smaller matters and forget the main objective that we were looking at. Sometimes it seems that the objective itself gets a little clouded and lesser objectives are before us. . . .

Now, a mere repetition of those principles and purposes would perhaps indicate to us how sometimes, with passion and prejudice, we swerve away from that path. This Assembly took shape after two mighty wars and as a consequence of those wars. What has been the lesson of those wars? Surely the lesson of those wars has been that out of hatred and violence you will not build peace. It is a contradiction in terms. The lesson of history, the long course of history, and more especially the lesson of the last two great wars which have devastated humanity, has been that out of hatred and violence only hatred and violence will come. We have got into a cycle of hatred and violence, and not the most brilliant debate will get you out of it, unless you

look some other way and find some other means. It is obvious that if you continue in this cycle and have wars which this Assembly was especially meant to avoid and prevent, the result will not only be tremendous devastation all over the world, but non-achievement by any individual Power or group of its objective.

How, then, are we to proceed? It may be that it is difficult to get this hatred and prejudice and fear out of our minds. Nevertheless, unless we try to proceed in this way, to cast out this fear, we shall never succeed. Of that I am quite convinced.

You meet here, representatives of all nations of the world, or nearly all. Inevitably, you have behind you and before you the immediate great problems that confront more especially Europe, which has suffered so much.

May I say, as a representative from Asia, that we honour Europe for its culture and for the great advance in human civilization which it represents? May I say that we are equally interested in the solution of European problems; but may I also say that the world is something bigger than Europe, and you will not solve your problems by thinking that the problems of the world are mainly European problems. There are vast tracts of the world which may not in the past, for a few generations, have taken much part in world affairs. But they are awake; their people are moving and they have no intention whatever of being ignored or of being passed by. . . .

Today I do venture to submit that Asia counts in world affairs. Tomorrow it will count much more than today. Asia till recently was largely a prey to imperial domination and colonialism; a great part of it is free today, part of it still remains unfree; and it is an astonishing thing that any country should still venture to hold and to set forth this doctrine of colonialism, whether it is under direct rule or whether it is indirectly maintained in some form or other. After all that has happened, there is going to be no mere objection to that, but active objection, an active struggle against any and every form of colonialism in any part of the world. That is the first thing to remember.

We in Asia, who have ourselves suffered all these evils of colonialism and of imperial domination, have committed ourselves inevitably to the freedom of every other colonial country. There are neighbouring countries of ours in Asia with whom we are intimately allied. We look to them with sympathy; we look at their struggle with sympathy. Any Power, great or small, which in that way prevents the attainment of the freedom of those peoples does an ill turn to world peace.

Great countries like India who have passed out of that colonial stage do not conceive it possible that other countries should remain under the yoke of colonial rule.

We in Asia regard it as a vital problem, because it has been a vital problem for us, and it is a question to which I want to draw attention—that is the question of racial equality, which is something which is laid down in the provisions of the United Nations Charter. It is well to repeat that, because after all this question of racial equality has frequently been spoken about in the Assembly of the United Nations.

I do not think I need dwell on any particular aspect of that question, but I would remind this Assembly of the world-wide aspects of this question. Obviously there are large regions of the world which have suffered from this question of racial inequality. We also feel that there is no part of the world where it can be tolerated in the future, except perhaps because of superior force. It is obviously sowing the seeds of conflict if racial equality is not approved, and a menace to world peace and is in conflict with the principles of the United Nations Charter.

The effects of this inequality in the past have made themselves felt in Asia, Africa and other parts of the world much more than in Europe, leading towards a conflict in the future, and it is a problem which, if it is not properly understood, will not be solved. . . .

I feel that today the world is so tied up in fears, apprehensions, some of them justified no doubt, but where a person feels fear, bad consequences and evil consequences follow. Fear is not a good companion. It is surprising to see that this sense of fear is pervading great countries—fear, and grave fear of war, and fear of many things. Well, I think that it is admitted, or it will be admitted, that no aggression of any kind can be tolerated, because the very idea of aggression must upset the balance and lead to conflict. Aggression of every type must be resisted.

If we proceed to this problem, and discuss in peace the psychology of fear, if we realise the consequences of what is happening, it is possible that this atmosphere of fear may be dissipated. Why should there be this fear of war? Let us prepare ourselves against any possible aggression, let no one think that any nation, any community can misbehave. The United Nations are here to prevent any fear or hurt, but at the same time let us banish all thought of an aggressive attitude whether by word or deed. . . .

I am not afraid of the future. I have no fear in my mind, and I have no fear, even though India, from a military point of view, is of no great consequence. I am not afraid of the bigness of great Powers, and their armies, their fleets and their atom bombs. That is the lesson which my Master taught me. We stood as an unarmed people against a great country and a powerful empire. We were supported and

strengthened, because throughout all this period we decided not to submit to evil, and I think that is the lesson which I have before me and which is before us today. I do not know if it is possible to apply this to the problems which face the world today. It is a terrible problem, but I think if we banish this fear, if we have confidence, even though we may take risks of trust rather than risk violent language, violent actions and in the end war, I think those risks are worth taking.

In any event, there are risks—and great risks. If it is a question of taking risks, why take risks which inevitably lead to greater conflict? Take the other risks, while always preparing yourself to meet any possible contingency that may arise.

It is perhaps not very proper for me to address this great Assembly in such matters, because I have not been associated with it nor with all these different problems in any intimate degree. However, there would have been no point in my addressing you merely to repeat certain pious phrases. I feel strongly about this matter, and that is why I should like to present the views and wishes of the Indian people. And the Indian people happen to be three hundred and thirty millions in number; it is well to remember that. We have had a year of freedom and a year of difficulty. We have overcome many of those difficulties and we shall overcome the others. We propose to go ahead at a rapid pace. We propose to build and construct and be a power for peace and for the good of the world. We propose to meet every aggression, from whatever quarter it comes, in every possible way open to us.

However, we do not think that the problems of the world or of India can be solved by thinking in terms of aggression or war or violence. We are frail mortals, and we cannot always live up to the teaching of the great man who led our nation to freedom. But that lesson has sunk deep into our souls and, so long as we remember it, I am sure we shall be on the right path. And, if I may venture to suggest this to the General Assembly, I think that if the essentials of that lesson are kept in mind, perhaps our approach to the problems of today will be different; perhaps the conflicts that always hang over us will appear a little less deep than they are and actually will gradually fade away.

I should like to state to this General Assembly, on behalf of my people and my Government, that we adhere completely and absolutely to the principles and purposes of the United Nations Charter and that we shall try, to the best of our ability, to work for the realization of those principles and purposes. . . .

Nehru Jawaharlal, *Independence and After,* 1949, pp. 318-24.

14 17 *October* 1949

ADDRESS: PANDIT NEHRU

Mr President (Dwight D. Eisenhower):

I am deeply grateful to this great University and to you, Sir, for the honour you have done me in inviting me today and in conferring the honorary degree of Doctor of Laws. It is an honour to be associated with this University and with the many men of learning and seekers after truth of this University and I shall treasure it. To have that signal honour conferred upon me by one who has played such a distinguished part in both war and peace adds to its value.

I have come to you not so much in my capacity as a Prime Minister of a great country or a politician, but rather as a humble seeker after truth and as one who has continuously struggled to find the way, not always with success, to fit action to the objectives and ideals that I have held. The process is always difficult but it becomes increasingly so in this world of conflict and passion today.

Politicians have to deal with day-to-day problems and they seek immediate remedies. Philosophers think of ultimate objectives and are apt to lose touch with the day-to-day world and its problems. Neither approach appears to be adequate by itself. Is it possible to combine those two approaches and function after the manner of Plato's philosopher-kings?

You, Sir, who have had the experience of a role of a great man of action and also that of a philosopher as head of this university, should be able to help us to answer this question.

In this world of incessant and feverish activity, men have little time to think, much less to consider ideals and objectives. Yet, how are we to act even in the present unless we know which way we are going and what our objectives are? It is only in the peaceful atmosphere of a University that these basic problems can be adequately considered. It is only when the young men and women who are in the University to-day, and on whom the burden of life's problems will fall tomorrow, learn to have clear objectives and standard values that there is hope for the next generation.

The past generation produced some great men but as a generation it led the world repeatedly to disaster. Two world wars are the price that has been paid for the lack of wisdom of man's part in this generation. It is a terrible price and the tragedy of it is that, even after that price was paid, we failed to purchase real peace, or a cessation of conflict, and an even deeper tragedy is that mankind does not profit by its experience and continues to go the same way which led previously to disaster.

We have had wars and we have had victory and we have celebrated that victory, yet, what is victory and how do we measure it? A war is fought presumably to gain certain objectives. The defeat of the enemy is not by itself an objective but rather the removal of an obstruction towards the attainment of the objective. If that objective is not attained, then that victory over the enemy brings only negative relief and indeed is no real victory. We have seen, however, that the aim in wars is almost entirely to defeat the enemy and the other and real objective is often forgotten. The result has been that the victory attained by defeating the enemy has only been a very partial one and has not solved the real problem or if it has solved the immediate problem, it has at the same time given rise to many other and sometimes worse problems. Therefore, it becomes necessary to have the real objectives clear in our minds at all times, whether in war or in peace, and always to aim at achieving that objective.

I think also that there is always a close and intimate relationship between the end we aim at and the means adopted to attain it. Even if the end is right, but the means are wrong, that will deviate the end or divert us into a wrong direction. Means and ends are thus intimately and inextricably connected and cannot be separated. That indeed has been the lesson of old taught us by many great men in the past, but unfortunately it is seldom remembered.

I am venturing to place some of these ideas before you, not because they are novel but because they have impressed themselves upon me in the course of my life which has been spent in alternating periods of incessant activity and conflict, and enforced leisure. The great leader of my country, Mahatma Gandhi, under whose inspiration and sheltering care I grew up, always laid stress on moral values and warned us never to subordinate means to ends. We were not worthy of him and yet to the best of our ability we tried to follow his teaching. Even the limited extent to which we could follow his teaching yielded rich results. After a generation of intense struggle with a great and powerful nation, we achieved success, and perhaps the most significant part of that achievement, for which credit is due to both parties, was the manner of it. History hardly affords a parallel to a solution of such a conflict in a peaceful way, followed by friendly and co-operative relations. It is astonishing how rapidly bitterness and ill-will between the nations have faded away giving place to co-operation, and we in India have decided of our own free will to continue this co-operation as an independent nation.

I would not presume to offer advice to other and more experienced nations in any way. But may I suggest for your consideration that there is some lesson in India's peaceful revolution which might be

applied to the larger problems before the world today? That revolution demonstrated to us that physical force need not necessarily be the arbiter of man's destiny and that the method of waging a struggle and the way of its termination are of paramount importance. Past history shows us the important part that physical force has played. But it also shows us that no such force can ultimately ignore the moral forces of the world, and if it attempts to do so, it does so at its peril.

Today this problem faces us in all its intensity because the weapons that physical force has at its disposal are terrible to contemplate. Must the twentieth century differ from primitive barbarism only in the destructive efficiency of the weapons that man's ingenuity has invented for man's destruction? I do believe, in accordance with my master's teaching, that there is another way to meet this situation and solve the problem that faces us.

I realize that a statesman or a man who has to deal with public affairs cannot ignore realities and cannot act in terms of abstract truth. His activity is always limited by the degree of receptivity of the truth by his fellowmen. Nevertheless, the basic truth remains truth and is always to be kept in view and, so far as possible, it should guide our actions. Otherwise we get caught up in a vicious circle of evil when one evil action leads to another.

India is a very old country with a great past. But she is a new country also with new urges and desires. Since August 1947, she has been in a position to pursue her foreign policy. She was limited by the realities of the situation which we could not ignore or overcome. But even so she could not forget the lesson of her great leader. She has tried to adapt, howsoever effectively, the theory to reality in so far as she could. In the family of nations she was a new-comer and could not influence them greatly to begin with. But she had a certain advantage. She had great potential resources which no doubt would increase her power and influence. A greater advantage lay in the fact that she was not fettered by the past, by old enmities or old ties, by historic claims or traditional rivalries. Even against her former rulers there was no bitterness left.

Thus, India came into the family of nations with no prejudices or enmities, ready to welcome and be welcomed. Inevitably she had to consider her foreign policy in terms of enlightened self-interest, but at the same time she brought to it a touch of her idealism. Thus she has tried to combine idealism with national interest. The main objectives of that policy are: the pursuit of peace, not through alignment with any major power or group of powers, but through an independent approach to each controversial or disputed issue; the liberation of subject peoples; the maintenance of freedom, both national and

individual; the elimination of racial discrimination, and the elimination of want, disease and ignorance which affect the great part of the world's population.

I am asked frequently why India does not align herself with a particular nation or a group of nations, and told that because we have refrained from doing so, we are sitting on the fence. The question and the comment are easily understandable, because in times of crisis it is not unnatural for those who are involved in it deeply to regard calm objectivity in others as other than irresponsible, short-sighted, negative, unreal or even unmanly. But I should like to make it clear that the policy India has sought to pursue is not a negative and neutral policy. It is a positive and a vital policy which flows from our struggle for freedom and from the teaching of Mahatma Gandhi. Peace is not only an absolute necessity for us in India in order to progress and develop, but is also of paramount importance to the world.

How can that peace be preserved? Not by surrendering to aggression, not by compromising with evil or injustice, but also not by talking and preparing for war. Aggression has to be met, for that endangers peace. At the same time, the lesson of the last two wars has to be remembered and it seems to me astonishing that in spite of that lesson we go the same way. The very process of a marshalling of the world into two hostile camps precipitates the conflict which it has sought to avoid. It produces a sense of terrible fear and that fear darkens men's minds and leads them into wrong courses. There is perhaps nothing so bad and so dangerous in life as fear. As a great President of the United States said: There is nothing really to fear except fear itself.

Our problem, therefore, becomes one of lessening and ultimately putting an end to this fear. That will not happen if all the world takes sides and talks of war. War becomes almost certain then.

We are a member of the family of nations and we have no wish to shirk any of the obligations and burdens of that membership. We have accepted fully the obligations of membership of the United Nations and intend to abide by them. We wish to make our full contribution to the common store and to render our full measure of service. But that can only be effectively in our own way and of our own choice.

We believe passionately in the democratic method and we seek to enlarge the bounds of democracy both on the political and the economic plane, for no democracy can exist for long in the midst of want and poverty and inequality. Our immediate needs are for economic betterment and raising the standards of our people. The more we succeed in this, the more we can serve the cause of peace in the world.

We are fully aware of our weaknesses and failings and claim no superior virtue, but we do not wish to forfeit the advantage that our present detachment gives us and we believe that the maintenance of that detachment is not only in our interest but also in the interest of world peace and freedom. That detachment is neither isolationism nor indifference, nor neutrality when peace or freedom is threatened. When man's liberty or peace is in danger we cannot and shall not be neutral; neutrality, then, will be a betrayal of what we have sought for and stand for.

If we seek to ensure peace we must attack the root causes of war and not merely the symptoms. What are the underlying causes of war in the modern world?

One of the basic causes is the domination of, or the attempt to dominate, one country by another. Large parts of Asia were ruled till recently by foreign and chiefly European powers. We ourselves were part of the British Empire, as were also Pakistan, Ceylon and Burma. France, Holland, Portugal still have territories over which they rule. But the rising tide of nationalism and the love of independence have submerged most of the Western empires in Asia. In Indonesia, I hope that there will soon be an independent sovereign state. We hope also that French Indo-China will achieve freedom and peace before long under a government of its own choice. Much of Africa, however, is subject to foreign Powers, some of whom still attempt to enlarge their dominions. It is clear that all remaining vestiges of imperialism and colonialism will have to disappear.

Secondly, there is the problem of racial relations. The progress of some races in knowledge or their success in war and conquest, has tempted them to believe that they are racially superior and has led them to treat other nations with contempt. A recent example of this was the horrible attempt, so largely successful, to exterminate the Jews. In Asia and Africa, racial superiority has been most openly and most insolently exhibited. It is forgotten that nearly all the great religions of mankind arose in the East and that wonderful civilizations grew up there when Europe and America were still unknown to history. The West has too often denied the Asian and the African and still, in many places, denies them not only equality of rights but even common humanity and kindliness. This is one of the great danger points of our modern world; and now that Asia and Africa are shaking off their torpor and arousing themselves, out of this evil may come a conflagration of which no man can see the range of consequences. One of your greatest men said that this country cannot exist half slave and half free. The world cannot long maintain peace if half of it is enslaved and despised. The problem is not always simple nor can it be

solved by a resolution or a decree, but unless there is a firm and sincere determination to solve it, there will be no peace.

The third reason for war and revolution is the misery and want of millions of persons in many countries and, in particular, in Asia and Africa. In the West, though the war has caused much misery and many difficulties, the common man generally lives in some measure of comfort—he has food, clothes, and shelter to some extent.

The basic problem of the East, therefore, is to obtain these necessaries of life. If they are lacking, then there is the apathy of despair or the destructive race of the revolutionary. Political subjection, racial inequality, economic inequality and misery—these are the evils which we have to remove if we would ensure peace. If we can offer no remedy, then other cries and slogans make an appeal to the minds of the people.

Many of the countries of Asia have entered the family of nations; others we hope will soon find a place in this circle. We have the same hope for the countries of Africa. This process should proceed rapidly, and America and Europe should use their great influence and power to facilitate it. We see before us vast changes taking place not only in the political and economic spheres, but even more so with the minds of Asia becoming passionately eager to progress and raise the economic standards of her vast masses. This awakening of a giant continent is of the greatest importance to the future of mankind and requires imaginative statesmanship of a high order. The problems of this awakening will not be solved by looking at it with fear or in a spirit of isolationism by any of us. It requires a friendly and understanding approach, clear objectives, and a common effort to realize them. The colossal expenditure of energy and resources on armaments, that is an outstanding feature of many national budgets to-day, does not solve the problem of world peace. Perhaps even a fraction of that outlay in other ways and for other purposes, will provide a more enduring basis for peace and happiness.

That is India's view, offered in all friendliness to all thinking men and women, to all persons of good will, in the name of our common humanity. That view is not based on wishful thinking but on a deep consideration of the problems that afflicts us all and on its merits I venture to place it before you.

Nehru, Jawaharlal, *Inside America (A Voyage of Discovery)* 1950, pp. 32-42.

SECTION III

FRENCH TERRITORY IN INDIA

15 26 *August* 1947

JOINT COMMUNIQUÉ OF GOVERNMENT OF INDIA AND GOVERNMENT OF FRENCH REPUBLIC

The Governments of India and of France, being equally desirous to strengthen and to develop the bonds of friendship which unite them, and being anxious to adjust, with the least delay and in a spirit of loyal understanding, their views on all questions affecting Indo-French relations, have decided to study, in common, ways and means of a friendly regulation of the problems of French Establishments in India, with due regard to the interests and aspirations of the population of these territories, to the historical and cultural links of these people with France and to the evolution of India.

PIB Release, External Affairs Ministry, New Delhi.

16 8 *June* 1948

DECLARATION OF GOVERNMENT OF FRENCH REPUBLIC (EXTRACT)

United to France by several centuries of history the people of the French establishments have been the first in the Indian Peninsula to benefit by democratic institutions. For a century already they have been called upon to designate themselves their local representation, and with French citizenship fully open to them to designate also their representatives to the Metropolitan Parliament. . . .

Integrated for a long time past in the French Community, these establishments at the same time in many respects take part in the general activity of the regions of India in which they are respectively situated. Thus, related at the same time to France and to India, these populations feel attracted both to one and the other and from time to time follow the varying inclinations of their affinities and their traditions.

In view of this situation, which is without precedent in the entire French Union, and convinced moreover that these establishments are destined in all circumstances to continue in the future the French

Government declares solemnly that it intends to leave to the populations of the French establishments in India themselves the right to pronounce their future fate and status.

Their decision will be taken by means of a free and sincere consultation, the particulars of which will be fixed in agreement with the elected Municipal councils of each of these establishments and at a date which will be fixed according to indications. The results of this consultation will hold good for each of these five establishments separately and not globally for the whole.

Until then the French Government intends to maintain peace and order in these establishments and to see to it that religious and social equality and the freedom of the individual is fully assured. . . .

Towards the people and the Government of friendly India, the French Government desires to bring a just and humane solution of a complex problem in a spirit of understanding and comprehension.

Hindu, Madras, 9 June 1948.

17 20 *June* 1949

RESULTS OF REFERENDUM ON 19 JUNE 1949 AT CHANDERNAGORE

Total Electorate	10,509
Total votes polled	6,387
Votes for India	6,165
Votes for France	119
Invalid votes	103

Keesing's Contemporary Archives, June 1949, p. 10118.

18 20 *June* 1949

FOREIGN MINISTER, INDIA, TO COUNCIL OF ADMINISTRATION, CHANDERNAGORE

The news of the decision of the overwhelming majority of the people of Chandernagore, freely expressed by the democratic method of a referendum, to join the Indian Union has naturally caused me and my colleagues great satisfaction, a satisfaction which, I feel sure, is shared by the entire Indian people. We welcome Chandernagore and its people to the Indian Union, and to the Indian Republic to be,

as partners in the disciplined liberty of a great country and in the great tasks that confront us.

It is particularly gratifying to me that the referendum should have passed off peacefully. The Government and people of France, for whom the Government and people of India entertain feelings of sincere friendship, should see in the result of the referendum in Chandernagore proof of the sentiment of the peoples of their Settlements in India for reunion with their motherland and of India's desire that this process of change, inevitable by reasons of history, geography, culture and the spirit of the times, should be voluntary and peaceful and should strengthen the existing bonds of friendship between India and France.

I send my greetings to the people of Chandernagore and my good wishes for their future progress and prosperity. The form in which Chandernagore will join the Indian Union will be decided after full consideration of all the issues involved, including, more especially, the wishes of the people. *Jai Hind.*

PIB Release.

19 10 *July* 1949

JOINT COMMUNIQUÉ OF INDIAN AND FRENCH GOVERNMENTS ON CHANDERNAGORE

In agreement with the Government of the Indian Union, the Government of the French Republic had decided by a declaration of June 1948 that the future of the French Establishments in India should be determined by the populations themselves by a free expression of their wishes in a referendum. This was held in Chandernagore on the 19th June last and the population of the Free City has made known its choice.

The French Government will not fail to follow up the consequences of this choice and are ready, in particular, to regulate by means of negotiation with the Government of India all matters that arise properly between the two Governments as a result of the recent popular consultation. Such negotiations, in accordance with the provisions of the French Constitution, will have to receive the sanction of the French Parliament.

The Government of India, for its part, is anxious, so far as the future is concerned, to take due note of the aspirations of the inhabitants of Chandernagore.

During the delay which must elapse between the time that the new regime shall replace the present one, it is necessary that the actual administration should continue to function without hindrance and that order should be maintained. Recognising the necessity for this, the Governments of the French Republic and of the Indian Union put their trust in the people of Chandernagore and expect that no activity, from whatever source, will be allowed to disturb the tranquillity of the city during the period of transition in which the two Governments will together examine and put into effect the results of the referendum of 19 June, 1949.

PIB Release.

20 18 *October* 1949

SUMMARY PROPOSALS OF GOVERNMENT OF FRENCH REPUBLIC TO FRENCH INDIA MUNICIPAL CONGRESS

Ch. 1 Pondicherry, Karaikal, Mahe and Yanam will be made autonomous Federated State within the framework of the French Union. There will be a President of the Federal Union. Under him there will be a Ministry and a Federal Assembly and he will be the President of the Ministry.

Ch. 2 As proposed at present, it will be handed over to the Municipalities administratively.

Ch. 3 There will be a Commissioner of the Republic in Pondicherry, a representative of the French Government. He will be directly under the French Ministry in Paris and in the other three places there will be Deputy Commissioners, who will also be directly appointed by the French Ministry.

Ch. 4 The Commissioner of the Republic will be in communication with the Federal Assembly.

Ch. 5 The Federal Assembly will take control of all administrative measures.

Ch. 6 The present Assembly will be the first Federal Assembly and the Commissioner of the Republic will appoint the first President. Afterwards, the Federal Assembly will elect the President. The Federal Assembly will function as the Constituent Assembly to formulate the future constitution. And they will have all necessary administrative powers excepting the judicial control which shall continue as at present.

Ch. 7 Deals with the powers of the President and Federal Assembly.

Ch. 8 Deals with the powers of the Council of Ministers which exclude certain functions which will continue to remain with the French Republic. The Council of Ministers will enjoy full control of all internal affairs.

Ch. 9 All decisions and laws framed by the Federal Assembly will come into force after being signed by the President and Ministers.

Ch. 10 Deals with the procedure as to how the President will deal with the decision of the Federal Assembly within 30 days, excepting what is mentioned in Ch. 3. The President will exercise control over all civil appointments.

Ch. 11 Says that the Councils of Ministers will be responsible to the Federal Assembly and they are liable to be removed in case a 'no-confidence' motion is passed against them according to the Constitution.

Ch. 12 Guarantees all protection to the French cultural interests and lays down that in all schools French must be a compulsory subject.

Ch. 13 Empowers the Federal Assembly to elect two representatives to the Federal French Union Assembly and also one member for the Senate of the National Assembly.

Ch. 14 Lays down that all expenses of the Commissioner of the Republic and French officials and Judicial Departments will be borne by the French Government.

When the present Act comes into force the French Government guarantees to pay all moneys in case India Government refuses to pay in full or part which they are paying under certain conventions.

(The Autonomy Proposal read out on 18 October, 1949 before the Municipal Congress.)

Hindu, Madras, 19 October 1949.

21 27 *October* 1949

PRESS COMMUNIQUÉ

The Government of India have seen Press reports of the statement made on behalf of the three-man French India delegation, which visited Delhi some time ago, before the Congress of the Municipal Assembly recently held in Pondicherry. The portion of that statement relating to the intentions of the Government of India with regard to the future of the French Indian Settlements appears to be based on a misapprehension.

In order to remove any doubts or misunderstanding, the Government of India wish to clarify their position with regard to the French-Indian Settlements.

The Government of India have decided that, in the event of the French possessions in India deciding to join the Indian Union, they will be administered as an autonomous unit in direct relation with the Central Government.

Any subsequent changes in the internal administrative set-up of these settlements will be carried out only after consulting local public opinion.

The special linguistic and cultural interests of the people of these settlements will be preserved.

The Government of India would provide adequate funds for carrying on their administration and for the payment of pensions and similar commitments of the existing Administration.

Provision has now been made in the new Constitution permitting the representation of these settlements in the Union Legislature.

Hindu, Madras, 28 October 1949.

22 6 *December* 1949

PRESS COMMUNIQUÉ

The attention of the Government of India has been drawn to a press statement reported to have been made by the Administrator of Chandernagore, Mr Tailleur, regarding the transfer of Chandernagore. Referring to a reply by Dr B. V. Keskar, Deputy Minister for External Affairs, in the Indian Parliament, Mr Tailleur stated that a draft-treaty regarding the transfer of Chandernagore to the Indian Union was sent by the French Government to the Government of India on 6 October and that the Government of India had made no response to it despite a reminder from the French Government. This statement is not correct.

Early in October a draft of the treaty was informally handed over to an officer of the Indian Embassy in Paris. Emphasis was laid by the French Foreign Office on the fact that the draft was not official and had not yet been approved by the French Foreign Minister. It was also emphasised by the French Government that it might undergo modifications before it could be considered as official. It was only on 30 November that the French Foreign Office informed our Embassy in Paris that the draft-treaty, which had been informally handed over

to us, could be regarded as official. This information was received in Delhi after the Deputy Minister had already stated the existing position viz. that an official draft of the treaty was expected from the French authorities.

The Government of India have been, and are, most anxious that the transfer of Chandernagore should take place as early as possible and from the facts stated above it is clear that there has been no delay on their part. The draft-treaty is now under the urgent consideration of the Government of India.

PIB Release.

SECTION IV(*a*)

COMMONWEALTH CITIZENSHIP

23 30 *July* 1948

BRITISH NATIONALITY ACT, 1948
(11 & 12 GEO. 6 CH. 56: EXTRACT)

An Act to make provision for British nationality and for citizenship of the United Kingdom and Colonies and for purposes connected with the matters aforesaid.

(30th July 1948)

Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Part 1

British Nationality

British nationality by virtue of citizenship.

(1) (i) Every person who under this Act is a citizen of the United Kingdom and Colonies or who under any enactment for the time being in force in any country mentioned in subsection (3) of this section is a citizen of that country shall by virtue of that citizenship have the status of a British subject.

(ii) Any person having the status aforesaid may be known either as a British subject or as a Commonwealth citizen; and accordingly in this Act and in any other enactment or instrument whatever, whether passed or made before or after the commencement of this Act, the expression 'British subject' and the expression 'Commonwealth citizen' shall have the same meaning.

(iii) The following are the countries hereinbefore referred to, that is to say, Canada, Australia, New Zealand, the Union of South Africa, Newfoundland, India, Pakistan, Southern Rhodesia and Ceylon.

Continuance of certain citizens of Eire as British subjects.

(2) (i) Any citizen of Eire who immediately before the commencement of this Act was also a British subject shall not by reason of anything contained in section one of this Act be deemed to have ceased to be a British subject if at any time he gives notice. . . .

Text supplied by the British Information Services, New Delhi.

24 16 *December* 1949

INDIA (CONSEQUENTIAL PROVISION) ACT, 1949
(12, 13 & 14 GEO. 6 CH. 92)

An Act to make provision as to the operation of the law in relation to India, and persons and things in any way belonging to or connected with India, in view of India's becoming a Republic while remaining a member of the Commonwealth.

(16th December, 1949)

Whereas on the twenty-sixth day of January, nineteen hundred and fifty, India is to become a Republic while remaining a member of the Commonwealth:

Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1. *Operation of existing law in relation to India in view of India's becoming a Republic*

(1) On and after the date of India's becoming a Republic, all existing law, that is to say all law which, whether being a rule of law or a provision of an Act of Parliament or of any other enactment or instrument whatsoever, is in force on that date or has been passed or made before that date and comes into force thereafter, shall, until provision to the contrary is made by the authority having power to alter that law and subject to the provisions of sub-section (3) of this section, have the same operation in relation to India, and to persons and things in any way belonging to or connected with India, as it would have had if India had not become a Republic.

(2) This Act extends to law of, or of any part of, the United Kingdom, a colony, a protectorate or a United Kingdom trust territory, and also, but so far only as concerns law which cannot be amended by a law of the legislature thereof, to law of Southern Rhodesia or of any part thereof.

The references in this sub-section to a colony, to a protectorate and to a United Kingdom trust territory shall be construed as if they were references contained in the British Nationality Act, 1948 (11 and 12 Geo. 6, c. 56).

(3) His Majesty may by Order in Council make provision for such modification of any existing law to which this Act extends as may appear to him to be necessary or expedient in view of India's becoming a Republic while remaining a member of the

Commonwealth, and sub-section (1) of this section shall have effect in relation to any such law as modified by such an Order save in so far as the contrary intention appears in the Order.

An Order in Council under this section—

(*a*) may be made either before or after India becomes a Republic, and may be revoked or varied by a subsequent Order in Council; and

(*b*) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(4) Any increase attributable to an Order in Council under this section in sums payable out of moneys provided by Parliament or out of the Consolidated Fund of the United Kingdom or the growing produce thereof shall be defrayed out of moneys so provided, or out of that Fund or the growing produce thereof, as the case may be.

2. *Short title*

This Act may be cited as the India (Consequential Provision) Act, 1949.

Text supplied by the British Information Services, New Delhi.

25 25 *January* 1950

CONSTITUTION (DECLARATION AS TO FOREIGN STATES) ORDER 1950 (C.O. 2)

C.O. 2.—In exercise of the powers conferred by clause (3) of Article 367 and clause (3) of Article 392 of the Constitution of India, the Governor-General is pleased to make the following Order, namely :—

(1) (i) This Order may be called the Constitution (Declaration as to Foreign States) Order, 1950.

(ii) It shall come into force at once.

(2) Subject to the provisions of any law made by Parliament, every country within the Commonwealth is hereby declared not to be a foreign State for the purpose of the Constitution.

Gazette, 25 January 1950.

SECTION IV(*b*)

COMMONWEALTH RELATIONS

26 22 *October* 1948

PRESS COMMUNIQUÉ OF COMMONWEALTH PRIME MINISTERS

The Final Plenary Session of the Meeting of Commonwealth Prime Ministers was held at No. 10 Downing Street this morning. At the end of the meeting the representatives of the other Commonwealth Governments placed on record their sincere thanks to the Prime Minister of the United Kingdom for presiding over the meetings and for his constant and valuable help.

The purpose of these informal meetings of Commonwealth Prime Ministers is to provide opportunities for a free exchange of views on matters of common concern.

The meetings held during the past two weeks have covered many such matters of common concern, including international relations, economic affairs and defence. The discussions have shown a substantial community of outlook among all the Commonwealth Governments in their approach to present world problems. Fundamentally, this approach is based upon their support of the objectives of the United Nations as an instrument for world peace and their determination to make its work fully effective. All the Commonwealth Governments are resolved to work together and with other Governments to establish world peace on a democratic basis.

In furtherance of these objectives, the representatives of Commonwealth Governments affirmed their purpose to build up the economic strength of their countries and to take all appropriate measures to deter and resist aggression. At the same time they will do their utmost to encourage an increased production of wealth so as to achieve higher standards of living, especially for the peoples of the less developed countries of the world, as a constructive contribution to the preservation of world peace.

The economic forecast for the coming years made by the United Kingdom Government for the Organisation for European Economic Co-operation was considered in order to give the other Commonwealth countries an opportunity to examine its implications for their own economies. The conference reaffirmed the desirability for all the Commonwealth Governments, in formulating their policies, to

consult with one another, so far as practicable, so that each can co-operate by taking into account the needs and policies of the others.

The United Kingdom Government outlined the nature of its association with other Western European nations under the Brussels Treaty, as a regional association within the terms of the United Nations Charter. There was general agreement that this association of the United Kingdom with her European neighbours was in accordance with the interests of the other members of the Commonwealth, the United Nations, and the promotion of world peace. It was agreed that other Commonwealth Governments should be kept in close touch with the progress of this co-operation with Western Europe.

The Conference was impressed by the value of the discussions which had taken place at the Ministerial level and expressed a general desire to maintain and extend methods of consultation between the Governments of the Commonwealth. Recommendations for improving Commonwealth consultation on foreign affairs, economic affairs and defence are being submitted to the Governments for consideration and decision.

The Meeting recorded its support for Ceylon's application for membership of the United Nations. The representative of all the other Commonwealth Governments took note of the constitutional documents published by the Ceylon Government in Ceylon Sessional Paper XXII of 1947 under the title 'The Independence of Ceylon' and in Ceylon Sessional Paper III of 1948 under the title 'The Constitution of Ceylon.' They agreed to take this opportunity of their meeting in London to place on record their recognition of Ceylon's independence and to affirm that Ceylon enjoys the same sovereign independent status as the other self-governing countries of the Commonwealth which are members of the United Nations.

This meeting included for the first time the Prime Ministers of India, Pakistan and Ceylon. Their presence symbolised the extension of the bounds of democratic freedom which reflects the spirit and steadfast purpose of the Commonwealth. These new representatives of sovereign nations brought to the deliberations of their colleagues from the other free countries of the Commonwealth the wisdom of their ancient civilisations vivified by the dynamism of the modern age. This blending of the West and the East in the lofty task of building a lasting peace on the foundations of freedom, justice and economic prosperity provides a new hope for harassed mankind.

Text supplied by the Ministry of External Affairs, New Delhi.

27 *November* 1948

REVIEW OF CONFERENCE OF COMMONWEALTH PRIME MINISTERS (EXTRACT)

...(3) The Meetings were held at No. 10 Downing Street. They were informal, and there were no resolutions and no voting. As the result of a preliminary exchange of views before the Meeting began, an informal list of subjects for discussion was drawn up, and at the opening plenary session on October 11th, after the representatives had been welcomed by Mr Attlee and had expressed their satisfaction at being able to meet together, they themselves settled their agenda and the order in which the items should be discussed. They chose first to consider economic questions, second, international affairs, and third, defence.

(4) In the discussions on economic problems the Chancellor of the Exchequer gave an account of Britain's effort towards recovery since the war, of the general line of her economic plans over the next four years, and surveyed the problems of the Commonwealth, and particularly that part of the Commonwealth in the sterling area, as seen from the UK point of view. In a general discussion on these matters great importance was attached to the economic development of the Commonwealth as a whole, and particularly the industrially less developed parts of it. Special attention was directed to the desirability of the earliest possible return to multilateral trade, and the removal of restrictions so that trade within the sterling area and within the commonwealth could be expanded and so contribute to world trade. The Chancellor gave the Meeting an assurance of the UK's appreciation of the Commonwealth's need of capital goods, and told them that the UK was doing, and would continue to do, her utmost to meet requirements, instancing as an example the British exports of machinery to Commonwealth countries which had increased in value by 63 per cent between 1938 and 1948. It also emerged from these talks that the Commonwealth representatives considered European Recovery plans at some length and expressed their agreement on the need to get Western European countries firmly established again economically as an essential basis for their political stability. As a result of these discussions the UK is in a position to go ahead with her contribution to European recovery, and her association with the Western European countries, with a confident understanding of the views of the Commonwealth.

(5) Mr Bevin surveyed the international scene at two plenary meetings, the first of which referred particularly to the problems of the Middle and Far East, and was followed by a report from

Mr Malcolm MacDonald, Commissioner-General in South-East Asia, on the situation in Malaya. The growth of Communist activities occupied a prominent place in the Meeting's deliberations in this sphere, and all the representatives contributed to the discussion on what is a problem of grave and direct concern to each Commonwealth country as well as to the Commonwealth as a whole. Mr St. Laurent had reached London in time for the second plenary session on international affairs in which the problems of Europe and the West were predominant in the discussion. The meeting found itself in full agreement as to the importance of the maintenance and revival of democracy in Europe which it was acknowledged was a policy not in any way incompatible with Commonwealth interests. The second outstanding point on which there was a unanimous approach on the part of all the representatives, was their wholehearted support for the United Nations as an instrument of world peace. The veto and other UK problems were freely discussed, but it was generally agreed that all practical steps should be taken by the countries of the Commonwealth to make the UN effective. Throughout these discussions on international affairs the preservation of world peace and the maintenance of democracy were the two great objectives which the Meeting held in view, above all others. Democracy, whether in the East or the West, should be revived and sustained, and full co-operation given to all democratic countries, as a sure contribution to the peace and prosperity of mankind.

(6) Two plenary sessions were devoted to defence questions. There were surveys on various aspects of defence by Mr Attlee, Mr A. V. Alexander, Minister of Defence, and by the Chairman of the Chiefs of Staffs Committee. All the Commonwealth representatives took part in this discussion and agreed that freedom must be safeguarded not only by building up armed forces in order to deter any would-be aggressor, but by advancing social and economic welfare.

(7) Beyond these three major fields of discussion, the only subjects dealt with in plenary sessions of the Meeting were the question of consultation and exchange of information between Commonwealth countries, and the status of High Commissioners. On the first of these, it was made clear that the whole question had been considered on a reciprocal basis, importance being attached equally to the flow of information and views from the Commonwealth to the UK (and, of course, as between Commonwealth countries themselves), as to the flow in the reverse direction. The fact that communications sent out from London to Commonwealth capitals have increased more than tenfold in the last decade is one indication of the way such methods of consultation are being developed. The precedence of High

Commissioners *vis-à-vis* the foreign Diplomatic Corps is a question of some intricacy, but it was generally agreed that the status of High Commissions should be raised. On both these questions proposals were remitted to the Governments of the Commonwealth countries for further consideration. . . .

Text supplied by the Information Department, Commonwealth Relations Office, through the Royal Institute of International Affairs, London.

28 27 *April* 1949

DECLARATION BY COMMONWEALTH PRIME MINISTERS

During the past week the Prime Ministers of the United Kingdom, Australia, New Zealand, South Africa, India, Pakistan and Ceylon and the Canadian Secretary of State for External Affairs have met in London to exchange views upon the important constitutional issues arising from India's decision to adopt a republican form of constitution and her desire to continue her membership of the Commonwealth.

The discussions have been concerned with the effects of such a development upon the existing structure of the Commonwealth and the constitutional relations between its members. They have been conducted in an atmosphere of goodwill and mutual understanding and have had as their historical background the traditional capacity of the Commonwealth to strengthen its unity of purpose while adapting its organization and procedures to changing circumstances.

After full discussion, the representatives of the Governments of all the Commonwealth countries have agreed that the conclusions reached should be placed on record in the following declaration:

'The Governments of the United Kingdom, Canada, Australia, New Zealand, South Africa, India, Pakistan and Ceylon whose countries are united as Members of the British Commonwealth of Nations and owe a common allegiance to the Crown, which is also the symbol of their free association, have considered the impending constitutional changes in India.

'The Government of India have informed the other Governments of the Commonwealth of the intention of the Indian people that under the new constitution which is to be adopted India shall become a sovereign independent Republic. The Government of India have, however, declared and affirmed India's desire to continue her full membership of the Commonwealth of Nations and her acceptance of the King as the symbol of the free association of its independent member nations and as such the Head of the Commonwealth.

'The Governments of the other countries of the Commonwealth, the basis of whose membership of the Commonwealth is not hereby changed, accept and recognize India's continuing membership in accordance with the terms of this declaration.

'Accordingly the United Kingdom, Canada, Australia, New Zealand, South Africa, India, Pakistan and Ceylon hereby declare that they remain united as free and equal members of the Commonwealth of Nations, freely co-operating in the pursuit of peace, liberty and progress.'

[*Editorial Note:* – On 17 May 1949 the Constituent Assembly of India accepted the decision of the Government of India to remain in the Commonwealth of Nations.]

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29 16 *May* 1949

SPEECH: PANDIT NEHRU

I have the honour to move the following motion:—

'Resolved that this Assembly do hereby ratify the declaration, agreed to by the Prime Minister of India, on the continued membership of India in the Commonwealth of Nations, as set out in the official statement issued at the conclusion of the Conference of the Commonwealth Prime Ministers in London on 27 April, 1949.'

All Honourable Members have been supplied with copies of this declaration and so I shall not read it over again. I shall merely point out very briefly some salient features of this declaration. It is a short and simple document in four paragraphs. The first paragraph, it will be noticed, deals with the present position in law. It refers to the British Commonwealth of Nations and to the fact that the people in this Commonwealth owe a common allegiance to the Crown. That in law is the present position.

The next paragraph of this declaration states that the Government of India have informed the Governments of the other Commonwealth countries that India is soon going to be a sovereign independent Republic; further that they desire to continue her full membership of the Commonwealth of Nations, accepting the King as a symbol of the free association.

The third paragraph says that the other Commonwealth countries accept this and the fourth paragraph ends by saying that all these countries remain united as free and equal members of the Commonwealth of Nations. You will notice that while in the first paragraph this is referred to as the British Commonwealth of Nations, in the

subsequent paragraph it is referred to only as the Commonwealth of Nations. Further you will notice that while in the first paragraph there is the question of allegiance to the Crown which exists at present, later, of course, this question does not arise, because India by becoming a Republic goes outside the Crown area completely. There is a reference, in connection with the Commonwealth, to the King as the symbol of that association. Observe that the reference is to the King and not to the Crown. It is a small matter, but it has a certain significance. But the point is this that in so far as the Republic of India is concerned, her Constitution and her working are concerned, she has nothing to do with any external authority, with any king, and none of her subjects owe any allegiance to the King or any other external authority. The Republic may however agree to associate itself with certain other countries that happen to be monarchies or whatever they choose to be. This declaration, therefore, states that this new Republic of India, completely sovereign and owing no allegiance to the King, as the other Commonwealth countries do owe, will, nevertheless, be a full member of this Commonwealth and it agrees that the King will be recognized as a symbol of this free partnership or rather association.

Now, I am placing this declaration before this Honourable House for their approval. Beyond this approval, there is no question of any law being framed in accordance with it. There is no law behind the Commonwealth. It has not even the formality which normally accompanies treaties. It is an agreement by free will, to be terminated by free will. Therefore, there will be no further legislation or law if this House approves of this. In this particular declaration nothing very much is said about the position of the King, except that he will be a symbol. It has been made perfectly clear—it was made perfectly clear—that the King has no functions at all. He has a certain status. The Commonwealth itself, as such, is not a body, if I may say so; it has no organization through which to function and the King also can have no functions.

Now, some consequences flow from this. Apart from certain friendly approaches to one another, apart from a desire to co-operate, which will always be conditioned by each party deciding on the measure of co-operation and following its own policy, there is no obligation. There is hardly any obligation in the nature of commitments. But an attempt has been made to produce something which is entirely novel, and I can very well understand lawyers on the one hand feeling somewhat uncomfortable at a thing for which they can find no precedent or parallel. There may also be others who feel that behind this there may be something which they cannot quite understand, something

risky, something dangerous, because the thing is so simple on the face of it. That kind of difficulty may arise in people's minds. What I have stated elsewhere I should like to repeat. There is absolutely nothing behind this except what is placed before this House.

One or two matters I might clear up which are not mentioned in this declaration. One of these, as I have said, is that the King has no functions at all. This was cleared up in the course of our proceedings; it has no doubt been recorded in the minutes of the Conference in London. Another point was that one of the objects of this kind of Commonwealth association is now to create a status which is something between being completely foreign and being of one nationality. Obviously, the Commonwealth countries belong to different nations. They are different nationalities. Normally either you have a common nationality or you are foreign. There is no intermediate stage. Up till now in this Commonwealth or the British Commonwealth of Nations, there was a binding link which was allegiance to the King. With that link, therefore, in a sense there was common nationality in a broad way. That snaps, that ends when we become a Republic, and if we should desire to give a certain preference or a certain privilege to any one of these countries, we would normally be precluded from doing so, because of what is called the 'most favoured nation clause' every country would be as much foreign as any other country. Now, we want to take away that foreignness, keeping in our own hands what, if any, privileges or preferences we can give to another country. That is a matter entirely for two countries to decide by treaty or arrangement, so that we create a new state of affairs—or we try to create it—that the other countries, although in a sense foreign, are nevertheless, not completely foreign. I do not quite know how we shall proceed to deal with this matter at a later stage. That is for the House to decide—that is to say, to take the right, only the right, to deal with Commonwealth countries, should we so choose, in regard to certain preferences or privileges. What they are to be, of course, we shall in each case be the judge ourselves. Apart from these facts, nothing has been decided in secret or otherwise which has not been put before the public.

The House will remember that there was some talk at one stage of a Commonwealth citizenship. Now, it was difficult to understand what the status of Commonwealth citizenship might be except that is meant that its members were not completely foreign to one another. That un-foreignness remains, but I think it is as well that we left off talking about something vague, which could not be surely defined, but the other fact remains, as I have just stated: the fact that we should take the right to ourselves if we so chose to exercise it at any

time to enter into treaties or arrangements with Commonwealth countries assuring us of certain mutual privileges and preferences.

I have briefly placed before this House this document. It is a simple document and yet the House is fully aware that it is a highly important document or rather what it contains is of great and historical significance. I went to this Conference some weeks ago as the representative of India. I had consulted my colleagues here, of course, previously, because it was a great responsibility and no man is big enough to shoulder that responsibility by himself when the future of India is at stake. For many months past we had often consulted one another, consulted great and representative organizations, consulted many members of this House. Nevertheless, when I went, I carried this great responsibility and I felt the burden of it. I had able colleagues to advise me, but I was the sole representative of India and in a sense the future of India for the moment was in my keeping. I was alone in that sense and yet not quite alone, because, as I travelled through the air and as I sat there at the Conference table, the ghosts of many yesterdays of my life surrounded me and brought up picture after picture before me, sentinels and guardians keeping watch over me, telling me perhaps not to trip and not to forget them. I remembered, as many Honourable Members might remember, that day 19 years ago when we took a pledge on the bank of the river Ravi, at the midnight hour, and I remembered the 26th January the first time and that oft-repeated pledge year after year in spite of difficulty and obstruction, and finally I remembered that day when standing at this very place, I placed a resolution before this House. That was one of the earliest resolutions placed before this Honourable House, a resolution that is known as the Objectives Resolution. Two years and five months have elapsed since that happened. In that Resolution we defined more or less the type of free Government or Republic that we were going to have. Later in another place and on a famous occasion, this subject also came up, that was at the Jaipur session of the Congress, because not only my mind, but many minds were struggling with this problem, trying to find a way out that was in keeping with the honour and dignity and independence of India, and yet also in keeping with the changing world and with the facts as they were. Something that would advance the cause of India, would help us, something that would advance the cause of peace in the world, and yet something which would be strictly and absolutely true to every single pledge that we had taken. It was clear to me that whatever the advantages might be of any association with the Commonwealth or with any other group, no single advantage, however great, could be purchased by giving up a single iota of our pledges, because no country can make progress by playing fast and

loose with the principles which it has declared. So during these months we had thought and we had discussed amongst ourselves and I carried all this advice with me. May I read to you, perhaps, just to refresh your minds, the Resolution passed at the Jaipur session of the Congress? It might be of interest to you and I would beg of you to consider the very wording of this Resolution:

'In view of the attainment of complete independence and the establishment of the Republic of India which will symbolize Independence and give to India the status among the nations of the world that is her rightful due, her present association with the United Kingdom and the Commonwealth of Nations will necessarily have to change. India, however, desires to maintain all such links with other countries as do not come in the way of her freedom of action and independence and the Congress would welcome her free association with the independent nations of the Commonwealth for their commonweal and the promotion of world peace.'

You will observe that the last few lines of this Resolution are almost identical with the lines of the declaration of London.

I went there guided and controlled by all our past pledges, ultimately guided and controlled by the Resolution of this Honourable House, by the Objectives Resolution and all that had happened subsequently; also by the mandate given to me by the All India Congress Committee in that Resolution, and I stand before you to say with all humility that I have fulfilled the mandate to the letter. All of us have during these many years past been through the valley of the shadow; we have passed our lives in opposition, in struggle and sometimes in failure and sometimes success and most of us are haunted by these dreams and visions of old days and those hopes that filled us and the frustrations that often followed those hopes; yet we have seen that even from that prickly thorn of frustration and despair, we have been able to pick the rose of fulfilment.

Let us not be led away by considering the situation in terms of events which are no longer here. You will see that the Resolution of the Congress that I have read out says that because India becomes a Republic, the association of India with the Commonwealth must, of course, change. Further it says that free association may continue subject only to our complete freedom being assured. Now, that is exactly what has been tried to be done in this declaration of London. I ask you or any Honourable Member to point out in what way the freedom, the independence of India has been limited in the slightest. I do not think it has been. In fact, the greatest stress has been laid not only on the independence of India, but on the independence of each individual nation in the Commonwealth.

I am often asked, how we can join a Commonwealth in which there is racial discrimination, in which there are other things happening to which we object. That, I think, is a fair question and it is a matter which must necessarily give us some trouble in our thinking. Nevertheless, it is a question which does not really arise. That is to say, when we have entered into an alliance with a nation or a group of nations, it does not mean that we accept their other policies; it does not mean that we commit ourselves in any way to something that they may do. In fact, this House knows that we are carrying on at the present moment a struggle, or our countrymen are carrying on a struggle in regard to racial discrimination in various parts of the world.

This House knows that in the last few years one of the major questions before the United Nations, at the instance of India, has been the position of Indians in South Africa. May I, if the House will permit me, for a moment refer to an event which took place yesterday, that is, the passing of the Resolution at the General Assembly of the United Nations, and express my appreciation and my Government's appreciation of the way our delegation has functioned in this matter and our appreciation of all those nations of the United Nations, almost all, in fact all barring South Africa, which finally supported the attitude of India? One of the pillars of our foreign policy, repeatedly stated, is to fight against racial discrimination, to fight for the freedom of suppressed nationalities. Are you compromising on that issue by remaining in the Commonwealth? We have been fighting on the South African Indian issue and on other issues even though we have thus far been a Dominion of the Commonwealth. It was a dangerous thing for us to bring that matter within the purview of the Commonwealth. Because then the very thing to which you and I object might have taken place. That is, the Commonwealth might have been considered as some kind of a superior body which sometimes acts as a tribunal, or judges, or in a sense supervises the activities of its member nations. That certainly would have meant a diminution in our independence and sovereignty, if we had once accepted that principle. Therefore, we were not prepared and we are not prepared to treat the Commonwealth as such or even to bring disputes between member nations of the Commonwealth before the Commonwealth body. We may, of course, in a friendly way discuss the matter; that is a different matter. We are anxious to maintain the position of our countrymen in other countries in the Commonwealth. As far as we are concerned, we could not bring their domestic policies in dispute there; nor can we say in regard to any country that we are not going to associate ourselves with that country because we disapprove of certain policies of that country.

I am afraid that if we adopted that attitude, then there would hardly be any association for us with any country, because we have disapproved of something or other that that country does. Some times, it so happens that the difference is so great that either you cut off relations with that country or there is a conflict. Some years ago, the United Nations General Assembly decided to recommend its member States to withdraw diplomatic representatives from Spain, because Spain was supposed to be a Fascist country. I am not going into the merits of the question. Sometimes, the question comes up in that way. The question has come up again and they have reversed that decision and left it to each member State to do as it likes. If you proceed in this way, take any great country or a small country; you do not agree with everything that the Soviet Union does; therefore, why should we have representation there or why should we have a treaty of alliance in regard to commercial or trade matters with it? You may not agree with some policies of the United States of America; therefore, you cannot have a treaty with them. That is not the way nations carry on their foreign work or any work. The first thing to realize, I think, in this world is that there are different ways of thinking, different ways of living and different approaches to life in different parts of the world. Most of our troubles arise from one country imposing its will and its way of living on other countries. It is true that no country can live in isolation, because, the world as constituted today is progressively becoming an organic whole. If one country living in isolation does something which is dangerous to the other countries, the other countries have to intervene. To give a rather obvious example, if one country allowed itself to become the breeding ground of all kinds of dangerous diseases, the world would have to come in and clear it up, because it could not afford to allow disease to spread all over the world. The only safe principle to follow is that, subject to certain limitations, each country should be allowed to live its own life in its own way.

There are at present several ideologies in the world and major conflicts flow from these ideologies. What is right or what is wrong, we can consider at a later stage, or may be something else altogether is right. Either you want a major conflict, a great war which might result in the victory for this nation or that, or else you must allow them to live at peace in their respective territories and to carry on their way of thinking, their way of living, their structure of State, allowing the facts to prove which is right ultimately. I have no doubt at all that ultimately it will be the system that delivers the goods—the goods being the advancement and the betterment of the human race or the people of the individual countries—that will survive and no amount of theorizing and no amount of warfare can make the

system that does not deliver the goods survive. I refer to this because of the argument that was raised that India could not join the Commonwealth, because it disapproved of certain policies of certain Commonwealth nations. I think we should keep these two matters completely separate.

We join the Commonwealth, obviously because we think it is beneficial to us and to certain causes in the world that we wish to advance. The other countries of the Commonwealth want us to remain, because they think it is beneficial to them. It is mutually understood that it is to the advantage of the nations in the Commonwealth and therefore they join. At the same time, it is made perfectly clear that each country is completely free to go its own way; it may be that they may sometimes go so far as to break away from the Commonwealth. In the world today where there are so many disruptive forces at work, where we are often on the verge of war, I think it is not a safe thing to encourage the breaking up of any association that one has. Break up the evil part of it; break up anything that may come in the way of your growth, because nobody dare agree to anything which comes in the way of a nation's growth. Otherwise, apart from breaking the evil parts of the association, it is better to keep a co-operative association going which may do good in this world rather than break it.

Now, this declaration that is placed before you is not a new move and yet it is a complete reorientation of something that has existed in an entirely different way. Suppose we had been cut off from England completely and we had then desired to join the Commonwealth of Nations, it would have been a new move. Suppose a new group of nations wanted us to join them and we joined them in this way, that would have been a new move from which various consequences would have flowed. In the present instance, what is happening is that a certain association has been in existence for a considerable time past. A very great change came in the way of that association about a year and eight or nine months ago, from 15 August, 1947. Now another major change is contemplated. Gradually the conception is changing. Yet that certain link remains in a different form. Now, politically we are completely independent. Economically we are as independent as independent nations can be. Nobody can be 100 per cent independent in the sense of absolute lack of interdependence. Nevertheless, India has to depend on the rest of the world for her trade, for her commerce and for many supplies that she needs, today for her food unfortunately, and so many other things. We cannot be absolutely cut off from the world. Now, the House knows that inevitably during the past century and more all kinds of contacts have arisen between England and this country, many of them were bad, very bad, and we

have struggled throughout our lives to put an end to them. Many of them were not so bad, many of them may be good and many of them, good or bad, irrespective of what they may be, are there. Here I am the patent example of these contacts, speaking in this Honourable House in the English language. No doubt we are going to change that language for our use, but the fact remains that I am doing so and the fact remains that most other members who will speak will also do so. The fact remains that we are functioning here under certain rules and regulations for which the model has been the British Constitution. Those laws which exist today have been largely forged by them. Gradually, the laws which are good we will keep and those that are bad we will throw away. Any marked change in this without something to follow creates a hiatus which may be harmful. Largely our educational apparatus has been influenced. Largely our military apparatus has been influenced by these considerations and we have grown up naturally as something rather like the British Army. I am placing before the House certain entirely practical considerations. If we break away completely, the result is that without making sufficient provision for carrying on in a different way, we have a period of gap. Of course, if we have to pay a price, we may choose to do so. If we do not want to pay the price, we should not pay it and face the consequences.

But in the present instance, we have to consider not only these minor gains, which I have mentioned to you, to us and to others but, if I may say so, the larger approach to world problems. I felt as I was conferring there in London with the representatives of other governments that I had necessarily to stick completely and absolutely to the sovereignty and independence of the Indian Republic. I could not possibly compromise on the question of allegiance to any foreign authority. I also felt that in the state of the world today and in the state of India and Asia, it would be a good thing if we approached this question in a friendly spirit which would solve the problems in Asia and elsewhere. I am afraid I am a bad bargainer. I am not used to the ways of the market place. I hope I am a good fighter and I hope I am a good friend. I am not anything in between and so when you have to bargain hard for anything, do not send me. When you want to fight, I hope I shall fight and then when you are decided about a certain thing, then you must hold on to it and hold to it to the death, but about minor things I think it is far better to gain the goodwill of the other party. It is far more precious to come to a decision in friendship and goodwill than to gain a word here and there at the cost of ill will. So I approached this problem and may I say how I felt about others? I would like to pay a tribute to the Prime Minister

of the United Kingdom and also to others there, because they also approached the problem in this spirit, not so much to score a debating point or to change a word here and there in this declaration. It was possible that if I had tried my hardest I might have got a word here and there changed in this declaration, but the essence could not have been changed, because there was nothing more for us to get out of that declaration. I preferred not to do so, because I preferred creating an impression and I hope the right impression that the approach of India to these and other problems of the world was not a narrow-minded approach. It was the approach based on faith and confidence in her own strength and in her own future and, therefore, it was not afraid of any country coming in the way of that faith, it was not afraid of any word or phrase in any document, but it was based essentially on this that if you approach another country in a friendly way, with goodwill and generosity, you would be paid back in the same coin and probably the payment would be in an even larger measure. I am quite convinced that in the treatment of nations to one another, as in the case of individuals, only out of goodwill will you get goodwill and no amount of intrigues and cleverness will get you good results out of evil ways. Therefore, I thought that this was an occasion not only to impress England, but others also, in fact to some extent the world, because the matter that was being discussed at 10 Downing Street, in London, was something that drew the attention of the entire world. It drew the attention of the world, partly because India is a very important country, potentially so, and actually so too. And the world was interested to see how this very complicated and difficult problem which appeared insoluble, could be solved. It could not be solved if we had left it to eminent lawyers. Lawyers have their uses in life; but they should not be spread out everywhere. It could not have been solved by those extreme, narrow-minded nationalists who cannot see to the right or to the left, but live in a narrow sphere of their own, and, therefore, forget that the world is going ahead. It could not be solved by people who live in the past and cannot realize that the present is different from the past and that the future is going to be still more different. It could not be solved by any person who lacked faith in India and in India's destiny.

I wanted the world to see that India did not lack faith in herself, and that India was prepared to co-operate even with those with whom she had been fighting in the past; provided the basis of co-operation today was honourable, that it was a free basis, a basis which would lead to the good not only of ourselves, but of the world also. That is to say, we would not deny that co-operation, simply because in the past we had fought, and thus carry on the trail of our past *karma* along

with us. We have to wash out the past with all its evil. I wanted, if I may say so in all humility, to help in letting the world look at things in a slightly different perspective, or rather try to see how vital questions could be approached and dealt with. We have seen too often in the arguments that go on in the assemblies of the world, this bitter approach, this cursing of each other, this desire, not in the least to understand the other, but deliberately to misunderstand the other, and to make clever points. Now, it may be a satisfying performance for some of us, on occasions to make clever points and be applauded by our people or by some other people. But in the state of the world today, it is a poor thing for any responsible person to do, when we live on the verge of catastrophic wars, when national passions are roused, and when even a casually spoken word might make all the difference.

Some people have thought that by our joining or continuing to remain in the Commonwealth of Nations we are drifting away from our neighbours in Asia, or that it has become more difficult for us to co-operate with other countries, great countries in the world. But I think it is easier for us to develop closer relations with other countries while we are in the Commonwealth than it might have been otherwise. This is rather a peculiar thing to say. Nevertheless, I say it, and I have given a great deal of thought to this matter. The Commonwealth does not come in the way of our co-operation and friendship with other countries. Ultimately we shall have to decide, and ultimately the decision will depend on our own strength. If we dissociate ourselves completely from the Commonwealth, then for the moment we are completely isolated. We cannot remain completely isolated, and so inevitably by stress of circumstances, we have to incline in some direction or other. But that inclination in some direction or other will necessarily be a basis of give-and-take. It may be in the nature of alliances, you give something yourself and get something in return. In other words, it may involve commitments far more than at present. There are no commitments today. In that sense, I say we are freer today to come to friendly understandings with other countries and to play the part, if you like, of a bridge for the mutual understanding of other countries. I do not wish to place this too high; nevertheless, it is no good placing it too low either. I should like you to look round the world today and look, more especially during the last two years or so, at the relative position of India and the rest of the world. I think you will find that during this period of two years or less, India has gone up in the scale of nations in its influence and in its prestige. It is a little difficult for me to tell you exactly what India has done or has not done. It would be absurd for anyone to expect that India can

become the crusader for all causes in the world and bring forth results. Even in cases that have borne fruit, it is not a thing to be proclaimed from the housetops. But something which does not require any proclamation is the fact of India's prestige and influence in world affairs. Considering that she came on the scene as an independent nation only a year and a half or a little more ago, it is astonishing—the part that India has played.

One more thing I should like to say. Obviously a declaration of this type, or the Resolution that I have placed before the House is not capable of amendment. It is either accepted or rejected. I am surprised to see that some Honourable Members have sent in notice of amendments. Any treaty with any foreign power can be accepted or rejected. It is a joint declaration of eight—or is it nine?—countries and it cannot be amended in this House or in any House. It can be accepted or rejected. I would, therefore, beg of you to consider this business in all its aspects. First of all make sure that it is in conformity with our old pledges, that it does violence to none. If it is proved to me that it does violence to any pledge that we have undertaken, that it limits India's freedom in any way, then I certainly shall be no party to it. Secondly, you should see whether it does good to us and to the rest of the world. I think there can be little doubt that it does us good, that this continuing association at the present moment is beneficial for us, and it is beneficial in the larger sense, to certain world causes that we represent. And lastly, if I may put it in a negative way, not to have had this agreement would certainly have been detrimental to those world causes as well as to ourselves.

And finally, about the value I should like this House to attach to this declaration and to the whole business of those talks resulting in this declaration. It is a method, a desirable method, and a method which brings a touch of healing with it. In this world which is today sick and which has not recovered from so many wounds inflicted during the last decade or more, it is necessary that we touch upon the world problems, not with passion and prejudice and with too much repetition of what has ceased to be, but in a friendly way and with a touch of healing, and I think the chief value of this declaration and of what preceded it was that it did bring a touch of healing in our relations with certain countries. We are in no way subordinate to them, and they are in no way subordinate to us. We shall go our way and they will go their way. But our way, unless something happens, will be a friendly way; at any rate, attempts will be made to understand one another, to be friends with one another and to co-operate with one another. And the fact that we have begun this new type of association with a

touch of healing will be good for us, good for them, and I think, good for the world.

Nehru, Jawaharlal, *Independence and After*, 1949, pp. 268-81.

30 18 *July* 1949

PRESS COMMUNIQUÉ OF COMMONWEALTH FINANCE MINISTERS

(1) The final session of the Meeting of Commonwealth Finance Ministers was held in London today. At the end of the Meeting the representatives from the other commonwealth countries placed on record their thanks to the Chancellor of the Exchequer for presiding over their meetings.

(2) The purpose of the Meeting was to enable Ministers of the Commonwealth countries to exchange views on the urgent economic problems at present confronting their countries with particular reference to the fall in the level of the gold and dollar reserves of the sterling area during recent months.

(3) The representatives of the sterling area countries expressed their pleasure that Canada had been able to be represented at these meetings and to take part in the discussions upon the positive and constructive side in particular. The Canadian representative could not of course take any part in urging dollar cuts which would vitally affect Canada, but fully supported all the constructive recommendations made.

(4) Attention was also given to the special position of South Africa, which is not a member of the sterling area dollar pool.

(5) They also recognised with appreciation the contribution to sterling area dollar earnings made by certain colonial territories such as Malaya and the importance of enabling those territories to maintain and if possible increase that contribution.

(6) The Ministers reviewed the economic position of the sterling area, both immediate and long-term. They re-affirmed their conviction that the strength and stability of sterling are essential to the well-being not only of each member of the sterling area but also of the world as a whole.

(7) Immediate steps necessary to check the continuing heavy drain on the central reserves of the sterling area were discussed, and the Ministers concerned agreed to recommend to their Governments action comparable in its results to that already decided upon by the United Kingdom.

(8) Emergency measures to stem the current drain on the sterling area's reserves are perforce negative and unconstructive. It was recognized that while the immediate action must be to protect the reserves of the sterling area, the problems of the past few months were an aggravation of long-standing difficulties. The Meeting therefore was pleased to note that discussions had taken place between United Kingdom, Canadian and United States Ministers and agreed with them that the aim must be the achievement of a pattern of world trade in which the dollar and non-dollar countries can operate together within one single multi-lateral system. The Meeting noted with satisfaction that further discussions were being arranged to take place in Washington early in September to consider the action required to carry out this aim.

(9) The Ministers agreed that the achievement of this aim depended on the establishment of conditions which would make a single multilateral system of world trade and payments practicable. These conditions did not exist at present.

It was agreed that the Governments represented would give considerations, in collaboration with other Governments concerned, to measures designed to establish these conditions, and that in endeavouring to solve the shorter-term problem care should be taken to concentrate upon measures which would fit into the permanent pattern of world trade.

(10) It was agreed that a lasting solution of the sterling area's difficulties could not be found without a very substantial expansion of the area's earnings of dollars and the most effective use and development of the resources of each part. Practical and positive measures designed to this end were discussed and accepted for recommendation to Governments. Ministers recognised the special position of those countries which are at present in a lesser or greater degree underdeveloped but which, with assistance, might not only improve the standard of living of their people but also make a greater contribution to the resources available to the world.

(11) These measures to be effective clearly call for close and continuing consultation between Governments, and the Ministers make recommendations for the necessary action to meet this need.

Text supplied by the Economic Information Unit, His Majesty's Treasury, through the Royal Institute of International Affairs, London.

31 8 *July* 1949

STATEMENT: DR JOHN MATTHAI

It is in the interests of India that the strength and stability of sterling should be maintained. It is necessary that we should do all we can to strengthen the hands of Sir Stafford Cripps. But I should add that the kind of things we are trying to get from the USA are some of the things so essential to us that, however much we might be anxious to help the Chancellor, there is a limit beyond which it would be difficult for us to go. We get a very considerable part of our essential food supplies from that country, and also a very substantial part of the industrial and agricultural equipment we need. I am prepared, on behalf of my Government, to cut down these purchases as much as possible, but there is a limit beyond which I cannot go without jeopardizing the functioning of our economy.

Keesing's Contemporary Archives, 1949, p. 10147.

32 14 *January* 1950

PRESS COMMUNIQUÉ OF COMMONWEALTH FOREIGN MINISTERS

At the meeting of Commonwealth Prime Ministers in October, 1948, it was contemplated that, apart from the meetings of Prime Ministers, other Commonwealth meetings would be held at the Ministerial level as occasion required on subjects such as foreign policy and economic affairs. A meeting of Commonwealth Finance Ministers was held in London in July. It has proved especially appropriate that a meeting at this time for the discussion of foreign affairs should be held in Ceylon; for, although world problems are indivisible, Asia is at the moment the main focus of interest and the area of special urgency.

The discussions which Commonwealth Ministers have held during the past week have once again demonstrated that among all the members of the Commonwealth there is a continuing and substantial community of outlook in their approach to current problems of foreign affairs.

Eleven plenary meetings have been held since the Conference opened on 9th January. The greater part of this time has been spent in a comprehensive review of the current problems of South-East Asia,

both political and economic. It was recognised that in the changing conditions brought about by recent developments in this area progress depends mainly on the improvement of economic conditions. The Conference was impressed by the magnitude of the contribution which the success of progressive policies in this area could make to the peace and prosperity of the world. Executive decisions are not taken at Commonwealth meetings of this kind; but, as a result of valuable exchange of views which has taken place, recommendations for the furtherance of economic development in South and S. E. Asia will be submitted to Commonwealth Governments for their consideration. These recommendations include a proposal for the establishment of a Consultative Committee representing Commonwealth Governments. The Australian Delegation proposed that the first meeting of this Committee when set up should be held in Australia.

In the course of their discussion the Commonwealth Ministers noted with satisfaction the political settlement recently reached in Indonesia. They also gave particular attention to the situations in Indo-China, Burma and Malaya.

The Conference also reviewed the current position in the Far East. They discussed both the question of recognition of the new regime in China and also the future relations of Commonwealth countries with China. They reconsidered, in the light of subsequent developments, the provisional conclusions reached at the Commonwealth Conference held in Canberra in 1947 on the conditions for a peace settlement with Japan. On this subject the Ministers attending the Conference will submit recommendations to their Governments.

Finally, the Conference were informed of the current political situation in Europe and the Middle East and of the steps which were being taken to promote closer co-operation, both political and economic, among the countries of Western Europe and between them and the United States of America and Canada. The Conference agreed that there need be no inconsistency between the policy followed by the United Kingdom Government in relation to Western Europe and the maintenance of the traditional links between the UK and the rest of the Commonwealth.

Commonwealth officials concerned with economic affairs have held a separate series of meetings throughout the week. Their primary purpose has been to exchange information on developments since Commonwealth Finance Ministers met in London in July. These meetings have afforded a valuable opportunity for a joint survey of the sterling area's current and prospective balance of payments position and for a discussion of the economic problems that face the

Commonwealth. Particular attention was given to the recent trend of, and the further prospects for, the dollar exports of the sterling area.

At the conclusion of the final meeting of Ministers this morning the representatives of all the other Commonwealth Governments expressed their appreciation of the helpful manner in which Mr Senanayake had presided over their meetings, and their gratitude for the generous hospitality accorded to them by the Government of Ceylon during their stay in the Island.

Text supplied by the Ministry of External Affairs, New Delhi.

33 8 *May* 1948

UNION CITIZENSHIP (ELECTION) ACT, 1948
(ACT NO. XXVI OF 1948, BURMA)

WHEREAS it is necessary to make provision for the election of citizenship by persons qualified under Section (11) (iv) of the Constitution:

It is hereby enacted as follows:

(1) This Act may be called the Union Citizenship (Election) Act, 1948.

(2) In this Act, unless the context otherwise requires—

(*a*) 'Officer' means any Officer nominated for the purposes of this Act by the President.

(*b*) 'Minister' means a member of the Government nominated by the President for the purposes of this Act.

(*c*) 'Deputy Commissioner' includes 'The District Magistrate, Rangoon': in the States 'the Resident', or when there is no Resident, the 'Assistant Resident.'

(3) Any person who was born in any of the territories which, at the time of his birth, were included in His Britannic Majesty's dominions and who had resided in any of the territories included in the Union for a period of not less than eight years in the ten years immediately preceding either the first day of January 1942 or the fourth day of January 1948, may apply to the officer in the district in which he resides for a certificate of citizenship.

(4) The application shall be made by petition which shall be accompanied by an affidavit of the applicant stating—

(*a*) the place of his birth, and the time or approximate thereof;

(*b*) the period or periods he had resided in the territories included in the Union prior either to the first day of January 1942 or to the fourth day of January 1948;

(*c*) his intention to reside permanently in the territories included in the Union; and

(*d*) the name, sex, place of birth and time of birth, exact or approximate, of each of his minor children, alive at the date of the application.

(5) (i) On an application made for a certificate of citizenship, the officer shall direct notice of such application to be issued to the Deputy Commissioner of the district where the applicant resides and

shall also have a copy of the notice posted in some conspicuous place in the office of the Deputy Commissioner.

(ii) The application shall not be heard by the officer before four weeks after the service of the notice on the Deputy Commissioner shall have expired.

(iii) At any time, previous to the hearing of the application, the Deputy Commissioner may file with the officer an objection, stating the grounds of such objection.

Any person, knowing of, or having evidence of, a disqualification in the applicant, may communicate his knowledge or the evidence to the Deputy Commissioner.

(6) (i) At the hearing, the applicant for a certificate shall, subject to the provisions of Section 132 of the Code of Civil Procedure, personally appear before the officer for examination unless the officer, for sufficient reason to be recorded in writing, dispenses with his personal attendance. The applicant shall produce before the officer at such hearing such evidence as he may desire to establish that he is qualified under Section 11 (iv) of the Constitution to elect for citizenship.

(ii) The Deputy Commissioner shall be entitled to adduce, at such hearing, such evidence as he may desire in disproof of the applicant's claim.

(iii) At the hearing, the officer shall not be bound by the Civil Procedure Code or any other enactment but shall be guided by rules of natural justice.

(7) (i) If the officer decides that the applicant has established his right to elect for citizenship of the Union, he shall forthwith transmit to the Minister a certified copy of his decision together with the application for the certificate and the affidavit annexed thereto.

(ii) If the officer decides that the applicant is not entitled to so elect, the applicant may file an application in revision against the order in the High Court within sixty days from the date of the order.

(8) (i) When the Minister receives a decision of the officer under Section 7, he shall, unless he is in doubt of the correctness of the decision of the officer, issue a certificate of citizenship in such form as may be prescribed and shall send the certificate to the officer by whom the decision was made.

(ii) If the Minister is in doubt of the correctness of the decision of the officer, he may refer the application to the High Court on the Appellate Side. To such a reference by the Minister or the application under Section 7(ii) the provisions of Order XLI of the Civil Procedure Code shall apply.

(iii) If the High Court, on a reference, confirms the decision of the officer under Section 7 (i), or sets aside the order under Section 7 (ii), the Minister shall issue a certificate of citizenship and transmit it to the officer by whom the decision was made.

(iv) The officer shall, on receipt of the certificate, call upon the applicant to appear before him on a date fixed by him and to subscribe a declaration on oath or affirmation renouncing any other nationality or status as citizen of any foreign country and, on the applicant making and subscribing such declaration, the officer shall deliver to him the certificate after having endorsed thereon the date of the making of and subscribing the said declaration

(v) The certificate shall not take effect unless the applicant makes and subscribes the declaration under the last preceding section.

(9) If any petition or affidavit, which is required to be filed under this Act, contains any averment which the person making the same knows or believes to be false, such person shall be deemed to have committed an offence under Section 193 of the Penal Code.

(10) Except with the prior leave of the President, no officer or court shall entertain an application under Section 4 if filed after the expiry of one year from the commencement of this Act.

(11) (i) The President may, from time to time, make rules for carrying into effect the objects of this Act.

(ii) In reparticular and without prejudice to the generality of the foregoing power, such rules may provide for and regulate—

(*a*) the presentation at the enquiry on behalf of the Union of Burma;

(*b*) the fees payable by the applicant in the proceedings for the grant of a certificate;

(*c*) the forms to be used under the Act including the certificate of citizenship; and

(*d*) the form of declaration renouncing any foreign nationality or status.

Text supplied by the Burmese Embassy, New Delhi.

34 28 *February* 1949

PRESS COMMUNIQUÉ

The Prime Minister of India, the Australian External Affairs Minister, Dr Evatt, and the UK Secretary for Overseas Trade, Mr Arthur Bottomley, had an informal discussion this afternoon on the present situation in Burma. Mr D'Silva, High Commissioner for Ceylon, and Mr Malcolm MacDonald, UK Commissioner-General

in South-East Asia, were also present. There was a consensus of opinion that peace and prosperity can be restored to Burma primarily through conciliation. The meeting unanimously decided to address a joint communication to the Prime Minister of Burma in which certain suggestions have been made for exploring ways and means of finding a peaceful settlement.

Hindu, Madras, 1 March 1949.

[*Ed. Note:*—On 1 March Dr Evatt said at an interview that joint mediation on compromise with the Karens was the best possible method of restoring peace to Burma. On 7 March Mr McNeill in reply to a question said in the House of Commons that Burma had given a negative reply to the suggestions made in Delhi. Thakin Nu visited Pandit Nehru in New Delhi on 12 April and met Sardar Patel and Indian Finance and Defence Ministers. Next day he met Mr Liaquat Ali Khan at Karachi.]

35 12 *May* 1948

PRESS COMMUNIQUÉ

In the course of the meeting of the Commonwealth Prime Ministers in London, the Prime Ministers of the United Kingdom, India, Pakistan and Ceylon met together to consider the Burmese Prime Minister's request of assistance for early restoration of law and order in Burma. They agreed in their desire to give whatever support they can to the Government of Thakin Nu to the end that peace may be rapidly restored in Burma.

New machinery has been set up to ensure the speedy implementation of this decision.

Hindu, Madras, 12 May 1949.

[*Ed. Note:*—On 12 May the Burma Government announced that there was 'no question of Burma being asked to consider the desirability of joining the Commonwealth. The Burmese Government had requested and accepted the assistance of aid from Britain, India, Pakistan and Ceylon solely for the purpose of restoring law and order in the country and setting the Union of Burma on the path of prosperity as an independent sovereign state.' The May 1949 Conference of Commonwealth Premiers appointed a Committee of British, Indian, Pakistani and Ceylonese ambassadors in Rangoon to ascertain the help in money, arms and consumers goods needed by Burma. At the Colombo Conference in January 1950 a commonwealth loan of £7½ million was recommended; as Canada, New Zealand and S. Africa did not subscribe to it, on 24 March 1950 a loan of £6 million was given to Burma.]

SECTION IV(*d*)

CITIZENSHIP RIGHTS IN CEYLON

36–46 28 *December* 1947–19 *August* 1948

CORRESPONDENCE BETWEEN THE PRIME MINISTERS OF INDIA AND CEYLON (SELECTIONS)

36 INTRODUCTORY NOTE

Discussions took place between the Prime Minister of India and the Prime Minister of Ceylon during the latter's visit to New Delhi in December, 1947, on the question of rights of citizenship for Indians resident in Ceylon. An agreement was reached on the broad principles, which should govern the admission of Indians to the citizenship of Ceylon, subject to further examination by the two Governments. These principles are enumerated in the agreed summary of the record of discussions (Document No. 3). Subsequent correspondence between the two Prime Ministers dealt in detail with the qualifications for citizenship and the procedure for registration of citizens of Indian origin. The views of the Government of India were finally communicated to the Prime Minister of Ceylon in the letter dated 17th July, 1948 (Document No. 14). These suggestions were discussed by the Prime Minister of Ceylon in his letters dated 26th July and 17th August, 1948 respectively (Document Nos. 15 and 19). The latter will show that with minor exceptions the Prime Minister of Ceylon found himself unable to accept any of the modifications suggested by the Prime Minister of India in his letter dated 17 July, 1948 (Document No. 14). In his telegram of August 6, 1948 (Document No. 17), the Prime Minister of India asked for an assurance from the Ceylon Government that there would be no discrimination, either legislative or administrative, between citizens by descent and citizens by registration. The reply of this telegram is contained in the Ceylon Prime Minister's letter of 19 August, 1948 (Document No. 20).

Indians in Ceylon [Indian and Pakistani Residents (Citizenship) Act became law on 28 February 1949]—*Ed.*

37 28–30 *December* 1947

SUMMARY OF DISCUSSIONS BETWEEN THE PRIME MINISTERS AT NEW DELHI

There was a general discussion on the question of citizenship between the Prime Ministers of India and Ceylon on December 28 and 29. The discussion mainly related to the determination of the qualifications which would enable Indians resident in Ceylon to acquire Ceylon citizenship. At the end of the discussion on the second day, the Prime Minister of India suggested that it would be of assistance if the Prime Minister of Ceylon could set down in writing the qualifications which in his view would be adequate for citizenship. Accordingly, detailed proposals were set out in a letter dated 29th December 1947 from the Permanent Secretary, Minister of Defence and External Affairs, Government of Ceylon, to the Secretary to the Government of India, Ministry of External Affairs and Commonwealth Relations Wing—Annexure 1.

(2) The qualifications suggested in the letter mentioned in the preceding paragraph formed the subject of discussion between the two Prime Ministers on December 30 and the clauses were considered one by one. The following is a summary of the points on which agreement was reached and others which the two Prime Ministers promised to examine further.

Qualifications for Ceylon citizenship

Clause (1) (Period of Residence). . . .

It was agreed that the applicant must have resided in Ceylon continuously for a prescribed number of years either preceding December 31, 1945 or preceding January 1, 1948, it being understood that absence from Ceylon for one year or less at a time would not constitute a break in the continuity of residence.

The Ceylon Prime Minister agreed to consider the suggestion of the Prime Minister of India that residence should be for a period of 7 years preceding January 1, 1948 for both bachelors and married persons.

Clause (2) (Adequate means of livelihood).

It was agreed that vagrants or destitutes should not be eligible for citizenship.

The Prime Minister of India suggested that no person who was employed, or temporarily unemployed but employable, should be precluded from citizenship and any condition that the applicant must have an adequate means of livelihood should be avoided. The Prime Minister of Ceylon agreed to consider the suggestion.

Clause (3) (If married, the wife and minor unmarried children, if any should have ordinarily resided with him).

This was agreed to by the Prime Minister of India.

Clause (4) (The applicant should be in a position to comply with the laws and customs of the country).

It was agreed that applicants must comply with the laws of the country on becoming citizens of Ceylon.

The Prime Minister of India suggested that it was not reasonable to expect that citizens of Indian origin should be debarred from following their customs, or should be subjected to the customary laws of other groups, and that it should be sufficient to state that applicants should comply with the laws of the country on becoming citizens.

The Prime Minister of Ceylon agreed to consider the suggestion.

Procedure

It was agreed that the procedure to be prescribed for acquiring citizenship should be simple.

The Prime Minister of Ceylon considered that applications should be received and dealt with by Courts of Law. The Prime Minister of India proposed that applications should be received by Commissioners, duly empowered in this behalf by the Government of Ceylon. The applicant would set out his qualifications in his application and support it by an affidavit accompanied by a declaration to make Ceylon his home. The Commissioner after such verification as he might consider necessary would grant the application. If in any particular case the Commissioner found himself unable to grant an application, he should refer the matter himself to a Civil Court which should then ask the applicant to satisfy it on the points on which satisfaction was necessary.

The Prime Minister of Ceylon promised to have the proposed procedure examined to see if it was feasible.

Avoidance of dual citizenship

It was agreed that no Indian who is admitted to Ceylon citizenship would be allowed to retain Indian citizenship.

The Prime Minister of India promised to examine whether it would be necessary to take any legal steps in India to prevent continuation of Indian citizenship by those who are admitted to Ceylon citizenship.

Indians in Ceylon, Item 3, pp. 6-7.

38 29 *December* 1947

LETTER FROM EXTERNAL AFFAIRS MINISTRY, CEYLON, TO EXTERNAL AFFAIRS MINISTRY, INDIA

With reference to the conversation the Prime Minister, Ceylon, had this morning with your Prime Minister, I am directed to state that the special conditions and qualifications suggested for the grant of Ceylon citizenship to the Indian residents in Ceylon are:

(1) A period of continuous residence of seven years for persons who are married and 10 years for other persons preceding 31st December, 1941, provided that such period of residence shall have been completed prior to 31st December, 1945. Absence exceeding one year shall constitute a break of continuous residence.

(2) Adequate means of livelihood.

(3) If married, the wife and minor unmarried children, if any, should have ordinarily resided with him.

(4) The applicant should also be in a position to comply with the laws and customs of the country.

The preceding conditions should be established in a Court of Law.

On the grant of Ceylon citizenship the applicant should forfeit all claims to Indian Citizenship. Any law of naturalization which may hereafter be passed would apply to Indian nationals equally with others. It may be added that Ceylon will in the near future pass immigration laws applicable to all nationals, including Indians.

Indians in Ceylon, Annexure I, p. 40.

39 26 *May* 1948

LETTER FROM SENANAYAKE TO NEHRU

I have your letter No. 686/P.M., dated 22nd April, 1948, regarding the acquisition of Ceylon citizenship by Indians resident in Ceylon. I have also received from Mr V. V. Giri, your High Commissioner in Ceylon, an *Aide-Mémoire* on the subject dated 24th April, 1948, from the Ministry of External Affairs and Commonwealth Relations, New Delhi.

(2) I have placed before my Cabinet the correspondence which passed between us and I am glad to state that final decisions have

now been reached on the qualifications and procedure for the acquisition of Ceylon citizenship of Indians resident in Ceylon. These decisions have been embodied in a Bill for introduction into Ceylon Parliament at an early date. A copy of this Bill, the ' Indian Residents (Citizenship) Bill,'[1] is attached for information of your Government. I also attach a copy of the ' Ceylon Citizenship Bill',[2] which will define, for the first time, the status to be known as 'the status of a citizen of Ceylon,' and will be a fore-runner to the 'Indian Residents (Citizenship) Bill '.

[1] cf. Document 47.
[2] cf. Document 48.

Indians in Ceylon, Item 10, p. 19.

40 22 *June* 1948

LETTER FROM SENANAYAKE TO NEHRU (EXTRACT)

I have your telegram No. 1320 dated 9th June, 1948, and the *Aide-Mémoire* dated 11th June, 1948, conveying, as stated, your ' comments on the various Clauses ' of the Indian Residents (Citizenship) Bill. It is a matter for regret that these two documents appear to ignore two very important aspects of the progress of the Indo-Ceylon negotiations.

(2) In the first place, while it is true the Bill does not conform to all the suggestions made by you, both during our discussions in Delhi and in the subsequent correspondence, it does reflect, among others, three important items of compromise in the original stand taken up by us, viz. (i) Limiting the scope of the compliance with the laws and customs of Ceylon to certain actual disability or incapacity under the Ceylon law, (ii) Fixing a period of two years within which application may be made for registration, thus enabling any person temporarily unemployed but employable to secure some employment at the time of making application, and (iii) Simplification of the enquiry proceedings by a Commissioner with partly judicial and partly executive functions, the latter being exercised through Deputies and Investigating Officers, instead of the original proposal for the enquiry proceedings to be had before the ordinary Courts of Law. These three points will be further dealt with below under their respective heads, but what

distresses me most is that one party to these negotiations, ignoring concessions made by the other, should appear convinced that their own proposals 'constitute a fair basis for a settlement between the two Governments' and feel aggrieved that their suggestions have not been accepted *in toto*. That way does not seem to point to a mutually satisfactory settlement being reached between two free countries.

(3) The second, and even more important, aspect of the progress of these negotiations which has to be borne in mind, is the radical change which has now taken place in the fundamental basis of the discussions which were conducted in Colombo in September, 1941, by the delegations from the Government of India and the Government of Ceylon. The most important point at issue during those discussions was the qualification for the franchise. The question of the status of Indians resident in Ceylon was talked out in a rather sketchy manner. The present proposal of the Government of Ceylon extends to Indians resident in the Island full rights and privileges of Ceylon Citizenship. It is only natural to expect Ceylon to satisfy herself, by reasonably ascertainable test, that the Indian residents who are going to be admitted to Ceylon citizenship have a genuine and abiding interest in the country of their adoption and equally genuinely desire to sever their connections with India. Those Indian residents who do not choose, or are not admitted to, Ceylon citizenship, will still continue to be allowed to remain in the Island as Indian citizens and to pursue their lawful avocations without any interference. It will also be observed that under our Ceylon Citizenship Bill, an Indian in the third generation will automatically become a natural-born citizen of Ceylon, if he and his father were both born in Ceylon, before the Bill is enacted.

It may be repeated here, let us hope for the last time, that in assessing the fairness or unfairness of treatment by the Government of Ceylon of the whole question as briefly stated above, it must be remembered that the large majority of Indians came to Ceylon not for purposes of settling down here but to work on plantations and return to their homes in due course. Moreover, while in Ceylon, they had special privileges, were exempt from some of the local taxation and, in any matter of dispute whether with the employer or with the Ceylon Government had the protection of the Agent of the Government of India. . . .

(5) Finally, I would request that the Bill be re-examined in the light of the above observations and the agreed amendments and in a spirit of compromise which we on our part have throughout adopted. We have undertaken these prolonged negotiations for the simple

reason that we desire the continuance of good relations between India and Ceylon and believe that once this ' problem ' is out of the way the two countries will draw closer together in strong bonds of friendship.

Indians in Ceylon, Item 13, pp. 23-4, 26.

41 17 *July* 1948

LETTER FROM NEHRU TO SENANAYAKE

Many thanks for your letter dated June 22, 1948 regarding the acquisition of Ceylon citizenship by Indians resident in Ceylon. I regret that, owing to the difficulty of finding time to consider this important question among my other pre-occupations, my answer has been somewhat delayed and trust that I shall be forgiven.

(2) As regards the observations made in paragraph 3 of your letter, I wish to assure you that, during these negotiations, I have constantly borne in mind the radical change in the political circumstances of our two countries which makes the solution of the problem easier and, at the same time, more urgent. I should also like you to know that I have approached this problem, not as one between two disputing parties in which each has to make concessions to the other but as one requiring a joint effort by two Governments to do justice and to bring contentment to an important section of the population of Ceylon, which though Indian in origin, has made substantial contribution to the economic development of Ceylon. Finally, I have felt that, in arriving at a solution, we should have regard not so much to the past as to the future.

Adverting to this last consideration, I should be failing in my duty if I did not make it clear that any suggestion that Indian labour proceeded to Ceylon solely for temporary employment on plantations in that country would be contrary to the facts of history. One of the conditions for emigration to other countries to which the Government of India have always attached the utmost importance from the very beginning of Indian emigration has been that an emigrant labourer should be given facilities to settle in the country to which he emigrates on equal terms with members of the indigenous population. The so-called ' special ' privileges sanctioned by the Government of Ceylon were benefits considered necessary to attract immigrant labour and to ensure that assistance in returning to their homes in India would be available to those migrants who did not want to settle down in the country of immigration. To argue from the existence of these special

stipulations that no settlement of Indians in Ceylon was contemplated would not be justified.

(3) However, as I have said, I wish to approach the Indo-Ceylon question in relation not to what happened in the past but to what should happen in the future. I recognized, in the light of your letter, that your present proposals do represent an advance in some respects on the views expressed by you last December. For this improvement, I wish to express my sincere appreciation and gratitude. But I still think that on certain fundamental points which are dealt with later on in this letter, changes are necessary. In this connection, I wish to recall that the proposals which I made to you last December went beyond the stand taken by the Government of India in earlier discussions. In fact, in subsequent correspondence I have agreed to the period of residence being raised to eight years in order to meet your point of view. In deference to your wishes I have also accepted a more elaborate procedure for dealing with applications for citizenship. If I still press certain suggestions upon you for change, it is because I consider them necessary to give satisfaction to the just claims of Indian residents in Ceylon, and because I am anxious that the settlement which I hope may be reached now should be such as to solve the Indian question in Ceylon once and for all in a manner which would be fair and honourable to our two countries and would leave behind no sense of injustice in the minds of those affected. I would ask you to look upon the comments that follow as made solely with this objective.

(4) *Qualifications for Citizenship* (i) Period of Residence—Section 3(2).—It would not be correct to suggest that the proposals in the Joint Report of 1941 were acceptable to the Government of India, and that only the final decision was postponed on account of the war. On the contrary, the Government of India communicated to the Government of Ceylon their view that several provisions of the agreement were unacceptable. It was only the re-examination of the question in the light of that decision that was interrupted by the war.

The period of residence which would qualify an applicant for citizenship was put forward on previous occasions as only 5 years. In view of the considerations urged by you, I was willing to agree to a longer period. I therefore proposed that the qualifying period of residence should be 7 years, this period being reckoned backwards from 31st December 1947. The provisions of your Bill require, in effect, continuous residence for married persons of 9½ to 11½ years and for others from 12½ years to 14½ years at the time when application for citizenship is made. This period is far longer than is common in the naturalisation laws of other countries and seems particularly harsh when

required of persons with the background of Indian emigrants to Ceylon. As I have already informed you, I am even prepared to agree to continuous residence for 8 years for all persons, married or unmarried. This would mean that an applicant would have to prove continuous residence in Ceylon for 8 to 10 years preceding the date of application. I feel that this period is long enough to meet your requirement of an additional period of residence for an unmarried person, and hope that you will find it unnecessary to prescribe a still longer period of residence for such a person.

(ii) Means of livelihood.—The assistance available from the Immigration Fund to the Indian Estate labourers who wish to return to India has not been overlooked by us in making our proposals under this heading. I believe that in the administration of your law relating to the registration of voters, it is usual to rely on the intention of the prospective Indian voter to settle in Ceylon after retirement as proof of his domicile for the purpose of registration as voter. The labourers who have now retired from active work and continue to live in Ceylon may be said to have established their Ceylon domicile by this very act. Admittedly, people of this age group will not have much interest in such incidents of citizenship as employment in Government departments or land colonisation. But this argument does not appear to me to justify their exclusion from citizenship. Their number is not insignificant. And their exclusion from citizenship would mean that not only they but their minor children also would be permanently debarred from acquiring Ceylon citizenship. I find it difficult to believe that public opinion in Ceylon would be opposed to the grant of citizenship to these persons who have lived and worked for long years in Ceylon and who intend to spend their remaining days in that country. I hope therefore that your Government will reconsider their attitude in this matter.

I am glad to observe that you are willing to consider alternative drafts of Section 5(2)(1).

I suggest the following redraft for your consideration:

'that the applicant is not a destitute or a vagrant or a person who is unemployable owing to physical disability and has no means of subsistence'.

(iii) Residence of family in Ceylon.—I note that you are prepared to delete the provision in Clause 5(2)(ii) regarding the manifestation of intention by the applicant to settle down in Ceylon. I believe that most boys and girls on estates begin to work when they are 12 and that they do not always live or work on the same estates as their parents. To make provision for these cases the following redraft which is substantially the same as the one proposed by you may be adopted:

' that where during the qualifying period of residence required by this Act, the applicant was a married person, his wife and such minor children as were dependent upon him were ordinarily resident in Ceylon.'

(iv) Compliance with the laws and customs of Ceylon.—I have considered carefully the arguments set out in your letter. It is certainly not my intention that any encouragement should be given to polygamous marriages. I think, however, that the complications of criminal law to which you refer could be avoided by a simple provision, exempting from the provisions of the relevant penal law, marriages contracted prior to the date on which the applicant becomes a citizen. As far as civil law is concerned, I have no doubt that the civil courts in Ceylon will continue satisfactorily to administer the existing law as it affects those who become citizens; it will not be necessary to enact any law especially to meet the requirements of citizens of Indian origin. I therefore urge the deletion of Section 5(2) (iii) which, by virtue of its wide and inclusive wording, is likely to lead to more legal complications than it is intended to avoid. It should be pointed out, incidentally, that a disqualification of this type had not been contemplated before and was put forward for the first time last Christmas.

(5) *Procedure to be prescribed for acquiring Ceylon Citizenship.* Affidavits and certified copies of documents.—I note that the provision that the applicant ' shall ' enclose affidavits by persons other than himself and certified copies of certain documents is not intended to be obligatory and is intended only to enable him to do so if he desires. I understand that it would be difficult for the estate labourers to secure affidavits or certified copies of documents of the type contemplated. An ordinary estate labourer will also find it difficult to cite the list of witnesses in advance. An adverse inference against him is inevitable if at the initial stage he fails to file a comprehensive list. For all these reasons I suggest that sub-clause (*c*) of Clause 6(1) be omitted and sub-clause (*b*) be amended to read as follows:

' (*b*) be supported by affidavit of the applicant '.

It should be noted that the class of persons with whom we are dealing will find the procedure laid down difficult unless the application form itself is made as simple as possible and not overburdened with details and by insistence on the provision of additional documents.

(6) *Enquiry by the Investigating Officer.*—The position of the Government of India appears to have been misunderstood. There is no objection in any particular case to the investigating officer making the fullest enquiry into the applications. However, Section 7(2) (*a*) makes it obligatory on the investigating officer to visit every place in which the applicant resided during the qualifying period. The main document

on which the estate labourer will have to rely will be his identity certificate lodged with the Superintendent of the estate where he is currently employed. This document is prescribed by Ceylon law and contains entries showing the history of employment throughout the life of the labourer in Ceylon. A reference to this document alone should in most cases establish the required residence and further enquiry in estates of earlier employment should not be necessary. While any doubts regarding the truth of a statement in the application should certainly empower the investigating officer to visit any or all previous residences of the applicant, a mandatory direction that he shall visit all such residences seems superfluous and might lead to needless delay in the disposal of applications. This point of view would be met if the word ' shall ' in Section 7 (2) (*a*) (*b*) and (*c*) were replaced by the words ' may if he considers necessary '.

Objections.—I note that you have not found it possible to agree to the prescription of a deposit fee in the case of objections. I am glad, however, to have your assurance that the onus of proof of the grounds of objections will rest upon the objector while the applicant will be able to abide by his statements in the application as verified by the investigating officer. In order to bring this onus home to the objector, I suggest that specific provisions be included to the effect that the objector should set out his objections in specific terms, indicating the particular disqualifications alleged and the grounds on which he bases them.

Refusal of Applications.—It is rather surprising that even after the exhaustive enquiries by the investigating officer, only a *prima facie* case should be considered to have been made out by the applicant and a notification inviting objections should be considered necessary. If this provision is to be retained, it seems only fair that, before a Commissioner refuses an application on an investigating officer's report, he should give notice to the applicant with a copy of the officer's report and should also give him an opportunity to establish his claim. This is particularly necessary as the investigating officer will not necessarily contact the applicant during his investigations. I hope that you will find it possible to accept this suggestion which will have the beneficial effect of diminishing the need for filing appeals to the Supreme Court. The period of one month allowed for the filing of appeals in Section 14(2) appears to be too short and may be increased to three months.

Further, the principle that the procedure should be inexpensive to an applicant would require that the witnesses for the applicant should be summoned at Government expense. A provision to this effect may also be included.

(7) *Full Citizenship.*—The Citizenship Bill draws a distinction between citizenship by descent and citizenship by registration. Section 16 of the Indian Residents (Citizenship) Bill provides that citizens registered under the latter enactment shall have the same rights and obligations in law as citizens registered under any other Act. I am glad to see that in paragraphs 4(i) and 4(ii) of your letter you have referred to the conferment of 'full citizenship'. The Ceylon Citizenship Bill, however, contains certain provisions which discriminate against citizens by registration. Thus Section 11(1)(b)(iii) of this Bill makes no provision for the wife of a citizen by registration to become a citizen, although it provides for the registration of the wife of a citizen by descent; Section 20(1) requires the minor children of a registered citizen to take certain steps in order to retain Ceylon citizenship while the children of a citizen by descent are not subject to any such requirement. And, Clauses 21 and 22 which provide for loss of citizenship go much further than the corresponding provisions of the British Nationality and Status of Aliens Act, 1914. You will remember that, in all past discussions the Government of India have attached the utmost importance to an Indian admitted to Ceylon citizenship being granted the same rights over the whole field of citizenship as a citizen of Ceylonese descent, and that in the past Indian residents in Ceylon agitated against certain disabilities which specifically applied to persons of non-Ceylonese origin. It is only fair that Indians who will be admitted to the Ceylon citizenship after the fulfilment of the somewhat rigorous tests now under discussion, should be assured of the same rights and obligations as citizens of Ceylonese origin. I would suggest, therefore, that in the Ceylon Citizenship Bill a specific provision should be made analogous to Section 3 of the British Nationality and Status of Aliens Act, 1914.

(8) I have written somewhat in detail because we are now at the final stage of these prolonged discussions, and I am anxious that there should be the fullest appreciation of our respective points of view. I hope and trust that the suggestions in the preceding paragraphs will be acceptable to you as a fair basis for a settlement and that you will find it possible to modify the Indian Residents (Citizenship) Bill on these lines. Once this fundamental issue is solved in a spirit of amity and goodwill on both sides, I am confident that the ties of friendship which have bound our two countries in the past will be greatly strengthened and India and Ceylon will be able to face the common tasks of the future with the confidence that comes of complete mutual trust and understanding.

Indians in Ceylon, Item 14, pp. 26-30.

42 26 *July* 1948

LETTER FROM SENANAYAKE TO NEHRU

Thank you for your demi-official letter No. 268/48-S, dated 17th July, 1948, regarding the acquisition of Ceylon Citizenship by Indian residents in Ceylon. I am afraid I shall have to confine this letter to dealing only with paragraph 7 of your letter in which you comment on certain distinctions between citizenship by descent and citizenship by registration proposed in the Ceylon Citizenship Bill. This is necessary as my Government is most anxious that this Bill should be enacted immediately so as to fill the void in our present law by the absence of any legal definition of the 'Status of a citizen of Ceylon'; such a definition, you will agree, is a most urgent necessity in our present constitutional status. I must apologise for not being able to consider immediately the other matters relating to the Indian Residents (Citizenship) Bill dealt with in your letter, owing to my preoccupation with the Budget Sessions of our Parliament and other matters of pressing importance. I shall address you again in due course on this subject.

(2) On reconsideration, I agree that the facilities provided by Sec. 11(1)(b)(iii) in the Ceylon Citizenship Bill may be the same for citizens by descent and citizens by registration. The relevant clause is being amended accordingly.

(3) In regard to the question of confirmation by minor children of their adopted citizenship on reaching majority, provided for in Section 20(1), this provision is a generally accepted principle of naturalization which it is considered desirable to keep in our law. I may, however, draw your special attention to the provision in Sec. 20(2) where any unfortunate lapse in making the declaration within the prescribed period may be cured at any time, for good cause shown.

(4) The British Nationality and Status of Aliens Act, 1914, which provides for occasional grants of certificates of Naturalisation, cannot be compared with the Ceylon proposals for registration of Indian residents in the Island. Even so, the wide discretionary powers conferred on the Secretary of State by Section 7 of the British Act for revocation of Certificates of Naturalisation would seem to cover fully the few specific provisions made in Sections 21 and 22 of the Ceylon Bill. I would draw special attention to the series of exclusions (*a*) to (*g*) in Section 21 and, in particular, to clause (*g*) which excuses absence 'abroad for any prescribed purpose'. I have no doubt that with the experience gained in the administration of this Section absence from the Island for reasonable 'Purposes' will be specially prescribed for exclusion under Clause (*g*). If, however, the contention is that registered citizens should be entitled to reside abroad at will for an indefinite

period, the reply would be that Section 21 is a necessary safeguard against the probability of Ceylon being saddled with responsibility for large numbers of her citizens who might leave the country after registration and settle down elsewhere and be a source of embarrassment to us under altered circumstances after a number of years. With regard to Section 22, I feel sure that, on reconsideration, you will agree that there is every justification for registered citizens, convicted by a Court for Acts amounting to waging war against the adopted State or for obtaining registration as citizens by false representation or fraud, to be deprived of their citizenship.

(5) With regard to your suggestion that specific provision should be made in the Ceylon Citizenship Bill analogous to Section 3 of the British Nationality and Status of Aliens Act, 1914, I may state that such a provision is outside the scope of our Bill. You will, no doubt, observe that the structure of the Ceylon Citizenship Bill is such that it merely defines a new status to be known as ' The Status of a Citizen of Ceylon ' and nowhere creates, or refers to, rights and obligations in Law as citizens whether by descent or by registration. It is clear on the face of the Bill that the only difference between citizens by descent and citizens by registration lies in the mode of acquiring or losing such status and it is therefore not considered necessary to introduce into it questions of rights and privileges. It is relevant to note that the British Nationality Bill, 1948, which has recently been passed by both Houses of the British Parliament and which is to repeal the British Act of 1914, does not contain the Section in the latter Act which you now suggest for inclusion in our Bill.

(6) I may add that subject to the amendment referred to in paragraph 2 above, the Ceylon Citizenship Bill will be introduced shortly into Ceylon Parliament.

Indians in Ceylon, Item 15, pp. 30-1.

43 6 *August* 1948

TELEGRAM FROM PRIME MINISTER, INDIA, TO PRIME MINISTER, CEYLON

My immediately preceding telegram No. 1488 dated 6th August, 1948.

(*a*) Clause 11(1)(*b*)(iii) : I am glad that you have accepted our view that citizens by descent will have same facilities as citizens by registration.

(*b*) Clause 20(1) : I am advised that in the naturalisation laws of all other countries of the British Commonwealth the rule is that where minor children are naturalised through the naturalisation of the father, the child has a right to make a declaration of alienage within one year after attaining majority. A provision to this effect has been made in Section 7 of the recent British Nationality Act. The principle adopted in the Ceylon Bill seems to be just the opposite :—that is to say the previous nationality of the minor ceases, unless certain steps are taken to retain it after the attaining of majority. I suggest, therefore, that this clause be amended so as to do away with the requirement of a conformatory declaration after the attaining of majority.

(*c*) Clause 21 : In the light of what you state I would not press my earlier comment on this clause.

(*d*) Clause 22 : I suggest that Sub-Clause (*b*) be confined to offences amounting to waging war against the States and that it would be better to mention these offences specifically rather than refer to the entire Chapter VI of the Penal Code, which, I understand, contains certain Sections which deal with offences other than waging or attempting to wage war or abetting war against the State.

(*e*) I note that you are unable to accept my suggestion to include a clause in the Bill on the lines of Section 3 of the British Nationality and Status of Aliens Act, 1914. I am not particularly anxious for a statutory provision of this kind so long as we have an assurance from the Ceylon Government that there will be no discrimination, either legislative or administrative, between citizens by descent and citizens by registration, for example, in respect of eligibility for the franchise or for office. You will no doubt appreciate that in the absence of an assurance of this kind, it will be difficult for Indian residents to decide whether they should acquire Ceylon Citizenship by registration or not.

(2) From our point of view, Indian Residents (Citizenship) Bill is essential complementary of Ceylon Citizenship Bill; otherwise large number of Indians now resident in Ceylon, whose claim to become Ceylon citizens has been recognized in principle by both Governments, will be left unprovided for. I would, therefore, strongly urge that Indian Residents (Citizenship) Bill should receive immediate attention.

Indians in Ceylon, Item 17, p. 32.

44 12 *August* 1948

TELEGRAM FROM PRIME MINISTER, CEYLON, TO PRIME MINISTER, INDIA

Your telegram No. Primin 1489. Ceylon Citizenship Bill. I am glad to inform you that I propose to introduce suitable amendments in the Committee stage of Parliament to the two Clauses in the Ceylon Citizenship Bill viz., Clause 20(1) and 22 about which you appear most concerned.

(2) With regard to Clause 20(1) Sub-Clause (*a*) deals with the declaration of retention of Ceylon Citizenship on reaching majority by children of citizens born outside Ceylon after the appointed date. My Government considers this provision essential and I have no doubt you will agree that it might stand. But Sub-Clause (*b*) is the material portion of this Clause which provides that all minors who acquire Ceylon citizenship by registration either under this Act or under any other Special Act such as the Indian Residence (Citizenship) Bill should declare their retention of citizenship of Ceylon on reaching majority on pain of losing Ceylon citizenship. In view of your plea that this would cause hardship to the minor my Government has agreed with me that this provision may be deleted.

(3) With regard to Clause 22 my Government has agreed to limit its operation to offences against the State specified in Chapter VI of the Penal Code punishable with rigorous imprisonment only. The Clause as amended now would meet your objection as the less serious offences under Sections 118, 120 and 125 of the Penal Code will not entail the penalty imposed by original Clause 22.

(4) With regard to paragraph 2 of your telegram under reference I hope to be able to discuss your representations on certain aspects of the Indian Residents (Citizenship) Bill with the High Commissioner for the Government of India in Ceylon within about a week's time when I expect our budget to have passed the Committee stage. I shall then be in a position to give a firm date as to when the Indian Residents (Citizenship) Bill could be brought before Parliament.

Indians in Ceylon, Item 18, pp. 32-3.

45 17 *August* 1948

LETTER FROM SENANAYAKE TO NEHRU

I refer to your letter No. 268/48-S dated 17th July, 1948, regarding the acquisition of Ceylon citizenship by Indian residents in Ceylon. I have already replied to one part of this letter dealing with the Ceylon Citizenship Bill, and that matter now rests with my telegram No. 35 dated 12th August 1948. I have for reply herein your observations on the Ceylon proposals for the grant of Ceylon citizenship to Indians resident in the Island. I fully appreciate the spirit in which you have approached the problem of the future status as citizens of Ceylon of Indians resident in the Island and can assure you that I am myself equally keen on a just settlement of this question acceptable not only to the two Governments and Indians resident in Ceylon but also to the indigenous population of the Island. I agree, that in arriving at a solution we should have regard not so much to the past as to the future. But the past has however been raised and I consider it necessary to correct certain misconceptions regarding it which seem to be prevalent even at this late stage of the discussion of the problem.

(2) I do not think that I misrepresent the 'facts of history' when I state that Indian labour did not come to Ceylon to settle down permanently in this country but primarily to seize the opportunities for employment which the Coffee, Tea and Rubber Plantations so generously offered. It is no reflection on Independent India that there was a time when a number of her sons were made, under an arrangement which a foreign power in India made with foreign capitalists in Ceylon, to leave India in search of employment and a fair livelihood abroad, nor can Independent Ceylon be held responsible for the unsatisfactory conditions under which emigration took place then. I do not deny that some of these emigrants may have come to regard their new lands as their home. This is natural and inevitable in the case of settlers in those countries where distance rendered difficult if not impossible the maintenance of any close connection with the motherland. Emigrants to Ceylon however were not compelled by a similar circumstance to sever their connection with India. Rather, is there every indication that Indians in Ceylon have neither forgotten nor forsaken their home country. The closest association was and is still being maintained by the emigrant with his village, and the facilities for travel have encouraged regular and periodical visits to it. There are several instances where land has been purchased and investments made in their villages by labourers through the agency of the Ceylon Emigration Commissioner. Money is remitted monthly to families or dependents in India. It is hardly necessary to repeat here

the arguments and statistics available in published reports demonstrating the ' fluidity ' of Indian labour, the number in Ceylon fluctuating in direct proportion to the opportunities for employment.

(3) That the Government of India too recognised the fact that Indian estate labour came to this Island chiefly for employment is seen in the great importance attached by that Government in previous correspondence to the right of free repatriation in the case of the unsuited, the sick, the disabled and unemployed. The Indian Government even went to the extent of maintaining an ' Agent ' in Ceylon to safeguard the interests in a foreign country of persons whom they continued to regard as their citizens. No such concern was shown by India in the case of ' non-estate ' emigrants, nor has it been shown by the ' mother ' countries in Europe in the case of those nationals who migrated to such countries like America and Australia solely for colonisation and settlement as ' pioneers ' with all the risks these entailed.

(4) There is no justification therefore for the claim that Indian immigrant labour came to Ceylon ' to settle down on equal terms with the members of the indigenous population '. The ' special ' privileges sanctioned by the Government of Ceylon were not so much ' benefits considered necessary to attract immigrants' labour ' but really ' conditions ' demanded by the Government of India for the well-being of her citizens in Ceylon and in view of which the Indian Government declared Ceylon as one of the countries to which emigration was lawful under the Indian Emigration Act of 1922. The ' Notification ' issued by the Governor-General under Section 10 of the 1922 Act makes no mention whatsoever of political or legal equality as one of the ' terms and conditions ' under which emigration to Ceylon will be lawful. That little significance and less consideration was bestowed on such equality is further borne out by the fact that no specific mention thereof is required to be made in the ' Statement of Information ' to be prepared under Rule 17 of Indian Emigration Rules of 1923.

(5) The Indian labourer therefore may have enjoyed the same political status as a Ceylonese at a time in the past when the attendant rights were ill-defined and of no consequence. It was when their value was enhanced by advances in self-government that attention was drawn to these rights which consequently became the subject of dispute and discussion. It is significant that when the franchise was first introduced in 1912 to elections for the Ceylon Legislative Council the electorate was limited to the Europeans, Burghers and the educated Ceylonese which clearly excluded even the educated Indians. In 1933, when the Ceylon Government desired to grant the same rights and

privileges of membership in Village Committees to Indian estate labourers as to the indigenous villagers, it was the Agent of the Government of India who objected to the proposal on the ground that these labourers ' have little interest in Village Committee elections ', even stating that the ' proposal may prove detrimental to the indigenous villagers themselves ', obviously supporting a certain section of the Ceylon public who feared being swamped by the immigrant labour of Village Committee elections.

(6) I admit that Indian labour has made a ' substantial contribution to the economic development of Ceylon '. This contribution, however, I feel was incidental and subordinate to other considerations which attracted foreign capital and labour to Ceylon. This country offered a wide field for the extensive and lucrative investment of British Capital, which the Colonial Power did not fail to seize. The development and wealth that were the results did not accrue to the indigenous population to any appreciable degree, the latter being deprived even of the opportunities for employment which this enterprise created. It was colonial development for the benefit of the Colonial Power and any benefits resulting to the country were disproportionately small and unintentional. I am sure that Indians regard the enterprise of the British in their country in very much the same way as Ceylonese do in this. That India wanted these ' benefactors ' to quit India is obviously no indication that Indians failed to appreciate the numerous and varied developments for which the British and their enterprise were responsible.

(7) Indian labour and British Capital likewise contributed to the economic development of Ceylon. It cannot however be pretended that it was any ardent desire to develop Ceylon that persuaded Indians to leave their country for this. It was rather the lack of opportunities for employment in the village and its offer on very reasonable and attractive terms in this Island that drew them away from the soil and home, to which they were so much attached, and brought them in large numbers to Ceylon. One must not fail to appreciate and acknowledge the very great benefits of such emigration to the emigrants and India herself. I may say that when Indian labour came to work on estates in Ceylon, they came with the certainty of employment on very favourable conditions and the hope of free repatriation at the end, and certainly not in the spirit of settlers prepared to face the risks of true pioneers.

(8) It is clear therefore that Indian labour migrated to this Island primarily, I should even say solely, for employment on estates. The farthest extent to which the existence in the past of any equality of status may be admitted is the grant in the last two revisions of the

constitution of the franchise to Indian immigrant labour during the period of their residence in the Island even though temporary. Nevertheless, we did not, nor do we even now, deny them the opportunity to settle down and become citizens of Ceylon. We desire, however, to ensure that the persons we admit as fellow-citizens in the future have a genuine and abiding interest in Ceylon and an intention of permanent settlement. Residence in the country for ten, even twenty, years is no conclusive proof; especially when such residence is punctuated with frequent visits to the home country. Still less does a mere declaration of intention justify the conferment of the privileges and rights of citizenship.

(9) The qualifications I have proposed are the minimum I consider necessary to ensure that the Indians applying for registration have a genuine desire to settle down in Ceylon. In fact, I have laid myself open to the charge of having consulted the interests of the indigenous population insufficiently or not at all. Far from being merged in the permanent population of the Island and identifying themselves with its interests and development, they have grown into a bloc quite distinct from other communities. I admire the affection they still have for their mother country but note with regret the absence of even the beginning of a similar affection for the country of 'adoption'. I am not surprised therefore to observe that opposition from Ceylonese even to the present proposals of the Ceylon Government is gathering force. The Kandyans, for instance, who have lost the best part of their territory to European capitalists now fear the loss of political power through overwhelming numbers of Indian labour, who have nothing in common with the permanent residents, swamping them in electoral strength.

(10) This is the background to the present proposals to confer citizenship on a large number of Indians who can genuinely claim Ceylon as their home. There is clearly no basis for the suggestion that Ceylon will withhold the rights of citizenship from persons who had been lured to come here by its promise or who had settled down here in reality and not merely in name. I agree that it is not in a spirit of bargaining but in one of co-operation that these discussions should take place. It is particularly important that they should not lead to any misunderstanding or bitterness which might vitiate a settlement of this problem and survive to embarrass the future happy relations between the two peoples. It behoves both sides therefore to pitch their claims at a just and reasonable level. The desire of the Government of India to satisfy public opinion both in India and among Indians in Ceylon is understandable. I regret, however, to observe that the leaders of Indian opinion in Ceylon show little understanding and less

sympathy with the real interests of the country they live in. They miss no opportunity of misrepresenting facts and misleading public opinion in India in an unjustifiable attempt to win sympathy for themselves and rouse antagonism against a country which is supposedly theirs. Should we not expect these persons to have an appreciation of both view-points?

(11) I am afraid I have discussed the past at great length and with much candour. This however is the background against which I suggest you consider the qualifications for citizenship. You have my assurance that we do not wish to deny the right of citizenship to any Indian who can justly claim it. If I refuse to accept modification of any proposal, it is because the grant of citizenship is mandatory, and because we attach the greatest importance to the rights and status of a citizen of Ceylon; a status of which we are justly proud and rights of which we are naturally jealous.

Qualification for Citizenship

(12) I do not propose, nor do I think it is necessary, to dwell at length on the qualifications for citizenship, but shall briefly state the reactions of my Government to the modifications suggested in your letter.

(i) *Period of Residence.*—I regret it is not possible for me to agree to a reduction in the period of residence. I am afraid that further postponement of a solution will only serve to lengthen the period. 'The naturalisation laws of other countries' have no doubt shorter periods of residence as the grant of citizenship by them is occasional and they have not the same problems to face as we have.

(ii) *Means of Livelihood.*—I have considered the alternative draft suggested by you for Section 5(2)(i). I have however decided to retain the present one in the confidence that no injustice is intended or will be done thereby. The concept of 'means' appears to be the same on your side as on mine, but we prefer to define it in a positive way for the simple reason that we shall not be able to assume responsibility for and support, if it becomes necessary, a large body of persons who will be a liability on us from the beginning.

(iii) *Residence of Family in Ceylon.*—I agree to adopt the redraft proposed by you.

(iv) *Compliance with the laws and customs of Ceylon.*—I regret I cannot agree to the deletion of Section 5(2)(iii). It is not the legal difficulty of drafting a clause to meet your wishes which is the 'complication' we contemplate. We dislike individual exceptions to the Criminal Law of the land. I agree that in the eyes of the Civil Law, the rights of persons can continue to be administered as at present and little difficulty arises from this source.

Procedure to be prescribed for acquiring Ceylon Citizenship

(13) (i) *Affidavits.*—I agree to a modification of Section 6 substantially in the manner suggested by you, by not making it obligatory on the applicant to furnish 'affidavits . . . of other persons, certified copies of documents, . . . and a list of witnesses'. As far as these documents are concerned, therefore, an applicant 'may' enclose them.

(ii) *Inquiry by Investigating Officer.*—I agree to replace the mandatory direction given by Section 7(2)(*a*) and (*c*) by a discretionary power to visit only such places and examine such documents as may be considered necessary.

(iii) *Objections.*—I do not think there is any need to make specific provision in regard to onus of proof and define a procedure clearly admitted in our law. The question of requiring a statement of objections is being further examined with a view to amendment of the draft if necessary.

(*iv*) *Refusal of Applications.*—(*a*) I agree that before an application is refused the applicant should be given an opportunity to establish his claim. Suitable amendment will be made accordingly to Section 8.

(*b*) The period of one month allowed for lodging an appeal is sufficiently long but, in deference to your wishes, it will be increased to two months.

(*c*) The procedure is informal and inexpensive in the sense that inquiries will as far as possible, be made on the spot. Statements may also be checked or verified by direct correspondence with the persons concerned. Moreover, the entire process will be free of stamp duty. Hardly any witnesses need be summoned to attend an original inquiry. In the case of appeals to the Supreme Court, where presumably only test cases for a ruling on fact or law will be taken, the Court will make an order as to costs.

(14) I have gone as far in meeting your wishes as is consistent with the interests of the permanent population of Ceylon. I am sorry that it has not been possible to agree to any further modification in the qualifications or procedure for admission to Ceylon citizenship. I venture to think that further delay in arriving at a settlement will, far from bringing any substantial benefit to Indian residents in Ceylon lead to a great deal of difficulties on both sides. I hope therefore that the present proposals will be acceptable to you, especially in view of the circumstances I have described earlier in this letter.

Indians in Ceylon, Item 19, pp. 33-7.

46 19 *August* 1948

LETTER FROM SENANAYAKE TO NEHRU

In continuation of my letter dated 17th August, 1948, regarding the acquisition of Ceylon citizenship by Indian residents in Ceylon, I have to state that I have since discussed the matter with the High Commissioner for India in Ceylon, and he has pointed out a hiatus in my reply which I take this opportunity to repair. In your telegram Primin. No. 1489 dated 6th August, 1948, paragraph 1(*e*), you have asked for ' an assurance from Ceylon Government that there will be no discrimination either legislative or administrative, between citizens by descent and citizens by registration—for example, in respect of eligibility for franchise or for office '. I can give the required assurance in respect of the two examples you have mentioned, viz., in respect of eligibility for franchise or for office. But in the light of the discussions which your High Commissioner had with me I have to add that the Government of Ceylon does not propose to remove any legal restrictions in Ordinances such as the Land Development Ordinance, the Fisheries Ordinance and the Omnibus Licencing Ordinance which may operate against certain classes of citizens by registration.

(2) No other discrimination, either legislative or administrative, between citizens by descent and citizens by registration is contemplated.

Indians in Ceylon, Item 20, p. 37.

47 26 *May* 1948

DRAFT ACT (ANNEXURE II TO LETTER OF 26 MAY 1948 FROM SENANAYAKE TO NEHRU)—EXTRACT

...(2) *Acquisition of citizenship by registration under this Act.* Notwithstanding anything in any other law, an Indian resident to whom this Act applies may acquire the status of a citizen of Ceylon by procuring registration as such, upon the conditions and in the manner hereinafter set out.

(3) *Application of Act.* (i) This Act shall apply, and the privilege of procuring registration thereunder shall extend, solely to those Indian residents in Ceylon who are possessed of a special residential qualification, which in each case shall consist :

(*a*) in the first instance, of uninterrupted residence in Ceylon, immediately prior to the first day of January, 1946, for a period not less than the appropriate minimum period hereinafter specified ; and

(*b*) secondly, of uninterrupted residence in Ceylon from the aforesaid day to the date of the application made in that case for such registration.

(ii) The appropriate minimum period of uninterrupted residence required by paragraph (*a*) of sub-section (i) shall

(*a*) in the case of a person who is unmarried at the date of his application for registration, or in the case of a married person whose marriage has been dissolved by death or divorce prior to that date, be a period of ten years; and

(*b*) in the case of a married person living with the partner of the marriage at the date of his application for registration, be a period of seven years.

(iii) For the purposes of this Act, the continuity of residence of an Indian in Ceylon shall, notwithstanding his occasional absence from Ceylon, be deemed to have been uninterrupted if, but only if, such absence was on each occasion intended to be temporary and did not on any one occasion exceed twelve months in duration.

(iv) No application purporting to be made under this Act by any person other than an Indian resident possessed of the special residential qualification required by sub-section (i) shall be entertained in any circumstances or on any ground whatsoever.

(4) *Time limit for exercise of privilege.* The privilege conferred by this Act shall be exercised in every case before the expiry of a period of two years reckoned from the appointed date; and no application made after the expiry of that period shall be accepted or entertained, whatsoever the cause of the delay.

(5) *Condition of allowing applications.* It shall be a condition for allowing any application for registration under this Act that the applicant shall have

(i) first proved that he is an Indian resident possessed of the special residential qualification required by section 3; and

(ii) in addition, produced sufficient evidence (whether as part of his application or at any subsequent inquiry ordered under this Act) to satisfy the Commissioner that the following requirements are fulfilled in his case, namely

(*i*) that the applicant is possessed of an assured income of a reasonable amount, or that he has some suitable business or employment or other lawful means of livelihood, to support himself and his dependents, if any;

(*ii*) that during the qualifying period of past residence required by this Act, the applicant has, by any specific act, or by his way of life generally, manifested his intention to settle down permanently in Ceylon, and in particular, where, during that period, the applicant

was a married person, that his wife and each minor son and unmarried daughter were ordinarily resident with him in Ceylon and that they continued so to reside until the date of application;

(*iii*) that the applicant is free from any disability or incapacity which may render it difficult or impossible for him to live in Ceylon according to the laws of Ceylon;

(*iv*) that the applicant clearly understands that, in the event of his being registered as a citizen of Ceylon

(*a*) he will be deemed in law to have renounced his right to the civil and political status he has had or would, but for his registration in Ceylon, have had under any law in force in the part of India from which he migrated, and

(*b*) in all matters relating to or connected with his status, his personal right and duties and his property in Ceylon, he will be subject to the laws of Ceylon.

(6) *Applications.* (i) Every application for registration under this Act shall

(*a*) be in the prescribed form and contain all the relevant particulars, explanations, answers or other statements for which provision is made in that form;

(*b*) be supported by affidavits of the applicant and of any other persons who have direct knowledge of any facts set out in the application;

(*c*) be accompanied by certified copies of all documents on which the applicant relies for proof of any statement or of any claim made by him, and by a list of the witnesses whom he is in a position to call in support of any such statement or claim; and

(*d*) be addressed, and be transmitted or delivered, to the Comissioner.

Every reference to an application in any of the other provisions of this Act shall, unless the context otherwise requires, be construed as a reference to an application together with the affidavits and other documents or copies of documents by which the application is required by this sub-section to be accompanied.

(ii) In the case of an applicant who has a wife or any minor children of a lawful marriage ordinarily resident with him in Ceylon

(*a*) where he desires such child or children to be registered simultaneously with himself, there may be included in the application an express request by him in that behalf; and

(*b*) where his wife elects to be registered simultaneously with him, there may be included in the application a request in that behalf authenticated by her signature or acknowledged and affirmed by her orally before a Justice of the Peace.

Where any such request is included in an application, there shall be set out in the application, in respect of each such child or the wife, as the case may be, all the particulars for furnishing which in such circumstances provision is made in the prescribed form of application.

(7) *Verification of applications.* (i) As soon as may be after the receipt of each application, the Commissioner shall refer the application, for verification of the particulars and statements therein and for such report thereon as may be necessary, to the investigating officer of the area or each of the areas in Ceylon, in which the applicant claims to be, or to have been, ordinarily resident.

(ii) The investigating officer to whom an application is referred shall

(*a*) visit the place where the applicant resides and each of the other places if any, where he claims to have resided;

(*b*) make such investigations as may appear to him to be necessary for verifying the particulars and statements set out in the application;

(*c*) examine the originals of any documents of which copies were sent with the application; and

(*d*) furnish a report thereafter to the Commissioner as to the nature of the investigations conducted by him, the facts which were disclosed to him or discovered by him in the course of such investigations and his conclusions as to the correctness or otherwise of the particulars or statements set out in the application.

(iii) The report of the investigating officer on each application shall be taken into consideration by the Commissioner in dealing with that application.

(8) *Refusal of application.* Where, upon the consideration of any application the Commissioner finds that the requirements of section (5) have not been satisfied he may make an order refusing the application. A copy of such order shall in every case be served on the applicant.

(9) *Notice calling for objections.* Where, upon the consideration of an application, the Commissioner is of opinion that there is a *prima facie* case for allowing the application, he shall give public notice in the prescribed manner that an order allowing the application will be made unless any written objection to the making of such order is received by him from any member of the public within a period of one month from the date on which the notice is published.

(10) *Application to be allowed in the absence of objections.* Where no objection is received in response to the notice within the period specified therein, the Commissioner shall make order allowing the application.

(11) *Inquiry into objections.* Where any objection is received within the period specified in the notice, the Commissioner shall make order

appointing the date and the place for an inquiry into the matter of the objection.

A copy of such objection and of the order shall in every case be served on the applicant.

(12) *Power of Commissioner to hold inquiry of his own motion.* Where, in considering any application, the Commissioner is of opinion that any matter or matters arising therefrom or connected therewith should be further investigated, he may of his own motion order an inquiry and specify in the order each matter which is to be inquired into and the date and the place appointed by him for the inquiry.

A copy of such order shall in every case be served on the applicant.

(13) *Provisions as to inquiries.* (i) The place appointed for each inquiry, whether under section (11) or under section (12), shall be some place convenient to the applicant within the area in which he resides.

(ii) Every inquiry shall be conducted by the Commissioner:

Provided that if the Commissioner so directs, any inquiry may be held by the Deputy Commissioner who shall, in that event, exercise all the powers and perform all the functions vested in the Commissioner in that behalf by this Act.

(iii) The Commissioner shall, for the purposes of any inquiry under this Act have all the powers of a District Court

(*a*) to summon witnesses,

(*b*) to compel the production of documents, and

(*c*) to administer any oath or affirmation to witnesses.

(iv) The proceedings at any inquiry shall as far as possible be free from the formalities and technicalities of the rules of procedure and evidence applicable to a court of law, and may be conducted by the Commissioner in any manner, not inconsistent with the principles of natural justice, which to him may seem best adapted to elicit proof concerning the matters that are investigated.

(v) The applicant or any person who has lodged any objection may be represented at an inquiry by proctor, or by advocate and proctor, or by any other agent or adviser authorised by him in that behalf either in writing or by oral statement made in the presence of the Commissioner.

(vi) At the close of an inquiry the Commissioner shall make order allowing or refusing the application, or give notice of the date on which he proposes to make such order. Where he gives such notice, he shall make the order on the date.

(14) *Appeals, &c.* (i) An appeal against an order refusing or allowing an application for registration may be preferred to the Supreme Court in the prescribed manner by the applicant or as the

case may be, by the person who lodged any objection which has been overruled by the order.

(ii) Each appeal under this section shall be preferred within one month of the date of the order by means of a petition setting out the facts and the grounds of the appeal.

(iii) The date on which an order allowing an application takes effect shall

(*a*) Where an appeal has been preferred, be the date on which the Supreme Court affirms such order or makes or directs the Commissioner to make such order; and

(*b*) where an appeal has not been preferred, by the date next succeeding the day on which the time limit for appeals, specified in sub-section (ii) expires.

(15) *Registration and issue of certificate and notification.* (i) As soon as may be after an order allowing an application takes effect, the Commissioner shall

(*a*) cause the applicant to be registered as a citizen of Ceylon in a book to be kept for that purpose in the prescribed form;

(*b*) issue to the applicant a certificate of registration in the prescribed form; and

(*c*) publish in the Gazettee a notification in the prescribed form setting out the fact of the registration of that applicant as a citizen of Ceylon.

(ii) Where in any application which is allowed, a request for the registration of the wife or any minor child of the applicant has been included as hereinbefore provided, the name of the wife or the child shall also be included in the registration entry, the certificate of registration and the notification made or issued under sub-section (i) in respect of that applicant.

(16) *Status of persons who have registered under this Act and have taken the Oaths of allegiance and of Citizenship.* Every Indian resident registered as a citizen under this Act shall, as soon as may be after the date of his registration, take the oath of allegiance and the oath of citizenship in the prescribed form, and shall thereupon be entitled to the same rights and be subject to the same obligations and liabilities, in law, as persons registered as citizens under any other law in force relating to the registration of persons other than Indian residents as citizens of Ceylon; and the provisions of such other law, so far as they relate to the liability to loss or deprivation of citizenship, and the renunciation of citizenship, in the case of persons registered as citizens thereunder, shall apply in like manner in the case of Indian residents registered as citizens under this Act. . .

(18) *Exemption from stamp duties.* All declarations, affidavits, petitions of appeal and other documents of any description whatsoever,

prepared or produced for the purposes of this Act or any proceedings or appeals, thereunder, shall be free of stamp duty.

Indians in Ceylon, Annexure II to item 10, pp. 41-6.

48 26 *May* 1948

DRAFT ACT (ANNEXURE III TO LETTER OF 26 MAY 1948 FROM SENANAYAKE TO NEHRU)—EXTRACTS

PART I

Citizenship of Ceylon

...2. *Status* (i) With effect from the appointed date, there shall be a status to be known as ' the status of a citizen of Ceylon '.

(ii) A person shall be or become entitled to the status of a citizen of Ceylon in one of the following ways only:

(*a*) by right of descent as provided by this Act;

(*b*) by virtue of registration as provided by this Act or by any other Act authorising the grant of such status by registration in any special case of a specified description.

(iii) Every person who is possessed of the aforesaid status is hereinafter referred to as a ' citizen of Ceylon '. In any context in which a distinction is drawn according as that status is based on descent or registration, a citizen of Ceylon is referred to as ' citizen by descent ' or ' citizen by registration '; and the status of such citizen is in the like context referred to as ' citizenship by descent ' or ' citizenship by registration '.

3. *Citizenship and nationality.* A citizen of Ceylon may, for any purpose in Ceylon, describe his nationality by the use of the expression ' Citizen of Ceylon '.

PART II

Citizenship by descent

4. *Citizenship by descent in the case of persons born before the appointed date.* (i) Subject to the other provisions of this Part, a person born in Ceylon before the appointed date shall have the status of a citizen of Ceylon by descent, if

(*a*) his father was born in Ceylon, or

(*b*) his paternal grandfather and paternal great grandfather were born in Ceylon.

(ii) Subject to the other provisions of this Part, a person born outside Ceylon before the appointed date shall have the status of a citizen of Ceylon by descent, if

(*a*) his father and paternal grandfather were born in Ceylon, or

(*b*) his paternal grandfather and paternal great grandfather were born in Ceylon.

5. *Citizenship by descent in the case of persons born on or after the appointed date.* (i) Subject to the other provisions of this Part, a person born in Ceylon on or after the appointed date shall have the status of a citizen of Ceylon by descent if at the time of his birth his father is a citizen of Ceylon.

(ii) Subject to the other provisions of this Part, a person born outside Ceylon on or after the appointed date shall have the status of a citizen of Ceylon by descent if at the time of his birth his father is a citizen of Ceylon and if, within one year from the date of birth, the birth is registered in the prescribed manner

(*a*) at the office of a consular officer of Ceylon in the country of birth, or

(*b*) where there is no such officer, at the appropriate embassy or consulate in that country or at the office of the Minister in Ceylon. . .

PART III

Citizenship by registration

11. *Persons entitled to registration as citizens.* (1) This section shall apply to any applicant for registration as a citizen of Ceylon who has the following qualifications:

(*a*) that the applicant is of full age and of sound mind;

(*b*) that the applicant—

(i) is a person whose mother is or was a citizen of Ceylon by descent or would have been a citizen of Ceylon by descent if she had been alive on the appointed date, and who, being married, has been resident in Ceylon throughout a period of seven years immediately preceding the date of the application, or, being unmarried, has been resident in Ceylon throughout a period of ten years immediately preceding the date of the application, or

(ii) is the spouse, or the widow or widower, of a citizen of Ceylon by descent or registration having married that citizen before the appointed date and has been resident in Ceylon throughout a period of one year immediately preceding the date of the application, or

(iii) is the wife or widow of a citizen of Ceylon by descent, having married that citizen on or after the appointed date, and has been resident in Ceylon throughout the aforesaid period of one year, or

(iv) is a person who ceased under section 19 to be a citizen of Ceylon by descent upon his acquiring citizenship of any other country in which he has been resident, and thereafter renounced that citizenship in accordance with the law of that other country; and

(*c*) that the applicant, is, and intends to continue to be, ordinarily resident in Ceylon.

(2) Subject to the other provisions of this Part, a person to whom this section applies shall

(*a*) if he has any of the qualifications set out in sub-paragraphs (i), (ii) and (iii) of paragraph (*b*) of sub-section (1) of this section, be registered as a citizen of Ceylon on his making application in that behalf to the Minister in the prescribed manner, or

(*b*) if he has the qualification set out in sub-paragraph (iv) of the aforesaid paragraph (*b*), be so registered on his making such application, unless the Minister decides to disallow such application on grounds of public policy.

(3) The Minister's refusal, under sub-section (2)(*b*) of this section, to allow the application of any person for registration as a citizen of Ceylon shall be final and shall not be contested in any court.

12. *Registration, as citizens, of persons to whom section 11 does not apply.* (1) Subject to the other provisions of this Part, a person to whom section 11 does not apply may, on his making application in that behalf to the Minister in the prescribed manner, be registered as a citizen of Ceylon if the Minister is satisfied

(*a*) that he is a person who

(i) has rendered distinguished public service or is eminent in professional, commercial, industrial, or agricultural life, or

(ii) has been granted in Ceylon a certificate of naturalisation under the British Nationality and Status of Aliens Act, 1914, of the United Kingdom, or Letters Patent under the Naturalisation Ordinance, and has not ceased to be a British subject, and

(*b*) that he is, and intends to continue to be, ordinarily resident in Ceylon.

(2) The number of persons registered as citizens of Ceylon under this section shall not exceed twenty-five in any year.

(3) The Minister's refusal under this section to allow the application of any person for registration as a citizen of Ceylon shall be final and shall not be contested in any court.

13. *Minor children of applicants for registration as citizens of Ceylon.* (1) Where an applicant for registration as a citizen of Ceylon has any minor child, he may in his application make a request for the inclusion of the name of that child in the certificate of registration which may be granted to him under this Part.

(2) Where a request as aforesaid is made in an application under section 11 or section 12, the Minister shall, subject to the other provisions of this Part, comply with the request if the applicant is registered as a citizen of Ceylon.

14. *Persons who are not to be granted citizenship by registration.* (1) Save as provided in section 11, a person who has ceased to be a citizen of Ceylon shall not be granted citizenship by registration.

(2) A person who is a citizen of any country other than Ceylon under any law in force in that country shall not be granted citizenship by registration unless he renounces citizenship of that country in accordance with that law.

15. *Register.* There shall be kept and maintained, in the prescribed form a register of persons who are granted citizenship by registration.

16. *Certificates of registration.* The Minister shall grant, in the prescribed form, a certificate of registration as a citizen of Ceylon to every person who is registered under section 11 or section 12 and, where he decides to comply with a request made by that person under section 13, shall include in the certificate the name of every minor child to whom the request relates.

17. *Effect of certificates of registration.* (1) A British subject to whom a certificate of registration as a citizen of Ceylon is granted or whose name is included in such a certificate shall, on subscribing the prescribed oath or affirmation of citizenship, have the status of a citizen of Ceylon by registration as from the date of that certificate.

(2) An alien to whom a certificate of registration as a citizen of Ceylon is granted or whose name is included in such a certificate shall, on subscribing the prescribed oath or affirmation of allegiance and the prescribed oath or affirmation of citizenship, have the status of a citizen of Ceylon by registration as from the date of that certificate.

PART IV

Loss of citizenship

18. *Renunciation of citizenship of Ceylon.* If a citizen of Ceylon of full age and of sound mind makes a declaration of renunciation of citizenship of Ceylon in the prescribed manner, the Minister shall cause the declaration to be registered; and upon registration thereof, the declarant shall cease to be a citizen of Ceylon: provided however that the Minister may withhold registration of such declaration if it is made during the continuance of any war in which Ceylon is engaged and if, by the operation of any law enacted in consequence of that war, the declarant is deemed for the time being to be an enemy.

19. *Becoming a citizen of any other country.* A person who is a citizen by descent or registration shall cease to be a citizen of Ceylon if he voluntarily or by operation of law becomes a citizen of any other country.

20. *Failure to declare retention of citizenship of Ceylon.* (1) A person

(*a*) who, under sub-section (2) of section 5, is a citizen by descent and whose father is or was a citizen by registration, or

(*b*) who, under section 17, is a citizen by registration by virtue of the inclusion of his name in a certificate of registration, shall, on attaining the age of twenty-one years, cease to be a citizen of Ceylon, unless, before the expiry of one year after attaining that age, he transmits to the Minister a declaration of retention of citizenship of Ceylon in the prescribed manner.

(2) A person who has ceased to be a citizen of Ceylon under sub-section (1) of this section may, within a period of one year after the date on which he ceased to be such citizen or within such further period as the Minister may for good cause allow, make a declaration to the Minister that he wishes to resume citizenship of Ceylon; and he shall, on making such declaration, again have the same status of a citizen of Ceylon as he had before that date.

21. *Residence outside Ceylon for five consecutive years.* A person who is a citizen by registration shall cease to be a citizen if that person resides outside Ceylon for five consecutive years or more, exclusive of any period during which that person

(*a*) is employed abroad as an officer in the service of the Government of Ceylon, or

(*b*) is abroad as a representative of the Government of Ceylon, or

(*c*) being the spouse or minor child of a citizen of Ceylon who is abroad in any of the capacities specified in paragraphs (*a*) and (*b*) of this section resides abroad with that citizen, or

(*d*) resides abroad on a holiday or for reasons of health, or

(*e*) is a student at an educational institution abroad, or

(*f*) resides abroad with a spouse who is a citizen of Ceylon by descent, or

(*g*) is abroad for any prescribed purpose.

22. *Conviction by court of certain offences.* A person who is a citizen by registration shall cease to be a citizen of Ceylon if he is convicted by a court of competent jurisdiction

(*a*) of an offence under this Act, or

(*b*) of any of the offences against the State specified in Chapter VI of the Penal Code.

Indians in Ceylon, Annexure III to Item 10, pp. 47-51.

SECTION V

RELATIONS WITH PAKISTAN

49 1 *August* 1947

REPORT ON STANDSTILL AGREEMENT WITH PAKISTAN

The terms of reference of Expert Committee No. VII on Economic Relations (Trade) are as follows:

'To examine matters regarding all trade and movement between the territories of the two successor governments.'

(2) Since a separate Committee has been constituted for the purpose of examining economic relations with regard to controls, this committee has confined itself mainly to matters bearing generally on trade and commerce and the movement of goods between the two dominions, and has not concerned itself with the special arrangements necessary with regard to such commodities as are now under control.

(3) While no reliable statistics are available of the total volume or value of the internal trade between India and the territory to be designated Pakistan, it is clear that while Pakistan has surpluses of foodgrains, hides and skins, raw jute, raw cotton, raw wool and un-manufactured tobacco which she supplies to India, she will be requiring from India commodities like coal, cotton textiles, rubber and jute manufactures, iron and steel, sugar and other consumer goods in which she is deficient.

(4) The complementary nature of the economies of the two Dominions therefore renders it necessary that, pending the negotiations of long term agreements, steps should be taken by both Governments to ensure that supplies of goods are distributed throughout the two Dominions more or less as they are at present when they form part of a single State. This does not call so much for any positive action on the part of either Government as an understanding on either side to continue the existing state of affairs for some time to come. The business community on their part may be expected to keep their old trade connections alive, irrespective of political changes as evidenced by the anxiety which they have always displayed in exporting goods outside the country even when great shortages existed within. Further, their mutual interdependence in many matters, as for example the supply of long-staple cotton to India and the despatch in return of cotton textiles to Pakistan may be expected to strengthen the trade connections between the two Dominions. It may therefore safely

be assumed that, left alone, the existing channels of trade will be preserved and that supplies will continue to flow freely between the two Dominions as heretofore. It is imperative, however, that nothing should be done to impede or divert this flow. We are not unaware in this connection that in course of time it may be necessary for the two Governments to pursue divergent economic policies in their own interests, to achieve which the imposition of such restrictions may be inevitable. But in the interim period, with which the Committee are concerned, neither Government would have had the time to evolve such a policy, much less to implement it, and free trade between the two dominions during the transitional stage would therefore appear to be the most suitable policy to follow.

(5) A prerequisite of free trade is that there should be no customs frontiers between the two countries. No such frontier, in fact, exists to-day, and it would obviously take considerable time before one can be set up. There are also no natural boundary lines between India and Pakistan to make the establishment of a land customs frontier an easy task, and even the political frontiers are still uncertain in parts. The frontier of Western Pakistan would be almost 1,200 miles in length consisting of deserts, river banks and thickly populated territories. The frontier of Eastern Pakistan would be about 1,350 miles in length traversed by innumerable waterways, rails and roads. The staff required to prevent smuggling across the frontiers would not be readily available, nor does it seem likely that either Government would desire to levy immediately import duties on commodities like cloth, food, coal, iron and steel, etc., which flow across these frontiers.

(6) The absence of a customs frontier presupposes that the two Governments will pursue a more or less identical policy with regard to both imports as well as exports. For, if Pakistan were to allow the unrestricted export of any commodity, India might well find it necessary to restrict the export of that commodity to Pakistan. Likewise, if either country were to adopt divergent customs tariffs, free trade would be rendered impossible. Although the Committee are not concerned directly with import and export control or customs tariffs, we would like to recommend having regard to these considerations, that the same policy with regard to import control, export control and customs tariff should be followed and that no departure from the *status quo* should be made without mutual consultation between the two Governments.

(7) A customs barrier is not, however, the only form of restrictions which might hamper the free movement of goods between the two territories. There are a number of other factors which can have the effect of altering the direction of trade or placing impediments in its

way. There are many kinds of taxes, particularly cesses, excise, transit taxes and duties which may well disturb the pattern of trade and cause general disequilibrium in the existing economic system.

(8) Disturbances to trade can also arise if commodities which are now flowing through commercial channels become the object of monopolistic buying by either Government or the subject of Government to Government transactions. It is necessary that such steps should not be taken, save in the last resort, without consultation between the two Governments.

(9) The Committee also consider that the free movement of goods can be seriously restricted by the imposition of new forms of control and that recourse to such measures should not be had without mutual consultation between the two Governments.

(10) What has been stated above with regard to trade applies with equal force to the actual movement of goods. Not only should no restrictions be placed on the free movement of goods from one dominion to the other, but each Dominion should give the fullest transit facilities to goods moving from the other Dominion. Goods moving from Assam to other parts of India would necessarily pass through Eastern Pakistan just as all rail movements between Eastern and Western Pakistan would necessarily be through India. In the matter of ports also, it may in some cases be more economical to move tea through the port of Chittagong just as with regard to many commodities going to and from Eastern Pakistan, Calcutta may be a more suitable port. Here again, there should be not only freedom of movement, but also no discrimination in the shape of a transit or other duty on such goods.

(11) A policy of free trade also postulates free remittance of funds between the two territories, continued sanctity of contracts entered into between the nationals of the two states and free movement of goods and services between the two areas. The Committee consider that with a view to inspiring the fullest degree of confidence in the trade and business community, it is most essential that nothing should be done by either Government during the interim period which would have the effect of interfering with the free movement of funds, whether on current or capital account as also the movement of capital and other goods.

(12) The Committee have considered in this connection the period for which the agreement on the lines indicated above should continue to be in force. While there are obvious advantages in a long term agreement which will admit of either Government being in a position to formulate its future economic policy and to enter into negotiations with either Government on matters affecting trade and commerce,

it may well be that the two Governments may find it necessary, in view of revenue or other considerations to modify their policy with regard to tariffs and currency at the beginning of the next financial year. It is also possible that the internal economy of each Dominion may call for divergent policies as regards imports and exports and if, in addition, the two currency systems are separated, considerations of foreign exchange will also arise with regard to trade between the two Dominions. The Committee feel, therefore, having regard to these considerations, that it would be easier for the two Governments to extend the period of the present agreement if they find it mutually advantageous than to withdraw from a long term agreement if it proves to be irksome in future. They therefore consider that the arrangements suggested by them should remain in force till the 29th February 1948.

(13) The Committee recommended therefore that the two Governments should agree to maintain as far as possible the *status quo* regarding all matters affecting trade and movements between the two dominions up to the 29th February, 1948, and in particular that they should not:

(i) impose customs barriers between the two Dominions;

(ii) change existing import and export policy;

(iii) change existing customs tariffs, excise duties and cesses;

(iv) impose any restriction on the free movement of goods and remittances including capital equipment and capital;

(v) levy transit duties or taxes on goods passing across the territory of the other;

(vi) interfere with existing trade channels by monopolistic Government purchases;

(vii) modify existing controls or introduce new controls;

(viii) interfere with contracts between nationals of the two States.

(14) The above report represents the view of the Committee as a whole. The Moslem members insist, however, that throughout the report the words ' mutual agreement ' should be substituted for the words ' mutual consultation '. The Non-Moslem members insist, however, on ' mutual consultation ' and not on ' mutual agreement '.

(15) Subject to this difference of opinion, the report is submitted to the Steering Committee.

STEERING COMMITTEE'S NOTE

The report of Expert Committee No. VII appointed to examine the matters regarding trade and movement between the territories of two successor Governments is enclosed. The Steering Committee are in agreement with the views expressed therein and recommended the acceptance of the proposals made in paragraph 13 of the report.

(2) As regards the issue raised in paragraph 14 of the report, the Steering Committee have been unable to reach an agreed conclusion. Although the Committee agree that the arrangements for the interim period should be such as to produce the maximum amount of goodwill and understanding, Mr Mohd. Ali feels that this object will be better achieved if the two Governments agree to proceed in regard to all matters dealt with in this report by ' mutual agreement ' whereas Mr Patel, for precisely the same reason, prefers the formula of ' mutual consultation '. The issue is therefore for the Partition Council's decision.

PARTITION COUNCIL'S DECISION

The Council approved the proposals in paragraph 13 of the report of the Expert Committee No. VII on Economic Relations (Trade), the Pakistani Members reserving right to revise their attitude in view of the stand taken by the Dominion of India regarding Customs Revenue.

WPIPT, Annexure, No. I, pp. 1-4.

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SECRETARIAT LEVEL MEETING OF INTER-DOMINION REPRESENTATIVES (AGREEMENT NO. I)

ITEM NO. I—INSURANCE COMPANIES

It is agreed that Companies which have moved their Head Offices to India will advise the Reserve Bank through the Government of India that 15 per cent of the statutory deposits made by them with the Reserve Bank shall be deemed to be held on account of the policy holders now resident in Pakistan until the Superintendent of Insurance has determined the appropriate percentage of policy liability pertaining to persons at present resident in Pakistan.

(2) The Superintendent of Insurance is to be requested to report the appropriate percentage figure by the 15th of January, if possible.

(3) On behalf of the Companies which have moved their Head Offices to India, an undertaking is given that their assets, other than statutory deposits with the Reserve Bank of India, will not be reduced or withdrawn from Pakistan to the detriment of Pakistani policy holders.

(4) Insurance Companies, in particular General Insurance Companies, will be accorded all reasonable facilities by the Pakistani

Government in respect of protection and investigation of claims for their representatives who must go to investigate and appraise claims which have already arisen or may arise hereafter. The Government of India will accord reciprocal facilities. Agents of such companies should report to the Home Secretary, Government of West Punjab; and similarly agents of companies in Pakistan should report to the Home Secretary, East Punjab, Jullundur. Both Governments will advise the companies concerned to send out agents and investigators, as far as possible, belonging to communities which *prima facie* would not require protection.

(5) In respect of investigation of claims in N.W.F.P. and Sind, the procedure agreed upon in respect of West Punjab will apply and the agents of companies concerned will report to the Chief Secretary to the N.W.F.P. and Home Secretary, Sind, for grant of necessary facilities. It is understood that reciprocal facilities will be accorded in the Delhi Province. Agents of Companies concerned will approach the Deputy Commissioner, Delhi, for grant of necessary facilities.

(6) Complaints in regard to delay in settlement of claims will be referred by Pakistan to Mr Ranganathan, Joint Secretary, Ministry of Commerce, Government of India and complaints from India will be referred to Mr Karamatullah, Joint Secretary, Ministry of Commerce, Pakistan, Karachi. It is recognised, however, that settlement of claims can be expedited only after the companies concerned get their records, equipment, furniture, etc.

(7) It is agreed that as soon as the provisional allocation under para. 1 has been made, the companies concerned may remove their Head Office records, equipment, furniture fittings, etc., and for this purpose they should make application to the Custodian of Evacuee Property, West Punjab, Lahore.

(8) The same procedure should apply in respect of any insurance companies in other parts of Pakistan, who may have removed their Head Offices to India.

SUB ITEM (I) UNDER ITEM III—ARTICLES HELD IN SAFE CUSTODY, SAFE DEPOSIT IN BANKS OR SAFE DEPOSIT ACCOUNTS

It is agreed that

(*a*) the depositor must be deemed to be the person entitled to claim such property and take possession thereof; and

(*b*) if any person other than the depositor claims the whole or part of the contents standing to the account of a depositor, either as a pawnor or a bailor, such claim must be lodged by a prescribed date.

In regard to Lahore it is understood that the District Magistrate fixed 15th of December 1947 as the last date on which such claims must

be lodged. It is agreed that the last date for lodging of such claims in respect of other places in West Punjab shall be the 10th of January 1948.

(2) In respect of deposits against which no claim is lodged by the prescribed date, depositors concerned will be allowed full facilities to operate the deposits or to withdraw them partly or completely. The procedure in this behalf will be that the depositor or his duly accredited agent will present an application to the Custodian of Evacuee Property, West Punjab, who will grant the necessary permission as a matter of course. In districts of West Punjab, other than Lahore, such application will be made to the Deputy Custodian concerned, who again will grant permission as a matter of course. In the N.W.F.P. such application will be made to the Controller appointed under Section 3 of Ordinance X of 1947 promulgated in that province.

(3) As for deposits in respect of which a claim has been lodged, it is agreed that, when the depositor or his duly accredited agent presents an application to the Custodian of Evacuee Property or to the Deputy Custodian concerned in the West Punjab, or to the Controller concerned in N.W.F.P. this officer will immediately release such part of the deposit as is not in dispute and against which there is no claim. In regard to the balance, a final decision shall be made as speedily as possible. The same procedure will apply in Baluchistan and applications will be made to the Custodian of Evacuee Property in that Province.

(4) So far as the Custodian, Deputy Custodian, or Controller is concerned, a permit to operate a deposit will be issued in the name of the depositor and not his accredited agent. It will be for the bank etc. to satisfy itself that the person presenting the permit is the depositor himself or his duly accredited agent.

(5) No restrictions on operation of vaults, bank deposits etc. have been imposed by India so far; but in the spirit of the agreement reached with Pakistan in this matter, if any person now resident in Pakistan has any difficulty whatsoever in regard to deposits of this nature, he or his accredited agent should apply to the Custodian of Evacuee Property, East Punjab or Delhi Province, as the case may be, who will give such assistance as may be necessary.

(6) In regard to States in either Dominion, the Dominion Governments agree to endeavour to have the same procedure implemented.

(7) If at any time hereafter restrictions on operation of safe deposit vaults etc. are imposed in the Indian Union, the Government of India agree to implement the same procedure as has now been agreed upon in respect of West Punjab, N.W.F.P. and Baluchistan.

REPORTED BY JOINT SUB-COMMITTEE. IMMOVABLE PROPERTY

General Plan Regarding Treatment of Property left behind by Evacuees :

(1) It is agreed and re-affirmed that ownership of all immovable property left by an evacuee in either Dominion remains undisturbed and continues to vest in that evacuee.

(2) (*a*) It is agreed that out of the immovable property left by evacuees and vested in the Custodian, the Rehabilitation authorities of the Dominion concerned may take over for temporary use for a fixed period of years such property as is required by them *bona fide* for purposes of rehabilitation of refugees from the other Dominion, but not for other or collated purposes.

(*b*) The maximum period for which the Rehabilitation authorities may take over immovable evacuee property should not exceed the following :

(i) Residential property—3 years.

(ii) Commercial and Industrial undertaking—4 years.

(iii) Agricultural property—3 years.

(iv) The question of properties owned by Institutions and Trusts would be considered later separately.

(*c*) In respect of property taken over by Rehabilitation authorities, from the Custodian, the rentals payable by the Rehabilitation authorities to the Custodian should be determined by the Custodian, with reference to fair value and not with reference to the rents at which the Rehabilitation authorities decide to make available the use of those properties to refugees. It is the intention that concessions given to refugees should be at the cost of the Rehabilitation authorities and not of the evacuee owners.

(3) Where the property is not required by the Rehabilitation authorities, and if the owner makes his own arrangements for the proper management of such property on his application to the Custodian such property shall be restored to him for management and/or disposal as the owner may deem fit. Where the management has not yet been taken over by the Custodian, he may on the owner's application allow him to retain the management.

(4) Where property is taken over by the Rehabilitation authorities the owner shall have full right and facilities to transfer, by sale, exchange or otherwise, such property subject to the retention of the property by the Rehabilitation authorities for the period of years mentioned in para. 2 (*b*).

(5) Where property has been returned to the owner for management or is not required by the Rehabilitation authorities, the owner shall be given full facilities for transfer of the property whether by sale,

exchange or otherwise. These facilities will include the employment of private dealers and brokers to arrange exchanges or sales.

(6) Where the owner, in spite of the freedom and facilities to transfer his property, considers or finds himself unable to do so he may proceed in the following manner:

(i) *Urban Property* (*a*) He may at any time apply to the Government of the Dominion to which he has moved for transfer of the property through official agency.

(*b*) For dealing with such applications the two Dominions will set up a joint agency for the purpose of joint valuation of the property in question by means of assessors acting under the joint agency.

(*c*) The joint Inter-Dominion agency will take all possible steps to arrange for disposal of the property at or above the value arrived at by assessment by the joint agency. In this repect the joint Inter-Dominion agency will act merely as agents of the owner on each side. Neither Dominion, however, accepts responsibility for taking over urban property at the price assessed by joint evaluation.

(ii) *Agricultural Property* (*a*) Any owner of agricultural property who considers or finds himself unable to arrange transfer of it, by sale, exchange or otherwise, by private means may apply to the Government of his Dominion requesting disposal through official agency.

(*b*) The two Dominions will set up a joint agency which will draw up a schedule of prices for agricultural property in both Dominions with reference to, firstly classification of different types of land such as homestead, chahi, nahri, barani, banjar, etc. and secondly with reference to territorial divisions which may be districts, sub-divisions, tahsils or in any particular case other convenient territorial division.

(*c*) When the schedule of prices has been decided upon by the joint agency, all agricultural property in respect of which transfer through official channels has been applied for, will be valued and assessed with reference to such schedule. The particulars of holdings and rights therein will be determined from the prepartition village records.

(*d*) Each Dominion undertakes to take over at the value assessed in the above manner, all agricultural property lying in its territory and to make payment to the other Dominion of the said assessed value. After taking over the agricultural property at the assessed value, the Dominion concerned will be free to dispose of it in any manner it chooses and any profit or loss arising therefrom will not concern the other Dominion.

(*e*) Each Dominion, after taking over agricultural property in its territory in accordance with above will arrange to pay to evacuee

owners for their territory the assessed value of their holdings in the other Dominion. Such payment may be by way of allotment of land or in cash or both.

(7) It is agreed that the basis for valuations as also for fixation of rentals will be ' fair-value '.

(8) It is agreed that no restrictions will be placed by either Dominion on remittances of sale proceeds of property or of cash differences in value in cases of exchanges of property.

(9) It is recognized that in respect of the Dominion to Dominion liability arising out of the taking over by each Dominion of agricultural property jointly valued, the Dominion owing a net amount after evaluation and adjustment may require time for payment. The period and method of payment may be determined by a further agreement between the Dominions after the amount payable have been estimated or determined.

Moveable Property. It was agreed that the right of ownership of any moveables continues to vest in the owner and that the owner should be given the right either to remove them or to dispose of them himself or to receive reasonable compensation therefor subject to the following :

(*a*) Moveables required by Government for Governmental purposes i.e. in respect of administration : the acquiring authority will acquire from the Custodian on payment of fair value.

(*b*) Moveables required by the rehabilitation authorities for purposes of rehabilitation of refugees may be acquired from the Custodian on payment of fair value.

(*c*) Moveables of a commercial or industrial undertaking where the owner at any time before disposal of such moveables applies to the Custodian for return of the undertaking to him for the purpose of his running it at its original site, may be restored to the owner by the Custodian on such conditions as he thinks fit. This permission may or may not include the permission to operate through agents.

(*d*) Moveables not comprised in (*a*), (*b*) and (*c*) above which nonetheless are considered essential to the life of the community and cannot, therefore, be allowed to go outside the Dominion—In this category will fall those moveables the export of which has been prohibited by a prohibitory order by the Dominion or the Provincial Government. In such cases on application from the owner the Custodian will allow the owner to make his own arrangements for the disposal of the moveables within the Dominion.

(*e*) As regards the balance the owner will be given the right and full facilities to deal with or dispose of as he thinks fit including permission to remove outside the Dominion.

(2) Para. II (i) is subject to any agreements subsisting or to be made between the Dominions with regard either to export or import of articles or on other matters affecting moveables.

(3) In respect of moveables comprised in commercial or industrial undertakings the following facilities will be given to owners in respect of inventories and valuation:

(*a*) Within a period of one month of a date to be prescribed for the purposes, the owner may apply to the Custodian informing him that he will either appear personally or through a specified agent for the purpose of being present at the time of preparation of inventories or for being heard with regard to valuation of the moveables by the Custodian. During this period of one month no action to the prejudice of the owner will be taken.

(*b*) Each Dominion may appoint Liaison Officers at such places as it may desire for the purpose of assisting evacuees who have moved to that Dominion in regard to preparation of inventories and valuation. It shall be open to the owner to appoint such Liaison Officer as his agent.

(*c*) In regard to any undertaking in respect of which the owner has signified his desire to appear personally or be represented by his agent, the Custodian will arrange that freedom and facilities are given to the owner or his agent to be present at the time of preparation of inventories and at the time when the valuation is decided by the Custodian.

(*d*) Where the orders passed by any officer under the Custodian require confirmation by the Custodian, the owner or his agent shall be given an opportunity to be heard by the Custodian before the order confirming or varying valuation is passed.

(*e*) Where an order of valuation has been passed by an authority subordinate to the Custodian himself, and the order does not require confirmation by the Custodian, the owner shall have the right to appeal to the Custodian.

(4) (*a*) With regard to household effects, under the subsisting agreement between the Dominions the evacuee has a right to remove all his household effects. This right when exercised in relation to household effects in the meantime allotted to or taken possession of by a refugee tends to create a condition of insecurity for the refugee and hinders rehabilitation. Therefore, it is proposed that a list be drawn of articles of household goods which are required for rehabilitation and which the Rehabilitation department may ask the Custodian to retain for use of the refugee on full compensation in cash being paid. This cash value will be payable to the evacuee and he will be allowed to remove outside the Dominions.

(*b*) It is agreed that in regard to the household effects owners on both sides should be expected to remove them as early as possible and should be required to do so within three months from the date of operation of arrangements to be made in that behalf. It was agreed that arrangements facilitating the removal of such goods should be made by the two Dominions.

(*c*) The household goods belonging to evacuees which are not removed by the evacuee by the end of the said three months may be disposed of by the Custodian to the best advantage and the money credited to the account of the evacuee.

(5) Moveables which are known to be property of evacuees but which are not identifiable to particular evacuees will be sold by the Custodian to the best advantage and the amount kept under a separate account. The disposal of such monies will be discussed by the Dominions at a subsequent date.

(6) The above principles will generally apply to moveable property. It is recognised that special categories or special articles will require special treatment, and each Dominion agrees at the suggestion of the other Dominion, to hold discussions to consider the establishment of special arrangements with regard to particular commodities or categories of articles.

IAIP, Agreement No. I, pp. 1-16.

RESOLUTION

The Conference considered the joint plan regarding treatment of property left behind by evacuees, produced by the Sub-Committee consisting of:

(1) Mr Justice A. Rehman, Custodian of Evacuee Property, West Punjab,

(2) Mr Mueen-ud-din, Commissioner of Rehabilitation, West Punjab,

(3) Mr Y. K. Puri, Deputy Secretary, Ministry Without Portfolio,

(4) Mr K. B. Lall, Deputy Secretary, Partition Office.

It was agreed that this paper be considered by Governments on both sides and each Dominion furnish its own scheme for treatment of property both moveable and immovable to a Joint Committee not later than 5th January 1948.

It was further agreed that the Joint Committee should report on the two schemes not later than the 12th January. This would probably give one week to the two Dominions to consider the report of the

Joint Committee before the Inter-Dominion Ministers Conference which should meet as soon as possible after the 20th of January.

The Conference felt that the membership of the Joint Committee may well be increased. The consensus of opinion was that the membership should not exceed eight i.e., four representatives from each Dominion.

INTERIM ARRANGEMENTS REGARDING PROPERTY

(1) Sec. 4(3) (*b*) of the West Punjab Ordinance No. VII of 1947 will not be brought into operation until final decisions in an Inter-Dominion agreement have been reached.

(2) Sec. 5(2). The intention is that the Custodian will scrutinize the terms and conditions in arrangements made by the Rehabilitation Authorities and revise them where necessary with a view to bring them into conformity with the principles now agreed upon.

(3) Sec. 9. A press note is to be issued to the effect that in regard to Sec. 9 of the W. P. Ordinance VII of 1947, the question of permitting transfers etc. is under discussion between the two Dominions and it is the intention of the Government of Pakistan that until the conclusion of such discussions, no action will be taken under the provisions of this section to the prejudice of parties to the transfer of persons claiming under such transfers of property or rights. But such persons should nonetheless within the prescribed period apply to the Custodian for registration of such transfers.

(4) Sec. 12 (*d*) (ii). In the interim period action under this clause will not be taken and applications made will be kept pending.

(5) Sec. 12 (*e*). It was explained by the Custodian that it was not intended to make refugees a charge on evacuee property. Mr Puri suggested that in order to avoid mixing up funds held for evacuees and funds disbursed for rehabilitation purposes the normal procedure of separate account heads for the two items—one of receipts and other of expenditure—should be adopted. Mr Rehman and Mr Mueen-ud-din promised to examine the matter.

(6) Sec. 12(i). Refer to Note under Sec. 4(3) (*b*).

(7) In the interim period, action regarding sales, allotments etc., of moveables forming part of commercial or industrial undertakings will be suspended, except in regard to essential industries and businesses. A list of such essential industries and business will be supplied by each Government immediately. Instructions will be issued that in regard to such a clear week's notice will be given in certain predetermined papers. The Rehabilitation Department will not proceed to allot or make inventories till the week's notice has expired. Owners will

in the interim period enjoy the right of representation at the time of making inventories and valuations.

INTERIM ARRANGEMENTS REGARDING PROPERTY

The Conference considered the question of interim arrangements to be made regarding property until a long term settlement could be reached. The paper produced by the Sub-Committee ' Interim arrangements regarding property ' was adopted with the following modification:

In paragraph 3 pertaining to Section 9 of West Punjab Ordinance No. VII of 1947 the clause ' No action will be taken under the provisions of this Section to the prejudice of persons claiming under such transfers of property rights ' was amended to read ' No action will be taken under the provisions of this Section to the prejudice of parties to the transaction or of persons claiming under them '.

In regard to paragraph 7, the Commissioner of Rehabilitation, West Punjab explained that the list of essential industries and businesses may not be quite small because the procedure contemplated in paragraph 7 and the procedure contemplated in regard to the long term settlement would mean that the process of rehabilitation would probably be held up for quite two months; which in his opinion, would be unfortunate. The representatives of India pointed out that the procedure contemplated under paragraph 7 was intended to make immediate satisfactory arrangements for an interim period which period it was hoped would be a short one, and therefore pressed that the lists of essential industries and businesses should be kept down to the minimum. After some discussion it was agreed that the lists would be made as short as possible.

The Pakistan representatives agreed that action contemplated in various paragraphs of this paper would be taken immediately.

The Government of India representatives drew attention of the Pakistan Government representatives to Ordinance No. IV of 1947 issued by the Governor General of Pakistan from Karachi on 10th December 1947 in regard to registration of documents pertaining to transfer of property. It was pointed out that the effect of this Ordinance was, practically, to stop all transfers of property and that this Ordinance operated very harshly against such non-Moslems as may be wishing to liquidate their properties in order to come over to India. The Pakistan representatives said that they had not been briefed on this point and that therefore they would like to receive a memorandum so that the matter may be examined on their side. It was agreed that this paragraph would be treated as the memorandum of India on the subject. The Pakistan representatives agreed to

have the matter examined quickly and to send a reply as soon as possible.

GOVERNMENT OF PAKISTAN
Ministry of Law and Labour

ORDINANCE NO. IV OF 1947

Karachi, 10 December 1947.

AN ORDINANCE to provide for the payment of taxes before the recognition of transfer of property.

WHEREAS an emergency has arisen which makes it necessary to provide for the payment of taxes before the recognition of transfer of property.

NOW THEREFORE, in exercise of the powers conferred by section 42 of the Government of India Act, 1935 (26 Geo. 5, c, 2) as adapted by the Pakistan (Provisional Constitution) Order 1947, the Governor General is pleased to make and promulgate the following Ordinance:

1. *Short title, extent, application and commencement.* (1) This Ordinance may be called the Transfer of Property (Pakistan) Ordinance, 1947.

(2) It extends to all the provinces of Pakistan.

(3) It shall come into force at once in the Provinces of Sind, West Punjab, North-West Frontier and Baluchistan, and in other areas as and when the Government of Pakistan may direct.

2. *Effect of Provisions with other laws.* Notwithstanding any other law for the time being in force the provisions of this ordinance shall have effect throughout the areas to which it applies.

3. *Registration of documents.* No registering Officer, Revenue Officer, Custodian or other officer appointed to deal with property shall register any document, relating to property other than agricultural land, which is required to be registered under the provisions of clause (*a*), (*b*), (*c*) or (*e*) of sub-section (1) of section 17 of the Indian Registration Act, 1908 (XVI of 1908), unless it is certified by an Inspecting Assistant Commissioner of Income-tax, in respect of every person whose right, title or interest in the property is or will be transferred, assigned, limited or extinguished under the terms of the document, either that such person is not liable to taxation under the Income-tax Act, 1922 (XI of 1922), the Excess Profits Tax Act, 1940 (XV of 1940) or the Business Profits Tax Act, 1947 (XXI of 1947), or that he has either paid or made satisfactory provision for the payment of all existing or anticipated liabilities under any of the said acts.

4. *Recovery Proceedings.* If any right, title or interest in any property whether moveable or immoveable other than agricultural land, is, or has been transferred, assigned, limited or extinguished after the 14th day of August 1947, an Income-tax Officer may at any time

issue a notice to all or any of the parties to the transaction requiring them to produce within one month the certificate prescribed by section 3; and if such certificate is not produced he may forward a statement to the Collector showing the existing and anticipated tax liabilities of each or any of the said parties. The Collector shall then proceed to recover the total amount shown in the statement as if it were an arrear of land revenue, and for the purpose of the recovery proceedings he may treat the said property as if it belonged to all or any of the persons named in the statement.

(5) *Proceedings of suits.* No suit, prosecution or other legal proceeding shall lie against the Dominion Government, any Provincial Government, any Income Tax Officer or any other person or authority acting under his directions or in pursuance of any claim shown in the statement forwarded to the Collector under the preceding section, for anything which is in good faith done or intended to be done under this Ordinance.

M. A. JINNAH
Governor-General

... ITEM III—TREATMENT OF PROPERTY LEFT BEHIND BY EVACUEES

The Pakistan representatives suggested that the scope of agreements pertaining to the West Punjab and North-West Frontier Provinces on the one side and the East Punjab Province on the other regarding evacuee property and other connected matters, should be extended to States within East Punjab Province which have acceded to the Indian Union, and the States of Bharatpur and Alwar. The representatives of India thought that this request was reasonable and agreed to have the matter brought to the notice of Ministry of States, India. The representatives of India expressed the hope that there would be full reciprocity in this matter in regard to Bahawalpur, Khairpur and other States which had acceded to the Dominion of Pakistan.

ITEM IV—SAVINGS BANK DEPOSITS, POSTAL CASH CERTIFICATES AND OTHER CERTIFICATES, e.g., NATIONAL SAVINGS

(*a*) (1) In regard to Post Office Saving Bank Accounts it is recognised that there are two categories:

(i) where the pass-books are available;

(ii) where the pass-books have been lost or misplaced.

In regard to (i) it is understood that the Director-General, Posts and Telegraphs, Pakistan has been in correspondence with his opposite number in India and that a satisfactory procedure had been devised. It is agreed that the proper procedure should be for persons resident in Pakistan to hand over pass-books at Pakistani Post Offices and that the D.G., Posts and Telegraphs, Pakistan, should consolidate such

cases and forward a list to the D.G., P. & T., in India who would arrange transfer of accounts without insisting on production of pass-books or on verification of signatures.

As to (ii), where pass-books have been lost or misplaced, persons resident in either Dominion should apply to the D.G., P. & T. concerned giving particulars of post offices where they had savings bank accounts. Consolidated lists of such cases would be exchanged between the D.Gs. of the two Dominions, who would make the necessary investigations and have the accounts transferred. Once the accounts have been transferred, the responsibility of a particular Dominion towards the depositor will cease. The two D.Gs. should clear legal and procedural difficulties between themselves.

(2) It is agreed that the same procedure will apply to Post Office Five Year Cash Certificates, Defence Savings Certificates and National Savings Certificates.

It is agreed that consolidated lists on both these items, separately, should be exchanged by the two D.Gs. at regular intervals weekly or fortnightly. This is a matter for the two D.Gs. to arrange between themselves.

(*b*) Deposits with Co-operative Societies, Central Co-operative Banks, Unions etc.—The Conference is of opinion that the question of Deposits with these various Societies, Banks and Unions and of loans owing to these concerns is a complicated matter. It is, therefore, agreed that the Registrars of Co-operative Societies, East and West Punjab, should discuss the matter and submit joint recommendations to their own Governments as soon as possible. The Conference trusts that the two Registrars will make joint recommendations not later than the 29th January, 1948.

ITEM V—PENSIONS

It is agreed that all Provincial Governments in either Dominion should take definite measures to facilitate transfer of pension papers with the least possible delay. It is further agreed that all complaints of pensioners in either Dominion should be made to the Auditor General of the Dominion in which the pensioner is now residing and all such complaints will be cleared between the two Auditors General. Pending transfer of pension papers the Conference agrees to accept the suggestion made in Pakistan's Memorandum on this item. The agreement is as follows:

(1) 'When a pensioner presents his half of the Pension Payment Order, the A. G. concerned will, after obtaining the following documents authorize a Treasury Officer or Post Master to make provisional payment:

(*a*) A certificate from a Magistrate or a Gazetted Officer certifying the pensioner's identity.

(*b*) An Indemnity bond from the pensioner, with two sureties who should either be permanent Government servants or persons certified to be solvent by an Officer not below the rank of Tehsildar, agreeing to refund any amount wrongly paid.

(2) Such payment should be authorized for pensions due for the period ending 31st March, 1948.'

(3) In regard to pensioners who have lost their halves of the Pension Payment Order, the Conference agrees that following procedure be observed until the Treasury half of the Pension Order can be transferred from one Dominion to the other. It is understood that on receipt of the treasury part of the Pension Payment Order the A. G. concerned will issue a fresh Order. Meanwhile pensions should be paid for the period ending 31st March, 1948 on production of the following :

(*a*) Certificate from a Magistrate or a Gazetted Officer certifying the pensioner's identity ;

(*b*) An Indemnity bond from the pensioner with two sureties, who should either be permanent Government servants or persons certified to be solvent by an Officer not below the rank of Tehsildar, agreeing to refund any amount wrongly paid ;

(*c*) Other corroborative evidence to show that he was in fact a pensioner and the Department and office from which he retired ;

(*d*) A declaration stating the amount of his monthly pension, the month up to which he had received payment and the name of the Treasury or Post Office from which he received payment ;

(*e*) The number of Pension Payment Order, if possible.

(4) Under this procedure, pensions will be payable for the months of August 1947 to March 1948 inclusive.

(5) In order that fresh permanent Payment Orders may be issued, the Auditors General of the two Dominions will collect all cases in which P. P. Os. have been lost by persons now resident in their territories and refer such lists to each other so that Treasury Halves of the P. P. Os. may be quickly transferred.

(6) The procedure agreed upon above will apply to all Provinces of either Dominion.

ITEM NO. VII—REMOVAL OF ASSETS OF TRUSTS, EDUCATIONAL, CULTURAL, AND RELIGIOUS INSTITUTIONS

(1) The assets of the institutions concerned may be divided into two categories—(*a*) Moveable and (*b*) Immoveable.

(2) In regard to Moveable assets, it is agreed that on application being presented to the Custodian of Evacuee Property, West Punjab,

a quick decision shall be made in regard to equipment etc. which the Provincial Government wish to retain for their own purposes. In regard to the rest of the assets, the Custodian will grant a permit authorising removal by the party concerned. In making the decision for retention of a part of the Moveable assets, due regard will be paid to mutual needs of equipment, furniture, fittings, etc. Above all special consideration will be given to articles to which the institution attaches special cultural, sentimental, or religious importance and as far as possible such articles will be released.

(3) In regard to immoveable assets India requested that this category of property be taken up for special consideration apart from the general case of treatment of immoveable property of non-Muslim evacuees and proposed that the Pakistani Government and Provincial Governments concerned consider the question of taking a quick decision in regard to acquisition of such property or its release so that the trustees or managers could liquidate it otherwise. The Pakistani representatives said that as India's original memorandum did not raise this issue, there had been no occasion to consult the Governments concerned but agreed to put up India's suggestion and communicate a decision at an early date.

(4) In regard to Nankana Sahib, at the request of Pakistani representatives, the representatives of India agreed to furnish a detailed memorandum. The Pakistani representatives agreed that they would endeavour to obtain a decision on the case before the Ministers' meeting some time in January. The Pakistani representatives raised the question of Qadian and, while India's representatives maintained that the case of Qadian was not quite comparable to the case of Nankana Sahib, they agreed that if a memorandum containing definite suggestions regarding Qadian was furnished, a decision would be obtained and communicated as soon as possible.

ITEM VIII– IMPLEMENTATION OF AGREED DECISIONS OF THE PARTITION COMMITTEE MADE PRIOR TO 15 AUGUST 1947

(*a*) The statement of fact made in the Pakistani Dominion Memorandum was noted and the East Punjab representatives agree to make necessary enquiries and take up the matter directly with the West Punjab Government.

(*b*) The Finance Secretary, East Punjab Government, stated that the rules which are now under consideration by the East Punjab cabinet will be shortly forwarded to the West Punjab Government. It is understood that whatever rules are mutually agreed upon, will be implemented in due course by both sides.

(Note 1).—The Conference agreed that the Dominion Governments should recommend to their Provincial Governments that the arrangements made in respect of Government servants in this paragraph should apply to similar cases in their territories.

(Note 2).—The Conference agreed that the Dominion Governments themselves should sympathetically consider cases of Government servants who were killed or injured in similar circumstances between the 1st and the 15th of August 1947.

(*c*) The East Punjab representatives have taken note of the comments in the Pakistani Memorandum.

(*d*) The matter has been settled.

(*e*) This is covered by the agreement on pensions.

ITEM IX—EXCHANGE OF UNDER-TRIAL PRISONERS

The Pakistani representatives furnished copies of West Punjab Notification No. 507-Legislative, dated the 15th December 1947, which promulgates West Punjab Ordinance No. VIII of 1947.

(2) In regard to Part II which covers transfer of persons in custody between the Provinces of West and East Punjab, it was agreed that the Home Secretaries of the two Governments should work out the mechanics. It was felt that the most convenient practice would be for the persons in custody to be collected at convenient centres from which they could be cleared. On the request of the representatives of India regarding clarification of the definition of 'Hindu' in Section 19(*c*) the Pakistani representatives stated that the word includes members of the scheduled castes.

The representatives of India requested that the same arrangement may well be extended to the N.W.F.P. The Pakistani representatives promised to consider the request and give a reply at an early date.

(3) With regard to Part III of the Ordinance and the schedule under Section 19 pertaining to Pakistani employees of all Provinces of the Dominion of India and of States that have acceded to the Dominion of India and Moslem prisoners in the States of Alwar, Bharatpur and the States previously known as the Punjab States excluding Malerkotla, Bahawalpur and Khairpur, the representatives of India pointed out that the Government of India could not at this stage speak for the various Provinces and States, and at the request of the Pakistani representatives agreed that the Government of India will ascertain the views of the Provinces and States concerned in this matter. It was suggested that this matter would obviously have to be discussed and decided at a level higher than that of the present Conference and it was proposed that this matter should be placed on the Agenda of the Inter-Dominion Ministers' Conference to be held in January 1948.

ITEM XI—FACILITIES FOR REMOVAL OF RECORDS AND EQUIPMENT BY EAST PUNJAB GOVERNMENT

(*a*) It was agreed that East and West Punjab Provinces should respectively nominate an officer who can clear outstanding matters between themselves.

(*b*) The Dominion Governments will likewise appoint officers to investigate the present position and have necessary records, etc., transferred to Pakistan.

Item No. 1 of the Supplementary Agenda.—Companies (other than Insurance Companies and Banks) incorporated under the Indian Companies Act.

With regard to Companies (other than Insurance Companies and Banks) incorporated under the Indian Companies Act, the Dominion representatives agree to recommend to their respective Governments, the modification by Ordinance of the provisions of Section 76 and 131 of the Indian Companies Act to enable the Companies incorporated under the Act, which had their registered offices in their territories, but whose management has been mainly in the hands of persons who have now left those territories, to compile their accounts, file their balance sheets and profit and loss accounts and convene their General Body meetings up to 31st March 1948 or within a period of six months from the termination of the period permissible to each such company under the Act, whichever is later.

(2) A draft of the Ordinance to be issued is attached for consideration by each Dominion Government.

(*VIDE* SUPPLEMENTARY ITEM 1)

AN ORDINANCE further to amend the Indian Companies Act, 1913.

WHEREAS an emergency has arisen which makes it necessary further to amend the Indian Companies Act 1913 (VII of 1913), for the purposes hereinafter appearing;

NOW, THEREFORE, in exercise of the powers conferred by Section 42 of the Government of India Act, 1935 (26 Geo. 5, c.2), as adapted by the Pakistan/India (Provisional Constitution) Order, 1947, the Governor-General is pleased to make and promulgate the following ordinance:

1. *Short title and commencement.* (1) This Ordinance may be called the Indian Companies (Amendment) Ordinance, 1947.

(2) It shall come into force at once.

2. *Amendment of Section 76, Act VII of 1913.* To sub-section (1) of Section 76 of the Indian Companies Act, 1913, the following proviso shall be added, namely:

'Provided that, in the case of a company whose directors, or the majority of whose directors, have during the year 1947 left for places in India/Pakistan on account of civil disturbances or the fear of such disturbances, the period shall be deemed to have been extended by six months or up to the 31st day of March, 1948, whichever is later.'

4. *Effect of expiry of Ordinance.* On the expiry of this Ordinance, Section 6 of the General Clauses Act, 1897 (X of 1897), shall apply as if this Ordinance were an enactment then repealed by a Central Act.

ITEM IV OF THE SUPPLEMENTARY AGENDA

Taxation of all property to be paid by Custodian of Evacuee Property in respect of properties left behind in Pakistan.

The representatives of India put forward the following proposals:

(1) That all tax demands against evacuees which remain unsatisfied should be paid by the Custodian of Evacuee Property, either from the income of the property of the evacuee or, if there is no income, from his pool, provided that the total charge so raised does not exceed 50 per cent. of the Custodian's own evaluation of that property. It is suggested that if this proposal were accepted the Custodian would be amply covered for the charge so raised against the property. The Pakistani representatives agreed that their request was not unreasonable and that they would be prepared to recommend it to their Government.

(2) The representatives of India also proposed that the provision in the Income Tax Act for the levy of penalty in the event of an assessed tax not being paid should be waived up to the end of the year 1948 in the case of non-Moslem evacuees.

SUPPLEMENTARY ITEM NO. IX—UNPAID BILLS OF CONTRACTORS

The Finance Secretary East Punjab explained that an agreement had already been reached between the Governments of East and West Punjab and a satisfactory procedure devised. A claimant puts in a claim in duplicate to the Chief Secretary of the Province where he is resident. The Chief Secretary forwards one copy of the claim to his opposite number who after having the necessary verification made replies whether payment may be made. Action is then taken accordingly. The principle is clear that authority to pay the claim must be given by the Government in whose territory the service or supply in respect of which the claim arises, was rendered or made. The Conferenoe agrees that this principle and practice are satisfactory and should be extended to all Provinces of either Dominion. In all Provinces the Officer to whom correspondence should be addressed

is the Chief Secretary, unless the Provincial Government nominates someone else.

ITEM NO. XI—SUPPLEMENTARY—TREATMENT OF NON-MOSLEMS IN WEST PUNJAB AND N.W.F.P.

It was agreed that item XI should not be discussed in detail. But it was recognised on both sides that if there were any individual cases of maltreatment and they are brought to notice, suitable action will be taken.

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MEETING BETWEEN INDIAN AND PAKISTANI MINISTERS FOR RELIEF AND REHABILITATION (AGREEMENT NO IV)

1. *Recovery of Abducted Women.* (1) The working of the agreement of the 6th December 1947 on the recovery of abducted women was reviewed. It was agreed that results had fallen short of expectations. India claimed that this was due to the limited role assigned to the troops in the recovery work and pressed that, under the agreement, the recovery parties visiting the villages should also include troops of both the Dominions. Pakistan did not agree with this interpretation of the agreement and in fact considered that the hostile feeling engendered in villages of one Dominion by the visit of troops of the other Dominion, militated against success in recovery. In their view, troops of one Dominion were, under the agreement, to be employed only as guards on transit camps and for escort duty. The difference of opinion remained unresolved.

(2) In Pakistan's view it was not therefore possible in any circumstances to permit troops of one Dominion to form part of village recovery parties in the other Dominion; they would however continue the present arrangements for recovering abducted women, namely recovery parties consisting of Police, social workers and D.L.Os. of the two Dominions. The function of the troops would, as at present, be confined to guarding Transit Camps to which recovered women are brought and to escorting parties of recovered women from one Dominion to the other or from one camp to another.

(3) At the suggestion of the Inspector-General of Police, West Punjab, it was agreed between the two Dominions that the Police Officers of West Punjab deputed for recovery work will nominate as colleagues for operations in East Punjab those officers of the East Punjab Police who in their opinion will be most effective for this type

of work. A similar right or nomination of West Punjab Police officers will be accorded to the East Punjab Police officers deputed for recovery work in West Punjab. The head of the West Punjab Police staff working in Pakistan for the recovery of abducted women will be nominated by the Inspector General of Police, East Punjab, and vice versa. It was agreed that this arrangement for selection of Police staff in East Punjab and West Punjab would not apply to States.

(4) Pakistan pressed that it was high time that the East Punjab States and the States of Alwar and Bharatpur should arrange to set up an organisation for the recovery of women on the same lines as had been working in East Punjab and should agree to receive detachments of Pakistan troops (for guard and escort duty) accompanied by Pakistani Police parties, Liaison Officers and social workers. Transit camps should be set up, though the location of each camp will be left to the States' discretion. If for any reason it was not possible to do so, Pakistan felt that they had no alternative but to withdraw all troops from East Punjab and to ask that all Indian troops should be withdrawn forthwith from Pakistani territory. Pakistan added that the States that had acceded to Pakistan would adopt the arrangements now in force in the districts of West Punjab.

(5) India said that they would consult their States immediately and send a reply on this point but pointed out that as already intimated, the Pakistani troops going into the States would be under the command of the Commander of the State forces and that the Police parties would work under the direction of the Inspector-General of Police of the States concerned.

(6) In Pakistan's opinion further consultation with Indian States was unnecessary as their assent had been obtained and communicated in the Prime Minister of India's telegram No. 947, dated the 8th March 1948. India could not accept the view that the proposition put forward in that telegram was the same as the arrangement now proposed. Therefore, consultation with Indian States was essential, but every effort would be made to get an immediate decision.

(7) Pakistan felt that the stage had been reached when troops could be gradually withdrawn from this work and said that they had decided in any case that no more Pakistan troops should operate with the M.E.O. in the districts of East Punjab after 31st March, all being withdrawn on 1st April, and in the States of East Punjab, after 15th April, all being withdrawn on 16th April. The reason for the later withdrawal from the States was that the work had been started there at a much later date. The corollary of this decision would be that no Indian troops should remain in Western Pakistan after the 16th April. Pakistan also intended to limit their troops employed for

this purpose in the States to 2 companies, and asked that the strength of the Indian troops should be reduced proportionately.

(8) Pakistan made it clear that even after the withdrawal of the troops, the work of recovery of abducted women and clearance of pockets would continue through joint parties of police, liaison officers and social workers. The M.E.O. Headquarters would continue for liaison work but would have no troops under its control. The troops of the Dominion in which the recovery work and clearance of pockets was to be continued would replace the troops withdrawn by the other Dominion.

(9) India considered that for inspiring confidence among the women to be recovered and converted persons to be evacuated, it was desirable to retain the present arrangements whereby the troops of the Dominion to which the persons belonged participated in this work. They were, therefore, of opinion that the proposed withdrawal dates were premature and would adversely affect the work of recovery. Pakistan said that these dates were final; India took note of this statement.

(10) It was agreed as under

(*a*) Civil road transport (together with drivers) required for actual recovery operations in West Punjab will be furnished by the East Punjab Government and vice versa. Those vehicles will be provided on payment with petrol, etc., by the Dominion in which they operate.

(*b*) For movement from district to district or from one Dominion to another civil or military transport may be employed as convenient.

(*c*) In no case will customs duty be charged by either Dominion in respect of vehicles used for rescue, district liaison or other evacuation work. In order to avoid disputes such vehicles will be specially listed and the drivers will be furnished with special permits.

(*d*) Existing arrangements will continue until the new arrangements be implemented.

(11) The Conference considered the question of recovered women who are unwilling to be restored to their people in the other Dominion. It was agreed that special camps should be established for such women, one in West Punjab and one in East Punjab. Non-Moslem women recovered in Pakistan who are unwilling to be transferred to India will be taken to the special camp in East Punjab. Similarly Muslim women recovered in India will be taken to the special West Punjab Camp. After a period not exceeding a fortnight the wishes of these recovered women will be ascertained by social workers of both Dominions acting jointly and action will be taken in accordance with their wishes. Pakistan urged that such camps should be managed by a neutral organisation. India agreed to the scheme except to

management of the camps by a neutral organisation. Pakistan attached considerable importance to this and intimated that they would pursue the matter further, but meanwhile agreed to the special camp being set up in India in the manner desired by India.

(12) It was agreed that any dispute as to whether a woman or child was abducted or forcibly converted before or after 1st March 1947 shall be determined by a joint enquiry held in Lahore or Jullundur, as the case may be, by the two senior most police officers of the special recovery staff of the two Dominions.

(13) It was felt that the decision now taken would improve the present arrangements for recovery. It was realised that the basis of all efforts so far made for recovering abducted women had been voluntary in character. Both Governments agreed that if despite the improvements in arrangements effected by the decision recorded above quicker and better results were not achieved, stern legislation might have to be enacted to deal with offenders.

2. *Exchange of Prisoners.* (14) India pointed out that the delay in implementing the agreement reached in the December 18th-20th, 1947 Conference at Delhi and later rectified by both Governments was due only to Pakistan having informed India of their inability to implement the agreement because of a legal defect in the West Punjab Legislation. Pakistan had been advised that central legislation was essential. The Pakistani representatives stated that a Central Ordinance was under issue and that the text when received, would at once be communicated to India; it was hoped to implement exchange on the basis of that Ordinance, provided that agreement was reached in respect of Delhi Province, as to which Pakistan awaited a reply to their proposal that exchange of prisoners from Delhi Province should be limited to persons under trial or convicted on or after 15th August 1947, and to their request for information as to the number of prisoners in each State and in Delhi Province. India suggested immediate start of exchange of prisoners between East and West Punjab, as agreed in December last; Pakistan did not agree in the absence of a reply to their proposal about Delhi. India said that the Delhi question was under consideration and enquired whether Sind prisoners would be transferable under the Pakistan Ordinance. The Pakistani reply was that this, if desired, was unlikely to present any difficulty as it would be possible to extend the Ordinance to Sind.

(15) Both Dominions desired that actual exchange of prisoners should start in the near future. Meanwhile it was agreed that the Provincial and State Governments concerned should issue instructions to ensure that the prisoners affected should be given adequate food and clothing and proper treatment.

3. *Evacuation of Moslem ex-Servicemen from Patiala State.* (16) Pakistan pressed for early decision as to the evacuation of discharged Muslim soldiers of the Patiala State Forces and their families. India agreed to use their good offices to secure that these persons should be removed from Patiala State at a very early date and given the option of staying in India or going to Pakistan. The Hon'ble Mr Neogy assured the Hon'ble Raja Ghazanfar Ali Khan that he would have this matter treated as one of the top priority.

4. *Joint Enquiry into Incidents.* (17) Certain instances were discussed in which one Dominion was dissatisfied with the finding of fact by the other Dominion on complaints arising out of incidents involving hardship and injustice to individuals. It was agreed that in future, wherever possible, such matters could best be resolved by speedy joint enquiry. The Dominion in whose territory the cause of action had arisen would hold an enquiry and request the other Dominion to nominate a representative to assist in the enquiry. It was agreed that drastic and exemplary action must be taken against offenders, particularly those guilty of offences against women.

5. *Possible effect of currency and exchange regulations, etc., on transfer of evacuee property.* (18) India suggested that an assurance should be given by both Dominions that no legislative or administrative action would be taken to prejudice transfer of property or proceeds of the property of evacuees from one Dominion to the other; this was particularly necessary in view of possible developments in regard to currency exchange and restriction of movement of precious metals.

(19) The Minister for Refugees, Pakistan, expressed his inability to deal with this matter, but promised to refer it for urgent consideration to the Finance Minister of Pakistan.

(20) India requested that a very early decision should be taken on this matter, if possible within a week or so.

6. *Vaults and Safe Deposits with Banks.* (21) India pointed out that in previous discussion emphasis had been laid on clearing the vaults and deposits in Lahore in Pakistan, and in Delhi, Jullundur and Amritsar in India. It was suggested that arrangements should be made by Lahore Banks with their outlying branches in Pakistan for the contents of local vaults and safe deposits belonging to non-Moslems now resident in India to be transferred to Lahore. Similar arrangements should be made on the other side at Jullundur, Delhi or any other convenient place.

(22) Secondly India suggested that instead of all individual evacuees having to come to Lahore, Pakistan should agree to hand over safe deposits and contents of vaults to an India governmental agency holding powers of attorney from evacuee depositors in India. Individuals

would still be free to come themselves if they did not wish to use this agency. India assured Pakistan of complete reciprocity. Both Dominions accepted these suggestions. Pakistan suggested that Indian States should be brought within the scope of the proposed arrangement. India agreed to advise the Indian States to accept this arrangement and promised to use their good offices to secure their early consent.

(23) India pointed out that there were over 4,000 lockers and safe deposits still to be cleared in West Punjab and pressed that the numbers of permits to be granted should be substantially increased to a minimum of 250 permits per day. The Minister for Refugees, Pakistan, was of the opinion that this was not practicable, but promised to use his good offices with the Custodian to increase substantially the number of permits to be granted. Pakistan requested that permits be issued freely by the East Punjab Custodian, and India agreed that results in West Punjab in regard to the two suggestions made would be influenced by the measure of reciprocity in East Punjab. The Chief Secretary, East Punjab Government, stated that he undertook to secure that no application were left unattended to and that every application for a permit would be promptly dealt with.

7. *Restoration of licensed arms.* (24) It was agreed that licensed arms of evacuees held by each Dominion will be restored to licensees on their application, or to such governmental agencies as the other Dominion may appoint.

(25) For the purpose of this agreement every licence that was valid on 14th August, 1947 shall be deemed to be still valid.

(26) Pakistan suggested that this agreement should be applied to States also, and both Dominions agreed to use their good offices to secure the consent of their States.

8. *Personal belongings of evacuees seized during Evacuation, for which receipts have been given.* (27) It was agreed that such property should be restored by both Dominions on presentation of the receipts. Property may be claimed by individual owners or by a Government agency on production of receipts issued by Government officials. Where personal belongings cannot be restored in conformity with any inter-Dominion Agreement, compensation will be paid for them directly to the owners or to the Government agency acting on their behalf.

(28) Both Dominions agreed to use their good offices to secure the consent of their States to similar arrangements.

9. *Government Securities, Certificates, Bonds, Debentures and shares of Joint Stock Companies.* (29) The Conference considered the Joint report of Mr K. J. Headington (Pakistan) and Mr Sachdeva (India), embodying Mr Headington's note regarding transfer of Government Securities between the two Dominions dated the 9th March, 1948,

and their joint addendum to the note in substitution for its original final paragraph (see Appendix A).

(30) Both Dominions accepted the proposals contained therein and agreed to implement them with immediate effect. They also agreed to use their good offices to secure the consent of their States to similar arrangements.

10. *Funds of Co-operative Societies etc.* (31) The Registrar of Co-operative Societies West and East Punjab, presented their joint report in pursuance of the decision IV (*b*) of the Delhi Inter-Dominion Conference of December 19-20, 1947, endorsed also by Mr Headington (Pakistan), Mr M. R. Sachdeva (India) and Mr P. K. Kaul (India) (See Appendix B).

(32) The Conference approved the recommendations made in the joint report, subject to the concurrence of the Government of West Punjab; the concurrence of the Government of East Punjab was conveyed to the Conference by the Chief Secretary (Mr Sachdeva).

11. *Treatment of Property as abandoned which has never been abandoned.* (33) It was agreed that such cases in Pakistan should be brought to the notice of the Refugees Ministry of Pakistan by the High Commissioner. The Refugees Minister of Pakistan stated that he would take up these cases personally and see that immediate orders were issued. India agreed to take similar action.

12. *Miscellaneous.* (34) The questions of transfer of securities and other assets of the Trusts etc., and the restoration of property to evacuees who wish to return to their homes were postponed for consideration by the Inter-Dominions Sub-committee which is to meet on the 22nd March.

(35) The agreed Press Statement signed by both Ministers and released after the Conference is appended (Appendix C).

APPENDIX A

(See para. 29 of the Minutes)

Note Regarding Transfer of Government Securities between the Two Dominions

The ownership of Government securities and Provincial loans can, in the majority of cases, be ascertained from a scrutiny of the endorsements on the reverse of the notes, and I am of an opinion that a large proportion of such securities held by Banks can be released without endangering the rights of the proper owner who might have pledged his securities to some other person. The transfer of Government securities between the two Dominions has been withheld to ensure that the

interests of nationals of both Dominions are fully protected but as a result much inconvenience has been caused to the rightful owners of such securities due to this ban, and the matter has now become of great urgency by reason of the fact that, after the 31st March, 1948, restrictions will be placed by each Dominion on the enfacement of such securities for the payment of interest at treasuries in the other Dominion.

(2) The following classes of Government securities and Provincial loans could, in my opinion, be released at once:

(*a*) Clean Government Securities (i.e. securities which bear no endorsements on the reverse)—Government securities falling in the above category usually stand in the name of the holding bank to facilitate the collection of interest and the question of a pledge does not, therefore, arise. Even where such securities stand in the name of an individual, there can also be no question of a pledge in the absence of an endorsement on the reverse. Such Government securities, could, therefore, be released at once.

(*b*) Government Securities bearing a last endorsement from a recognised firm of brokers in favour of the holding bank or an individual.—Government Securities falling under the above category have obviously been purchased through a firm of brokers and represent a genuine purchase in the open market. The question of a pledge cannot arise in such cases, as it is obvious that the selling broker has endorsed the securities to the genuine buyer. These securities could, therefore, be released at once.

(*c*) Government securities held by a Branch of a Bank on behalf of another Branch of the same bank:—Government securities falling under the above category have been transferred from one Branch of a bank to another Branch to facilitate the collection of interest as, for example, in the case of Punjab Government Loans, a large number of which are held in the West Punjab. There can be no question of a pledge in such cases, as the last endorsement has been made by one Branch of the Bank in favour of another. These securities should, therefore, be released at once.

(3) There remains for consideration those securities which have been endorsed by one individual to another individual, and it is in such cases that doubt regarding the actual ownership has been established after a reference to the Custodian.

(4) To summarise my proposals, I would recommend that, as regards securities, including Provincial Loans, in the first three categories mentioned above, banks should be allowed to transfer them in the ordinary course of business, if necessary, under the supervision of a Government official. As regards those securities endorsed by one

individual to another, these should not be transferred but should be set aside pending receipt of further instructions from the Custodian.

After securities in the first three categories have been released, lists of those securities which have not been transferred should be prepared by the Banks and submitted to the Custodian for his scrutiny and further orders. Such securities should form a very small portion of the whole, and my proposals, if approved, will relieve the Custodian of a great deal of work which would arise if he is called upon to examine all securities now in the possession of Banks.

Suitable instructions will be issued to the banks on the lines indicated above, and it is recommended that similar action be taken by the Indian Dominion.

(5) It is suggested that Government securities should also include Post Office Cash Certificates, which are not transferable and in connection with which the question of ownership is undisputed.

Addendum to the note of Mr Headington dated 9-3-48. To be substituted for the deleted paragraph 6.

There is no objection to the removal from either Dominion of Joint Stock Cos.' shares and debentures or of bonds issued by individual banks or of National or War Savings Certificates.

The reason for this decision is that in the case of Joint Stock Cos.' shares, the holder only derives his title by the express consent in writing of both parties—so that if the owner has not received full value of his shares, he can refuse to sign this transfer deed; in which case the holder cannot get any benefit out of the transfer.

In the case of bonds issued by individual banks or National or War Savings Certificates, and there is no point in their removal being disallowed.

APPENDIX B

(See paragraph 31 of the Minutes)

A conference between the representatives of the Co-operative Departments of the West Punjab and the East Punjab was held at 10 a.m. on the 15th March 1948.

The following decisions were agreed to:

(1) All Government Securities belonging to East Punjab Co-operative institutions and lodged with the Punjab Provincial Co-operative Bank Ltd., Lahore, either for safe custody or for purposes of overdraft or collection of interest, will be transferred by the Punjab Provincial Co-operative Bank Ltd., Lahore, before 31st March 1948, to the Ambala Central Co-operative Bank, which has been declared by the East Punjab Government as their Provincial Co-operative

Bank, provided that the East Punjab Central Co-operative Bank Ltd., Lahore, and provided also that such institutions repay the deposits of their evacuee individual depositors, the evacuee individual depositors of their constituent societies and societies whose membership consist entirely of Moslems and have evacuated.

The Central Banks in the West Punjab will also repay the deposits of their individual evacuees depositors, the deposits of the evacuee individuals of their constituent societies and of the societies which consisted wholly of non-Moslem evacuees.

The East Punjab Co-operative institutions owning Government securities will send to the Punjab Provincial Co-operative Bank Ltd., Lahore, their authority for getting their securities transferred to the Ambala Central Co-operative Bank.

(2) In order to execute the above decision, the two Registrars should immediately exchange lists of deposits and have the balance adjusted before 31st March 1948.

(3) In the case of primary societies of which the membership is mixed, no division of assets will be undertaken but it is understood that deposits of individuals of such societies who have evacuated will be repaid before 31st March 1948.

(4) In the case of societies whose membership consisted entirely of evacuees, all assets will be transferred to the dominion to which the evacuees have migrated and the Registrar concerned will register necessary amendments in their bye-laws making such change of address permissible.

(5) The debts owned by the societies which, as a result of partition, have now gone over to the other Dominion will be paid to the creditor Central Bank by the Provincial Bank of the Dominion concerned by adjustment or otherwise as may be agreed to by both the Registrars.

(6) The amounts paid by the Industrial Societies in the advertisement fund of the Amritsar Industrial Bank will be paid back by the Industrial Bank to the Punjab Provincial Bank, Lahore.

(7) All amounts received by the Industrial Co-operative Bank, Amritsar, on account of war supply orders will be adjusted or paid by the Industrial Bank to the societies concerned, as may be settled by the two Registrars.

(8) All amounts belonging to employees of co-operative institutions by way of salary, provident fund, security deposits, etc., will be repaid by institutions of both the dominions through their respective Provincial Bank before 31st March 1948.

(9) The question of the division of assets of

(i) Punjab Provincial Co-operative Bank Ltd., Lahore,

(ii) Punjab Co-operative Union, Lahore,

(iii) N. W. R. Co-operative Society, Lahore,

(iv) Industrial Co-operative Bank Ltd., Amritsar, was considered, but it was pointed out that since the matter was before the Arbitration Tribunal, it could not be discussed, being *sub judice.*

(10) All decisions arrived at will be implemented by the Governments of the West Punjab and the East Punjab.

(11) It is recommended that the date 31st March 1948 may be extended to 30th April 1948 in regard to all the decisions referred to above, provided the two Dominions extend the date of enforcement of securities for payment of interest to 30th April 1948.

(12) Shares and interest of members of Transport Societies and Ex-Soldiers Goods Transport Societies will be transferred to the Dominion concerned. The Registrars will arrange this.

APPENDIX C

Agreed Press Statement

The Refugee Ministers for Pakistan and India have been holding discussions at Lahore for three days and have examined a great many matters outstanding between the two Dominions, with the assistance of administrative officers concerned.

(2) Three important considerations have influenced the discussions and the decisions taken. The first is that there should be reciprocity on both sides in full and generous measure so that an atmosphere of lasting good-will may be created. The second is that, in so far as possible, both Dominions will use their good offices to persuade States that have acceded to either Dominion to fall in line with the decisions taken during this meeting. The third is that from time to time, complaints have been made by one Dominion to the other in regard to incidents involving hardship and injustice to individuals. It has been agreed that in future, whenever there is a complaint, the Dominion concerned will promptly make arrangements to investigate the incident and ask for association with the enquiry of a representative of the other Dominion. The two Ministers have agreed that drastic and exemplary action will be taken against offenders.

(3) The Ministers feel that one of the most important matters which must be dealt with very quickly, concerns the recovery and restoration of abducted women. The machinery that exists for the purpose and results achieved so far have been reviewed and it is recognised that results have fallen short of expectations. An improved machinery is being set up and an all-out effort is called for and will be made. The basis of all efforts hitherto made for the recovery of abducted women has been voluntary in character. If despite the

improved new machinery, quick and satisfactory results are not achieved, stern legislation may have to be enacted to deal with the situation.

(4) Exchange of prisoners has been delayed owing to certain legal technicalities. The Pakistani Government is enacting almost immediately a Central Ordinance and it is expected that India will enact similar legislation as soon as the text of the Pakistan Ordinance is available. The Pakistani Government have emphasized the importance of bringing the Delhi Province within the scope of the scheme for exchange of prisoners in respect of cases arising after the 15th of August 1947. The Government of India are examining the question in relation to Delhi Province and a decision may be expected shortly. It is hoped that actual exchange of prisoners will be started in the near future. Meanwhile, instructions are being issued to ensure that the prisoners concerned will be treated well and taken care of in the jails of the two Dominions.

(5) The Government of Pakistan have specially raised the question of discharged Moslem soldiers of the Patiala forces and their families. The Government of India agreed to use their good offices to secure that these persons are removed from Patiala at a very early date and given the option of staying in India or going to Pakistan. The Hon'ble Mr Neogy has assured the Hon'ble Raja Ghazanfar Ali Khan that he will have this matter treated as one of top priority.

(6) The decision regarding recovery of contents of vaults and safe deposits with banks has been reviewed. It is felt that the work should be expedited and steps are being taken to secure this.

(7) A satisfactory agreement has been reached in regard to transfer of Government securities, certificates, bonds, debentures and shares of Joint Stock Companies held by evacuees in the two Dominions. It is expected that the work of transfer will be expedited.

(8) It has been agreed that licensed arms detained by either Dominion during the process of evacuation will be restored to owners. Machinery has been set up to expedite the restoration and it has been decided that arms licenses of evacuees which were valid on 14th August 1947 will be deemed to be valid for this purpose.

(9) It has been agreed that property of evacuees which has been detained in either Dominion during searches or otherwise and for which receipts have been issued by Government officials will be restored to the owners on production of such receipts.

(10) As regards funds of co-operative banks in East and West Punjab Province, the Registrars of Co-operative Societies of the two Governments have evolved an agreed scheme in pursuance of a decision taken at the Conference held in December, 1947. It is hoped that the scheme will be implemented immediately. Although the matter is not

directly concerned with the agreement between East Punjab and West Punjab Provinces, both Dominions have agreed to use their good offices to secure substantial application of principles of the scheme to States on either side.

(11) Among other matters discussed were Provident Fund of Government and non-Government employees, including teachers, settlement of contractors dues, extension period of validity of cheques issued to such contractors and exemption from Customs search and duty of personal belongings of evacuees. For most of these matters, satisfactory solutions have been reached and it is expected that others will be settled shortly.

(12) Three important questions pertaining to property will be discussed by a Committee of Administrative Officers of the two Dominions on the 22nd March. These are:

(i) transfer of movable property of evacuees,

(ii) restoration of property to evacuees who wish to return to their homes, and

(iii) an Inter-Dominion settlement in regard to immovable property.

K. C. NEOGY
16 March 1948

GHAZANFAR ALI KHAN
16 March 1948

IAIP, Agreement No. IV, pp. 22-32.

52 1 *December* 1947-30 *June* 1948

MODIFICATIONS IN MONETARY ARRANGEMENTS (AGREEMENT NO. V)

In modification of the provisions of the Pakistan (Monetary System and Reserve Bank) Order, 1947, and the agreement made in December 1947, regarding the division of sterling balances, the Governments of India and Pakistan agreed as follows:

1. *Date of termination of Reserve Bank's functions in Pakistan.* The Reserve Bank will continue to function in Pakistan up to the 30th June 1948 in all respects as at present, i.e. as the currency authority, the banker of Government, agents for the management of public debt and for the exercise of exchange control.

2. *Reduction of currency chest balances in Pakistan.* The work of destruction or removal to India of India notes and coin held in currency

chests in Pakistan will be accelerated so that the balances left over on 30th June 1948 will be reduced to the minimum possible. The Pakistan Government will ensure that all possible facilities are provided to the Reserve Bank for this purpose.

3. *Mode of transfer of assets of the Issue Department.* (*a*) If at the close of business on the 30th day of June 1948, the currency chests in Pakistan contain an excess of India notes and India or Pakistan rupee coins over the amount of Pakistan notes put into circulation up to that date, the Pakistani Government undertakes the obligation to return as expeditiously as possible to the Reserve Bank of India such excess unconditionally and shall not be entitled to receive any assets of the Issue Department of the Reserve Bank in respect thereof. All the currency chests in Pakistan shall be deemed to be transferred from the Reserve Bank to the Pakistan State Bank at the close of business on 30th June 1948 and the State Bank shall give a certificate to the Reserve Bank acknowledging the value of the excess as stated above and the obligation to return it unconditionally.

(*b*) The Pakistani Government undertakes that no Indian notes shall be put into circulation from the currency chests after the 30th June 1948.

(*c*) If at the close of business on the 30th day of June 1948, the value of Pakistan notes put into circulation exceeds the value of India notes and India or Pakistani coin held in the currency chests in Pakistan, the Reserve Bank of India will give to the State Bank of Pakistan a certificate acknowledging the value of the deficiency and the obligation to transfer to the Pakistan State Bank equivalent assets of the Issue Department of the Reserve Bank on the surrender of the certificate.

(*d*) Except in regard to the assets equivalent to the deficiency mentioned in (*c*) above, which will be transferred as soon after 1st July 1948 as possible the physical transfer of assets of the Reserve Bank to the Pakistan State Bank shall be made only after the return to the Reserve Bank of India of the excess specified in the certificate referred to in sub-paragraph (*a*) and shall be subject to the procedure outlined in the next succeeding sub-paragraphs.

(*e*) As on the 1st July 1948 the Reserve Bank will issue a certificate recognizing the obligation of the Bank to deliver to the Pakistan State Bank assets equivalent to the Pakistan notes in circulation on 30th June 1948 on discharge by the Government of Pakistan of the liability to return the excess in currency chests as on 30th June 1948 in terms of sub-paragraph (*a*). The certificate will give particulars of the assets to be delivered.

(*f*) After the Pakistan State Bank has completed the return of the excess specified in sub-paragraph (*a*), any further delivery of India

notes and coins from the currency chests as on 30th June 1948, will entitle the Pakistan State Bank to proportionate assets of the Issue Department in respect of the notes. Such delivery shall be made to the Reserve Bank of India at any office in India in multiples of Rs. five crores except in the last instalment, and the Reserve Bank will transfer as early as possible proportionate assets except that in the case of gold the transfer will take place in not less than a complete bar, any excess being met in subsequent instalment. The certificate issued under (*c*) above will be modified from time to time as transfer of assets takes place.

(*g*) After the completion of the delivery of India notes and coins from the currency chests equal to the Pakistan notes in circulation on 30th June 1948, the Pakistan State Bank will deliver to the Reserve Bank in the manner as stated in (*f*) above, India notes returning from circulation after the 30th day of June 1948. Pending physical transfer of the assets the Reserve Bank will issue a certificate to the State Bank of Pakistan that assets equivalent to the amount so delivered are held by them on behalf of the State Bank and these certificates will be amended or cancelled from time to time on physical transfer of the assets.

(*h*) The State Bank of Pakistan will transfer India notes to India only by sea. If the State Bank of Pakistan makes a claim that any consignment of India notes has been irretrievably lost in transit from Pakistan to India, the Reserve Bank of India shall accept liability for the value of notes which it is satisfied have in fact been irretrievably lost.

4. *Return of India notes.* India notes withdrawn from circulation in Pakistan up to 30th June 1949 and delivered to the Reserve Bank by the State Bank of Pakistan will count for sharing in the profits of the Reserve Bank up to 30th June 1948 and the division of the assets of the Issue Department as on 30th June 1948.

5. *Cost of remittance.* The cost of remittance from Pakistan to India of India notes and coins held in currency chests on 30th June 1948 shall be borne by the Reserve Bank. The cost of remittance of India notes and Government of India one-rupee notes and coins withdrawn from circulation and delivered to the Reserve Bank shall be borne by the State Bank of Pakistan. The cost of transfer of gold and other assets from India to Pakistan shall also be borne by the State Bank of Pakistan.

6. *Mode of transfer of Pakistan Government cash balances and bank deposits.* The amount standing to the credit of Pakistan's Central and Provincial Governments at the Reserve Bank on 30th June 1948 and the amounts required for meeting the Reserve Bank's liabilities

to banks in Pakistan on 30th June 1948 shall be paid (*a*) in Pakistan currency to the extent that such currency is available with the Reserve Bank in the Banking Department on that date; (*b*) by transfer of the balance in the Reserve Bank's Pakistan Account with the Bank of England to the credit of the State Bank of Pakistan Account with the Bank of England; and (*c*) the balance by transfer from the Reserve Bank's No. II Account to a similar account of the State Bank of Pakistan with the Bank of England.

7. *Allocation of sterling balances.* (i) For the purpose of determining Pakistan's share in the assets of the Issue Department, the amount of sterling in the Issue Department will be notionally decreased by an amount which together with the amount of sterling in the Banking Department will be sufficient for the following liabilities:

(*a*) The lump sum payable to His Majesty's Government at the time of the final settlement of the sterling balances on account of the capitalisation of the pensionary liability, for H.M.G.'s military stores and fixed assets as on 1st April 1947 in India, etc.

(*b*) The cash balances of the Central and Provincial Governments of Pakistan to the extent they are payable in sterling as provided in paragraph (6);

(*c*) The amounts required by the Reserve Bank to meet its liabilities towards banks in Pakistan; and

(*d*) The amount equal to the balance at the credit of the Reserve Bank's Account No. I with the Bank of England.

(ii) The deficiency left in the Issue Department by the above national transfer of sterling to the Banking Department will be notionally filled by an increase in the Government of India's securities held in the Issue Department. The increase of each kind of security will be proportionate to the amounts of those securities held in the Issue Department on 30th June 1948.

(iii) To the extent considered necessary by the two Governments His Majesty's Government will be advised of the above arrangements.

8. *Liability for one-rupee notes.* The Pakistan Government will assume liability for the Pakistan inscribed one-rupee notes issued up to 30th June 1948. In addition, the Pakistan Government will assume liability towards the Government of India in respect of the Government of India one-rupee notes in circulation in Pakistan on 1st July 1948. The latter liability will be taken to be equal to the amount of Pakistan inscribed one-rupee notes put into circulation up to that date and this amount shall be added to Pakistan's debt to India. The Government of Pakistan shall be entitled to receive abatement of the debt so added equal to the amount of one-rupee Government of India notes returned by them up to 30th June 1949. It will be open to the

Government of India to impose a ban on the import of such notes into India after 30th June 1948.

9. *Provision for Burma's claim.* The transfer of profits and assets of the Reserve Bank to Pakistan will be provisional pending the settlement of Burma's claim to its share of these profits and assets, subject to readjustment when Burma's claim is settled.

10. *Exchange Control.* Until 30th June 1948 there will be no exchange control as between India and Pakistan, nor will any restrictions be placed on the transfer of funds or securities from one Dominion to the other, whether such transfers are on capital account or current account.

11. *Amendments to Monetary Order.* Necessary amendments in the Pakistan (Monetary System and Reserve Bank) Order, 1947 will be made to give legal effect to this agreement.

12. *Pakistan Coinage.* The Government of India will furnish to the Government of Pakistan figures for the production and supply of Pakistan coins by India mints for each category of coin for the period up to the 31st March, 1948. On the basis of these figures the Government of Pakistan will determine their further requirements from India mints and will intimate them to the Government of India. Should the Government of Pakistan decide that India mints should cease to produce Pakistan coins, they will give a notice of one month to the Government of India. If the Government of Pakistan decide not to employ the India mints for Pakistan coinage for the period originally agreed upon, the Government of India will be prepared to consider requests for helping the Lahore Mint in the matter of supply of stores.

IAIP, Agreement No. V, pp. 32-6.

EXTRACT FROM THE MINUTES OF THE PARTITION COUNCIL HELD ON 1ST DECEMBER, 1947

I

Sterling Assets of the Reserve Bank of India

(2) The two Dominions will negotiate separately with H.M.G. for release beyond 1st January 1948. The Reserve Bank will open a separate account or accounts with the Bank of England to which will be transferred from its present Account No. 2 a sum equivalent to the release made by H.M.G. to Pakistan together with the amount fixed as Pakistan's working balance. Pakistan's exchange operations will be conducted through these accounts. In assessing the total sterling

holdings of the Reserve Bank for purposes of paragraph 1(*a*) above, the amounts standing in the Reserve Bank's Accounts Nos. 1 and 2 will be taken into account together with the amounts in the ' Pakistan ' accounts with the Bank of England either through the Reserve Bank or otherwise.

(3) From the 1st January, 1948 onwards, each Dominion will retain separately its own foreign exchange earnings and its own foreign exchange expenditure will be debited against these earnings (By the term ' its own ' earnings or expenditure is meant the earnings arising out of exports from, and the expenditure due to imports into, ports within the territory of each Dominion). Invisible earnings and expenditure will be allocated according to the territory in which the transaction giving rise to them takes place.

(4) The Government of India will transfer from Account No. 1 of the Reserve Bank of India to the similar account of Pakistan when established a sum in sterling equivalent to the difference between Rs 6·95 crores and the c.i.f.-value of 'limit' items actually imported into Pakistan ports between the 1st July, 1947 and the 31st December, 1947.

Provided that if India is not allowed to carry forward the entire sum standing to its credit in Account No. 1 on 31st December 1947, the payment above mentioned will be reduced in proportion to the reduction in the amount agreed to be carried forward.

II

Decision of the Partition Council with regard to sharing of the Sterling Assets of the Reserve Bank

It was agreed in the Partition Council on 1st December 1947 that in addition to the sterling to which Pakistan would be entitled under paragraph 4(3) of Part IV of the Pakistan (Monetary System and Reserve Bank) Order, 1947, an amount of sterling calculated as below will be made available to Pakistan in the manner stated below:

(*a*) The total of the Sterling assets in both the Banking and Issue Departments on the 30th September 1948 will be taken together.

(*b*) From this total will be deducted the lump sum payable to H.M.G. at the time of the final settlement of the sterling balances on account of the capitalisation of pensionary liability, for H.M.G.'s military stores and fixed assets as on 1st April 1947, in India.

(*c*) Out of the remaining balance a sum in sterling which taken together with the gold held in the Issue Department will be equal to 70 per cent. of the total liabilities of that Department as on 30th September 1948, will be allocated in the manner prescribed in

paragraph 4(3) of Part IV of the Pakistan (Monetary System and Reserve Bank) Order, 1947.

(*d*) Of the remainder, 17½ per cent. will be allocated to Pakistan.

(*e*) The difference between the total of what will fall to the share of Pakistan under (*c*) and (*d*) and what Pakistan would obtain under paragraph 4(3) of Part IV of the Order is the amount of the additional sterling to be made available to Pakistan.

(*f*) In regard to the amount of this additional sterling, India agrees to sell to Pakistan from its Account No. II of similar Account sterling for Indian rupee on demand being made by Pakistan up to the 31st December 1967.

III

Extract from Pakistan (Monetary System and Reserve Bank) Order, 1948

(2) The agreement was modified by a subsequent amendment of the Pakistan (Monetary System and Reserve Bank) Order issued on the 31st March 1948. This amendment reads as follows:

'For the purpose of determining Pakistan's share of sterling securities and Government of India securities under the provisions of sub-section (3) of section 4

(*a*) the amount of sterling securities held in the Issue Department of the Bank on the 30th day of June, 1948 shall be deemed to be reduced and the amount of Government of India securities so held on that day shall be deemed to be increased by the amount by which the amount of sterling held in the Banking Department of the Bank on that day falls short of the aggregate of

(i) the amounts payable in sterling to the Government of the United Kingdom in pursuance of any agreement that may be reached as to the final settlement of the sterling balances.

(ii) the amounts payable in sterling to the Government of Pakistan and the Provincial Governments in Pakistan under the provisions of section 11, and

(iii) the amount of the balance at the credit of the Bank's Account No. 1 with the Bank of England; and

(*b*) the increase in each kind of Government of India securities under clause (*a*) shall bear the same proportion to the total increase as the amount of that kind of securities held in the Issue Department of the Bank on the 30th day of June, 1948, bears to the total amount of Government of India securities so held on that day.'

Sterling Balances, 1948, pp. 30, 37-8.

AGREEMENT NO. IX—AGREEMENT MADE THIS THIRTIETH DAY OF JUNE, 1948 BETWEEN THE DOMINION OF INDIA AND THE DOMINION OF PAKISTAN

Whereas the provision contained in Section 13 of Part IV of the Pakistan (Monetary System and Reserve Bank) Order, 1947, as subsequently amended, which prohibits exchange control as between India and Pakistan and any restrictions on the transfer of funds or securities from one Dominion to the other, is due to expire on the thirtieth day of June 1948;

And whereas it is to the advantage of both the Dominions that no unnecessary restrictions should be placed on exchange transactions and the transfer of funds and securities between the two Dominions;

It is hereby agreed as follows:

Article 1. The official rate of exchange as between the India rupee and the Pakistan rupee will continue to be at par, and will not be altered by either Government except after due notice and mutual consultation.

Article 2. As soon as the necessary arrangements can be made the Government of Pakistan will become a member of the International Monetary Fund, and for that purpose will declare the par value of the Pakistan rupee to be equal to 0.268601 grammes of fine gold.

It is assumed for the purposes of this Agreement that this parity will be accepted by the authorities of the Fund.

Article 3. (1) There shall be no exchange control as between India and Pakistan, nor shall any restrictions be placed on the transfer of funds or securities from one Dominion to the other, whether such transfers are on capital account or current account. In particular there shall be no restriction on transfer of evacuee funds in private hands. The transfer of evacuee funds in the hands of Custodians of Evacuee Property will be arranged after mutual consultation between the Reserve Bank of India and the State Bank of Pakistan (hereinafter referred to as 'the Reserve Bank' and 'the State Bank', respectively) in order to ensure orderly transfer without undue strain on exchange resources.

(2) Nothing contained in the preceding paragraph shall apply in relation to the transfer of gold or silver (in whatever form) between the two Dominions. Either Government may impose restrictions on such transfer, subject to such exemptions in regard to evacuee property as may be agreed upon by the two Governments.

Article 4. (1) The Reserve Bank, acting as agents of the Government of India, shall sell to the State Bank, acting as agents of the Government of Pakistan, India rupees to such extent as may be required

for payments which persons in Pakistan are permitted under the exchange regulations in force in Pakistan to make to India; and such sale shall be

(*a*) against Pakistan rupees to be credited at the official rate of exchange to the Reserve Bank's account with the State Bank, provided that the balance standing to the credit of that account is not thereby increased above a maximum of fifteen crores of Pakistan rupees; and thereafter;

(*b*) against sterling to be credited at the official sterling parity to the Reserve Bank's No. I Account with the Bank of England, provided that the total amount of sterling so transferred shall not exceed seven and a half million pounds; and thereafter

(*c*) against sterling to be credited at the official sterling parity to the Reserve Bank's No. II Account with the Bank of England.

(2) The State Bank, acting as agents of the Government of Pakistan, shall sell to the Reserve Bank, acting as agents of the Government of India, Pakistan rupees to such extent as may be required for payments which persons in India are permitted under the exchange regulations in force in India to make to Pakistan; and such sale shall be

(*a*) against India rupees to be credited at the official rate of exchange to the State Bank's account with the Reserve Bank, provided that the balance standing to the credit of that account is not thereby increased above a maximum of fifteen crores of India rupees; and thereafter

(*b*) against sterling to be credited at the official sterling parity to the State Bank's No. I Account with the Bank of England, provided that the total amount of sterling so transferred shall not exceed seven and a half million pounds; and thereafter

(*c*) against sterling to be credited at the official sterling parity to the State Bank's No. II Account with the Bank of England.

Article 5. (1) The Reserve Bank shall have the right at any time to sell to the State Bank against all or part of the India rupees held by that Bank either Pakistan rupees at the official rate of exchange or sterling from the Reserve Bank's No. I Account with the Bank of England at the official sterling parity.

(2) The State Bank shall have the right at any time to sell to the Reserve Bank against all or part of the Pakistan rupees held by that Bank either India rupees at the official rate of Exchange or sterling from the State Bank's No. I Account with the Bank of England at the official sterling parity.

Article 6. In the event of either Government taking action which results in a depreciation of its currency in terms of the currency of the other Dominion, India rupees held by the State Bank, or, as the case may be, Pakistan rupees held by the Reserve Bank, shall be

revalued on the basis of the new parity, and the account of whichever Bank incurs a loss as a result of such revaluation shall be written up by the credit of additional India rupees or Pakistan rupees, as the case may be.

Article 7. The Reserve Bank and the State Bank will collaborate to maintain the India and Pakistan rupees at parity with each other and to that end will take steps to enforce the use of the official rate as the basis of all transactions involving a relationship between the two currencies in the markets under their control.

Article 8. Any India rupees held by the State Bank shall be held and invested only as may be agreed by the Reserve Bank and any Pakistan rupees held by the Reserve Bank shall be held and invested only as may be agreed by the State Bank.

Article 9. The Reserve Bank and the State Bank shall maintain close contact on all technical questions arising out of the present Agreement.

Article 10. This Agreement shall come into force on the first day of July 1948 and shall remain in force for a period of one year, but shall be reviewed three months before the date of its termination:

Provided that if during the currency of this Agreement the transfer of funds from one Dominion to the other assumes such large proportions as to involve undue strain on the foreign exchange reserves of that Dominion, the two Governments shall consult together with a view to modifying the Agreement:

And provided always that in the event of either of the two Dominions ceasing to be a member of 'the scheduled territories' as defined in the Exchange Control Act, 1947, of the United Kingdom, the provisions of this Agreement shall be in abeyance pending consultation between the two Governments.

In witness whereof the Secretary to the Government of India in the Ministry of Finance, and the Secretary to the Government of Pakistan in the Ministry of Finance, having been duly authorised by their respective Governments, have appended their signatures.

Done in duplicate at Karachi this Thirtieth day of June 1948.

IAIP, Agreement No. IX, pp. 60-2.

53 15–18 *April* 1948

INTER-DOMINION CONFERENCE (AGREEMENT NO. VI)

Whereas the Governments of the two Dominions agree that mass exodus of minorities is not in the interest of either Dominion and they

are determined to take every possible step to discourage such exodus and to create such conditions as would check mass exodus to either direction and would encourage and facilitate, as far as possible, return of Evacuees to their ancestral homes, the two Dominions agree as follows:

Section 1. (1) The responsibility for protecting the lives and properties of the minority communities and for ensuring that they receive justice and that their civic rights are fully safeguarded rests on the Government of the Dominion in which the minorities reside.

(2) In Pakistan and in India every citizen shall have equal rights, opportunities, privileges and obligations; and there shall be no discrimination against the minorities whose cultural and religious rights shall be fully safeguarded.

N. B. 'Cultural' rights include 'educational' rights.

(3) Any propaganda for the amalgamation of Pakistan and India or of portions thereof including East Bengal on the one hand and West Bengal or Assam or Cooch Behar or Tripura on the other, shall be discouraged.

N. B. The word 'propaganda' shall be taken as including any organisation which might be set up for the purpose.

Both Governments recognise that the wholehearted co-operation of the Press is essential for creating a better atmosphere and therefore agree that every effort should be made, in consultation with the representatives of the Press, wherever possible, to ensure that the Press in each Dominion does not

(*a*) indulge in propaganda against the other Dominion;

(*b*) publish exaggerated versions of the news of a character likely to inflame, or cause fear or alarm to, the population or a section of the population in either Dominion;

(*c*) publish material likely to be construed as advocating a declaration of war by one Dominion against the other Dominion or suggesting the inevitability of war between the two Dominions.

(5) Complaints from minorities in both the Dominions that action is not taken on their reports against oppression or unfair treatment, should be promptly and fairly looked into and early remedial measures taken.

(6) Both in East Bengal and in West Bengal there shall be set up a Provincial Minorities Board and under the Provincial Board, District Minorities Boards for the express object of protecting the interests of the minorities, removing fear from their minds and inspiring confidence in them. These Boards shall ensure that the grievances of the minorities are promptly brought to the notice of the authorities and that they are satisfactorily and promptly dealt with.

It is suggested that the Provincial Minorities Board should be composed of five members, three of whom at least belonging to the major minority community to be selected by the members of the Provincial Legislature belonging to the minority communities. The remaining two shall be persons of influence and shall be nominated by the Provincial Government. The District Magistrate shall be the Chairman of the District Minorities Board and a Minister to be nominated by the Provincial Government shall be the Chairman of the Provincial Board.

(7) The two Dominions and their Provincial Governments shall declare and make it widely known to their officers and other employees that any Government servant proved to have been guilty either of dereliction of duty in protecting the lives and properties of the members of the minority community or of directly or indirectly ill-treating the members of the minority community or showing prejudice against the minority community in the discharge of his duties, shall receive exemplary and deterrent punishment.

(8) Severe action shall be taken against any person or group of persons creating or attempting to create any apprehension or fear or insecurity or alarm in the minds of the minority communities.

(9) (i) The two Dominions shall take adequate steps to remove complaints regarding

(*a*) Discrimination in the grant of export and import licences and railway priorities to members of the minority community as such,

(*b*) To curb all tendencies towards an economic boycott of minorities or strangulation of their normal economic life.

(ii) The two Dominion Governments shall request their respective Provincial Governments to observe the same principles in their own sphere.

(10) The Governments of East Bengal and West Bengal will promote legislation providing for the setting up of Evacuees Property Management Boards in districts or areas from where a substantial exodus has taken place. These Boards will be set up only when it is established that there is a demand for their establishment. These Boards will assume management of properties only on the definite request of their owners. Their functions will be of a managerial character and they will not have the power to alienate the property entrusted to them for management. These Boards shall be composed of members of the Minority Community.

N. B. For this purpose 'Evacuee' shall be defined as a person who has left the Province in question on or after 1st June 1947 and who declares his intention to return as soon as normal conditions are restored.

A committee of officers will be appointed immediately by the two Governments to draw up detailed proposals for the necessary legislation.

Section 2. To ensure the implementation of this Agreement, the representatives of the two Dominions shall meet at least once in two months so as to bring to the notice of each other any instances of the non-observance of the above principles in either Dominion. In the case of East Bengal and West Bengal, where the situation requires more urgent measures, the Premiers of the two Provinces shall meet once every month for the same purpose; and in addition, to begin with, the Chief Secretaries of the two Provinces shall meet once a fortnight. Whenever matters concerning Assam, Cooch Behar and Tripura are likely to be discussed the Chief Secretary, West Bengal, shall arrange for their representatives to be present.

Section 3. (1) This Conference recommends that another Inter-Dominion Conference should be called at a very early date to which representatives of other Provinces and States (except East and West Punjab and N.W.F.P.) from which exodus has taken place on a large scale, or is likely to take place should be invited to consider action on lines similar to those proposed above or on any other suitable lines in respect of:

(*a*) Protection and other safeguards for the property of refugees who have gone out from one Dominion to the other temporarily or otherwise, and

(*b*) Creation of conditions in any affected area which will reassure the minorities that their interest and rights are fully safeguarded and will prevent exodus or will induce evacuees to return to their homes.

(2) It is further understood that a separate conference as already agreed to is to be held to consider the special problems relating to East and West Punjab and N.W.F.P. It is recommended that this Conference should also be held at a very early date.

(3) It is further recommended that a separate Inter-Dominion Conference should be called at an early date, at which representatives of East Bengal and Assam are present, to discuss the question of migration of Muslims from East Bengal to Assam and the migration of Muslims who have been in Assam prior to partition into East Bengal. Pending this Conference, both sides agree not to take any action to force or precipitate migration from one Province to the other on a mass scale. While both the Dominion Governments agree to this arrangement, Mr Bardoloi wished to place the matter before his Cabinet.

IAIP, Agreement No. VI, pp. 37-9.

54 3 & 4 *May* 1948

INTER-DOMINION CONFERENCE (AGREEMENT NO. VII)

The Pakistan representatives first raised the question of payment by India of the sum of Rs 6 crores which India had agreed to make available to Pakistan for the setting up of Ordnance Factories and other unique institutions. It was explained by the Indian delegation that the agreement was to make this money available only as and when required and the mere fact that a provision of Rs 6 crores had been included in the Pakistan budget did not mean, particularly in the present difficult supply conditions, that the money was immediately required. The Pakistan representatives pointed out that a part of the expenditure had already been incurred whereas the rest was to be incurred shortly and firm indents had already been placed. In view of the December agreement payment was to be made on the basis of requirements and not after actual disbursement. It was agreed that the necessary funds will be placed at Pakistan's disposal for meeting the expenditure to be incurred by them in the near future including the expenditure already incurred. The Pakistan delegation agreed to review the position once again and intimate their requirements to India.

(2) The payment of the balance of Rs 5 crores out of the allocation of Rs 75 crores as Pakistan's share of the cash balance of the undivided Government was next raised. It was explained by the India representatives that Pakistan's share of the joint military expenditure after the partition was certain to exceed Rs 5 crores and since Pakistan had provided no finance for meeting this joint expenditure and India had carried this expenditure for months, this amount should be treated as an on account payment for Pakistan's share. Pakistan contended that the allocation of the cash balance was a separate transaction and should not be mixed up with the recovery of Pakistan's share of the joint military expenditure, the adjustment of which should be left to take its course in accordance with the prescribed procedure. The Pakistan representatives suggested that the adjustment of joint military expenditure could be expedited by the Military Financial Advisers or Auditors General of the two Dominions working in consultation in the immediate future. India could not accept this contention for the reasons already mentioned.

(3) The payment of the pre-partition liabilities still outstanding was then considered. The Pakistan delegation proposed that the joint account of the undivided Government should be kept open for a further three months. The Indian delegation made it clear that they could not

accept this and the view-points of the respective Governments in this matter, as set out in the correspondence between them, were restated. The Pakistan delegation contended that as the Government of India would not agree last December to reimburse the payments made on account of the pre-partition liabilities Pakistan had actually made no payments between then and the 24th March when they were resumed on India agreeing to accept the debits for payments made till the 31st March and that they only asked to be placed in the same position as if this interruption had not actually occurred. The Indian delegation pointed out that there was an earlier agreement that till 31st March each Government will pay the claims arising in its area pending subsequent adjustment, that Pakistan had no justification for stopping payments and that such stoppage did not by itself confer any right to Pakistan for an extension of the date. The Indian delegation also pointed out that after the unconditional allocation of the available cash balance of the undivided Government the fact that India agreed to pay from its cash balance the preparation liabilities up to the 31st March was in itself a concession and that the current sharing of the outstanding liabilities was the only fair and equitable arrangement. The Pakistan representatives pointed out that the fact that there was an agreement whereby India was to reimburse Pakistan in respect of pre-partition claims, clearly recognised that this was to be done in spite of the allocation of the cash balances. The agreement on pre-partition liabilities, therefore, stood by itself and required to be fully implemented. In view of the fact that its working had been considerably impaired by India's attitude, the only way of implementing it now was to extend the period up to which the joint account would remain open by three months from the date of decision by the conference.

Asked about how the liabilities still remaining after the joint account was closed, even if Pakistan's proposal were accepted, would be met, the Pakistan representatives suggested that after the closing of the joint account each Dominion should take final liability for the outstanding claims in its area.

The Pakistan delegation made it clear that they could not discuss the problem further unless an agreement was reached on the question of extending the period of the joint account.

The India Delegation stated that as it had not been possible to reach any settlement, India would meet the legal liability to third parties for supplies and services rendered to the undivided Government before partition and Pakistan's share of this would be added to its debt. Asked if the Pakistan authorities would be prepared to check the claims arising in their area and pass them on to India for payment the Pakistan representatives replied in the affirmative.

The Indian delegation pointed out that if this position was reached it would follow, as a corollary, that there will be no sharing of any further pre-partition receipts. The Pakistan representatives could not agree to this as in their view any specific decisions already taken must be implemented by themselves.

The point was also made by India that any cash realisations from the disposal of surplus military stores and any receipts from H.M.G. as a result of the final allocation of the defence expenditure would not also be shareable and would be set off against the payment to H.M.G. on account of surplus stores and installations for which the rupee finance will be found by India. The Pakistan representatives stated that this was a new point and would have to be further considered by them.

(4) The question of payment to the Provinces of the provincial share of the income-tax up to the 15th of August 1947 and other similar payments that the old Central Government would have made but for the partition was then raised The India representatives pointed out that this was in a category different from that of the claims of third parties like contractors. Those could reasonably be considered as so many promises by the old Government to the provinces and it was for the dominion Government concerned to pay (or not to pay) to the provinces now in its area the amount which would have been paid by the old undivided Government. Obviously, the Indian dominion could not be expected to pay anything on this account to the provinces in Pakistan after the available cash balance of the undivided Government, from which these payments would have been met by that Government had been allocated between the two Governments and Pakistan had received something like 23 per cent. of the available cash balance. The Pakistan representatives strongly refuted this suggestion and maintained that no distinction could possibly be drawn between claims of Provincial Governments and third parties. The legal position in this respect was clear beyond doubt. They also pointed out that this view was being advanced by India for the first time for ever since the question of the payment of the Provincial share of income-tax to the Provinces was taken up with India in November 1947 India had always pointed out that payment could not be made as the accounts figures were not yet available and had at no stage questioned the propriety of such payments being made by the Dominion of India. India did not accept this contention.

(5) The Pakistan delegation then raised the question of paying the Pakistan opted staff arrears following the implementation by India of the Pay Commission's recommendations. It was argued that the undivided Government had more than once announced its intention

to give effect to the Commission's recommendations and that irrespective of what Pakistan did after the partition the employees who had opted for Pakistan should get their arrears as employees, till partition, of the undivided Government of India. The employees had a perfectly valid claim against the Government of India for the period from 1st January 1947 to the 14th August 1947 and this claim was supported by the legal provision. The India delegation could not accept this view. The Indian Dominion alone had decided to implement the Commission's recommendations and would meet the entire bill for it. The Pakistan Government had not only not implemented the recommendations of the Pay Commission but had on the other hand objected to the Indian Government implementing the recommendations in respect of their own staff in a joint establishment. The Pakistan delegation held that the non-acceptance by the Pakistan Government of the Indian Pay Commission's recommendations was not very relevant for even if the recommendations had been accepted, the arrear liability for the period from the 1st January 1947 to the 14th August 1947 would have in any case devolved on the Government of India.

(6) The question of adjusting the debits raised by the Pakistan Accounts Officers in respect of payments made up to the 31st March was then discussed. The Pakistan representatives contended that the reversal of these debits was unjustified and said that the correctness of these was under examination. They reiterated their offer to withdraw such of the debits as they may find to be unjustified. The Indian delegation pointed out that the amounts involved were of an improbable magnitude and there was clear evidence that substantial amounts had been debited on account of book adjustments for which there was no authority. It also appeared that in East Bengal debits had been raised, not for actual payments, but for lump sum imprests with disbursing officers, like Collectors, for payment of claims. In view of these obvious irregularities India could not, even provisionally, accept these debits but the undertaking that debits for *actual* payments would be accepted subject to subsequent verification by audit, would be honoured.

(7) The Pakistan representatives then mentioned a number of points about the Railways. Their first complaint was that the East Bengal Railway had not been receiving the share of revenue due to it for cross traffic. It was pointed out that the normal process of adjustment between Railways through the exchange of Division Sheets had not been functioning properly, and the Indian Railways on their part had also not received their share of the receipts in respect of traffic originating in Pakistan Railways. It was agreed that the Railway Boards of the two Dominions should get together and evolve a suitable

procedure for expediting these adjustments. The Pakistan representatives also complained that the Jodhpur State had demanded advance payments before transferring a section of the railway line to Pakistan and that this did not conform to the normal arrangements between the Dominions. It was explained that the assets in question for which payment had been claimed belonged to the Jodhpur State and not to the Indian Dominion and that a workable arrangement could best be devised in discussion with the authorities concerned instead of importing the inter-dominion procedure into the matter. It was, however, agreed that the Pakistan Railway Board might address the Railway Board India in this matter who would take up this matter with the Jodhpur State through the States Ministry. Similarly with regard to a complaint that the E. I. Railway was asking for an advance payment in respect of supplies of boulders it was agreed that the system of advance payments was irksome and that the procedure for supplies and payments should be discussed between the Railway Boards and settled.

(8) A number of miscellaneous points were then discussed. It was mentioned that a number of employees who had either retired or were on leave pending retirement without opting for either Dominion could not get their dues settled. The problems mainly concerned the Secretary of State's Services, the Railways and Defence Services and it was agreed that the authorities concerned in both dominions should in mutual consultation evolve a common procedure for the verification and early payments of the claims. It was also agreed that the Auditors General of the two dominions should discuss and settle the procedure for the settlement of the accounts between the two dominions at a very early date. The existing procedure had not worked well and the matter was of some urgency as the Reserve Bank would cease to be the common banker from the 1st July 1948. Another outstanding point was also mentioned, viz., the procedure for the transfer of pensions between the dominions and the financial adjustments between them. This still remained to be discussed and the meeting decided that this should be taken up as early as possible.

The meeting also discussed the question of the audit of the Joint Account and it was agreed that the audit of these accounts should be expedited and the respective Auditors General should make arrangements to that effect.

IAIP, Agreement No. VII, pp. 48-51.

55 4 *May* 1958

INTER-DOMINION AGREEMENT ON THE CANAL WATER DISPUTE BETWEEN THE EAST AND WEST PUNJAB

A dispute has arisen between the East and West Punjab Governments regarding the supply by East Punjab of water to the Central Bari Doab and the Depalpur canals in West Punjab. The contention of the East Punjab Government is that under the Punjab Partition (Apportionment of Assets and Liabilities) Order, 1947, and the Arbitral Award the proprietary rights in the waters of the rivers in East Punjab vest wholly in the East Punjab Government and that the West Punjab Government cannot claim any share of these waters as a right. The West Punjab Government disputes this contention, its view being that the point has conclusively been decided in its favour by implication by the Arbitral Award and that in accordance with International Law and Equity, West Punjab has a right to the waters of the East Punjab rivers.

(2) The East Punjab Government has revived the flow of water into these canals on certain conditions of which two are disputed by West Punjab. One, which arises out of the contention in paragraph 1, is the right to the levy of seigniorage charges for water and the other is the question of the capital cost of the Madhopur Head Works and carrier channels to be taken into account.

(3) The East and West Punjab Governments are anxious that this question should be settled in a spirit of goodwill and friendship. Without prejudice to its legal rights in the matter the East Punjab Government has assured the West Punjab Government that it has no intention suddenly to withhold water from West Punjab without giving it time to tap alternative sources. The West Punjab Government on its part recognise the natural anxiety of the East Punjab Government to discharge the obligations to develop areas where water is scarce and which were under-developed in relation to parts of West Punjab.

(4) Apart, therefore, from the question of Law involved, the Governments are anxious to approach the problem in a practical spirit on the basis of the East Punjab Government progressively diminishing its supply to these canals in order to give reasonable time to enable the West Punjab Government to tap alternative sources.

(5) The West Punjab Government has agreed to deposit immediately in the Reserve Bank such *ad hoc* sum as may be specified by the Prime Minister of India. Out of this sum, the Government agrees to the immediate transfer to East Punjab Government of sums over which there is no dispute.

(6) After an examination by each party of the legal issues, of the method of estimating the cost of water to be supplied by the East Punjab Government and of the technical survey of water resources and the means of using them for supply to these canals, the two Governments agree that further meeting between their representatives should take place.

(7) The Dominion Governments of India and Pakistan accept the above terms and express the hope that a friendly solution will be reached.

JAWAHARLAL NEHRU	GHULAM MOHD
SWARAN SINGH	SHAUKAT HYAT KHAN
N. V. GADGIL	MUMTAZ DAULTANA

New Delhi,
4 May 1948

No War Declaration, 1950, pp 39-40.

56 22 *July* 1948

INTER-DOMINION CONFERENCE (AGREEMENT NO. X)

ITEM I OF THE AGENDA

(1) The draft scheme for inter-Dominion Evacuee Property Agreement prepared by the Joint Official Committee at Lahore (March 22nd to 25th 1948) was considered by the Conference, and the following decisions were reached:

PART I GENERAL

1. *Area to which Applicable.* (2) It was agreed that the areas should be extended to include in India, Ajmer-Merwara, Malerkotla State, the Matsya and Rajasthan Unions, Saurashtra, Jaipur State, Jodhpur State, and Western Districts of the United Provinces (which shall in any case include the districts of Saharanpur, Dehra Dun, Meerut and Muzaffarnagar). Pakistan was to forward a list of any further areas which they might wish to be included, for India's consideration.

2. *General Principles.* (3) The following new sub-section (4) should be added to section 2 as follows:

'Throughout this agreement whatever has been laid down as applicable to any Province or to its Government shall be applicable to any States or to the Government of any such States as have acceded to either Dominion and are included in the area to which this agreement now becomes or hereafter becomes applicable.'

(4) India said that evacuees had been moving from all parts of one Dominion to all parts of the other and in so far as India was concerned, they were prepared to extend the agreed area to cover the whole of both Dominions. Pakistan agreed to consider this proposal.

PART II AGRICULTURAL PROPERTY

(5) The main question to be decided in this part was whether the settlement should be as between the Governments of the two Dominions or as between individual evacuees. Pakistan were of the view that no definite decision could be taken on this point until more data were available. For this purpose special Revenue Officers were to be appointed by both Dominions. Copying of revenue records should start forthwith. A special Joint Committee should be set up to supervise and expedite the whole work.

(6) It was further agreed that with a view to ensuring more equitable management of evacuee properties and the early payment of rents due to evacuee owners during the interim period, an officer of the other Dominion should be associated with the Custodians of Evacuee Property of each Dominion.

PART III URBAN IMMOVABLE PROPERTY

(7) Here again the main question to be decided was whether the settlement of this type of property should be on a Governmental or an individual basis. India felt that it might be advantageous to pool for purposes of exchange on a Governmental basis all properties valued below a certain figure to be agreed upon between the two Dominions. Property above that value would be open to unrestricted private sale and exchange. With this end in view it would be necessary to collect more data in regard to urban property.

(8) Pakistan's view was that, while the suggestion might prove practicable, it certainly presented enormous difficulties and would probably take an unduly long period to put into operation.

(9) It was finally agreed that the Joint Urban Assessment Board contemplated in Section 7 of this part should be set up and its functions enlarged to include assessment of the value of property. It was further agreed that an officer of the other Dominion should be associated with the Custodians of Evacuee Property of each Dominion with a view to ensuring equitable management and early payment of rents due to evacuee owners. India suggested that pending a final settlement it might be advisable to allow freely exchanges of Urban Immovable Property. Pakistan agreed to consider this proposal.

PART IV HOUSES AND SHOPS IN RURAL AREAS

(10) It was decided that whatever decisions were finally taken in regard to Parts II and III should be made to apply to Part IV also, according to the category of property concerned.

PART V MOVABLE PROPERTY

(11) The proposals were accepted by both Dominions subject to the following modifications:

The Joint Government Agency to be set up under sub-section (5) of section 6 should deal with all matters and complaints arising out of the working of this part.

PART VI CUSTOMS EXPORT AND IMPORT CONTROLS

(12) The proposals as contained in Pakistan's redraft of this part dated 21st July 1948, were accepted by both Dominions.

PART VII INTER-DOMINION COMMISSION

(13) The proposals as contained in the draft agreement were accepted.

ITEM 2 OF THE AGENDA: TRUST PROPERTY

(14) It was decided to postpone consideration of this item.

ITEM 3 OF THE AGENDA: DAMAGED URBAN IMMOVABLE PROPERTY

(15) India was unable to accept Pakistan's proposals as they stood. They had no objection to demolitions or repairs necessary for ensuring safety, protecting health and life but they could not agree to sales by the Custodians of Evacuee Property. Pakistan undertook to consider India's counterproposals.

ADDITIONAL ITEM 3-A NOT ON THE AGENDA: INCOME-TAX ASSESSMENT

(16) There was at present an agreement between the two Dominions under which no *ex parte* assessment of income-tax could take place in the West Punjab until 31st July, 1948.

(17) In view of the postponement of Evacuee Property settlement it was suggested by India that the agreement should be further extended up to 31st December, 1948, and should include the N.W.F.P. and Sind.

(18) Pakistan agreed to extend the present date up to 31st August, 1948, and pointed out that its present scope already covered the N.W.F.P. Pakistan was not prepared to extend the agreement to Sind. They would, however, consider the definite proposals from India as contained in Appendix A.

(19) Pakistan stated that no sales against realization of income-tax had taken place either in the West Punjab or the N.W.F.P. so far and they undertook that no such sales would take place at least until 31st August 1948, in any part of West Pakistan.

ITEM 4 OF THE AGENDA: EXCHANGE OF PRISONERS

(20) The question of resuming the exchange of prisoners between the two Dominions which has stood suspended from the 27th April, 1948 was discussed. Pakistan handed over the following draft of what they desired in this connection:

'The exchange of Prisoners between the Dominion of Pakistan and the Dominion of India, which was suspended on the 27th April, will be resumed as soon as a satisfactory agreement has been arrived at with regard to Muslim prisoners of Delhi, whose families have migrated to Pakistan, on the same terms and under the same conditions as applied to the exchange of prisoners from East and West Punjab.'

India undertook to consider this and send a reply as early as possible.

ITEM 5 OF THE AGENDA: INDIA'S 'PERMIT' SYSTEM

(21) India explained their reasons for introducing a system of permits but were prepared to consider its withdrawal if the two Dominions could evolve some system of regulating a two-way, as opposed to one-way, traffic. Pakistan was not satisfied that there was a case for introducing a permit system nor for any form of traffic regulation in either direction and stated that in deference to public opinion they would be obliged to introduce a similar permit system in West Pakistan, which would have to be extended to cover also movement between East and West Bengal, if India could not see their way to withdrawing their 'permit' system forthwith.

NOTE DATED 22 JULY 1948 BY INDIA ON INCOME-TAX ASSESSMENT

Appendix A. Referred to in Paragraph (18) of the Minutes

There is at present an agreement between the two Dominion Governments governing the East and West Punjab under which no *ex parte* assessment of Income-Tax can take place. This agreement which expired on the 30th June 1948, has been extended up to the 31st July, 1948.

We suggest that this agreement should be extended further up to 31st December, 1948, in regard to time and should be covered to include Sind and N.W.F.P. in addition to West Punjab.

Meanwhile the work of assessment can be done either by deputing Pakistan officials to the Indian Dominion and vice versa under the guard and protection of the Dominion concerned, or notice in regard to all evacuees should be served on the High Commissioner of the Dominion concerned who should arrange for the defence of the case in consultation with the evacuee.

Once the assessment is made the Dominion to which the evacuee has gone may collect the Income-Tax and remit it to the originating Dominion or intimate its inability to do so. In the latter event, or at the option of the assessee the originating Dominion will have the right to dispose of the evacuee's property in fulfilment of the Income-Tax demand.

Pending consideration of this proposal we suggest that no sale of evacuee property should take place in either Dominion in fulfilment of the Income-tax demands.

IAIP, Agreement No. X, pp. 63-6.

57 11 *November* 1948

NEW PROPOSALS (AGREEMENT NO. XII)

The new proposals will result in the following procedure being adopted in the matter of Recovery of Abducted women and children.

(1) The responsibility for the recovery of abducted women will hereafter be that of the police and civil authorities of the Dominion in which the abducted women are known to be residing.

(2) The recovered non-Muslim women from Pakistan will be handed over to the Provincial Transit Camp maintained for the purpose at Lahore, which will be under the control of two Indian women social workers; and recovered Muslim women from India will be handed over to the Provincial Transit Camp maintained at Jullundur under the control of two Pakistan women social workers. Women recovered in Sind shall be handed over to the High Commissioner for India in Karachi. Receipts in a prescribed form will be given for all women handed over to these camps or to the High Commissioner.

(3) The only police personnel to be maintained by one Dominion in the territory of the other Dominion for the purposes of this work,

shall consist of two platoons, with officers, who shall form a static guard at the recovered women's camp mentioned in para. 2 above, and also provide escorts from the Camp to the other Dominion.

(4) The responsibility for obtaining information in respect of abducted persons will be that of the recovery squad of the Dominion in which the abducted persons are known to be residing. Each Dominion, however, may furnish such information as may be available to the other, in respect of abducted cases known to be in the other Dominion.

(5) In the case of women recovered in one Dominion being unwilling to proceed to the other Dominion, the S.P. of the recovery squad of the Dominion in which the woman was recovered may permit the relatives of the recovered woman to visit her in the camp located in Lahore or Jullundur, as the case may be.

(6) The propaganda to be conducted in favour of recoveries will hereafter be the responsibility of each Dominion in its own territory.

(7) Transport required for affecting recoveries in each Dominion will be the responsibility of the Dominion from which the recovery is to be made except that transport for sending recovered women from the Jullundur Camp to Lahore will be that of Pakistan and that for sending them from Lahore to Jullundur will be that of India. Transport for women social workers will be provided by the Dominion to which they belong.

(8) Any difficulties or legal complications arising in the process of recovery will be resolved by the Dominion making the recovery. Even in doubtful or resisting cases no recovered women will be given up or released without being brought to the Provincial Transit Camp at Lahore or Jullundur, except where the Provincial Organiser of the other Dominion agrees to such a course, in any special case. After the recovered woman is brought to the Provincial Transit Camp at Lahore or Jullundur each doubtful or resisting case will be enquired into and resolved by the S.Ps. of the two Dominions jointly. In the event of disagreement between the two S.Ps. the case will be referred to High Powered Officers of the two Dominions for resolution.

(9) The two High Powered Officers nominated by the two Dominions shall continue to rectify the breaches, if any, of Inter-Dominion agreements on recovery work.

(10) Shrimati Bhag Mehta, as India's Provincial Organiser in West Punjab, will be allowed to tour West Punjab and West Punjab States in company with Muslim women social workers, and Miss Qari, as Pakistan's Provincial Organiser in India, will be allowed to tour East Punjab and East Punjab States in company with Indian women social workers.

(11) There will be no neutral camps in either Dominion in future. Cases of girls who were in the neutral camp at Jullundur, till recently, have been disposed of. Cases of those who remain in any similar camp in Lahore should be disposed of in the next few days.

(12) Women bailed out or released on bonds, when recovered, will be brought to the Provincial Transit Camp in Lahore or Jullundur as the case may be and their cases re-examined by the two S.Ps.

(13) In order to avoid unnecessary obstructions in the movements of women social workers, in transit from one Dominion to the other or otherwise each Dominion should arrange to issue special permits, and facilitate the movements of women social workers in the other Dominion.

IAIP, Agreement No. XII, pp. 71-2.

58 22–26 *November* 1948

FINAL AGENDA FOR INTER-DOMINION CONFERENCE (EXTRACTS)

REFERENCE ITEM 5 OF THE AGENDA

I STATEMENT SHOWING AMOUNTS DUE FROM PAKISTAN IN REGARD TO MILITARY STORES

(In crores of Rs)

A. *Amounts due from Pakistan on account of*	
(i) Stores (including unit equipment) taken over from UK and located in Pakistan on 15th August 1947	11·38
(ii) Fixed assets taken over from UK and located in Pakistan as on 15th August 1947	2·35
(iii) Stores despatched from India to Pakistan between 15th August 1947 to 31st July 1948	4·21
(iv) Transportation charges on stores sent to Pakistan.	0·18
(v) Estimated amount to be paid by Pakistan on account of net sale proceeds of UK owned surpluses located in Pakistan	2·21
(vi) Pakistan's share of joint expenditure booked in the Indian Accounts	
(*a*) Compiled during 15th August 1947 to 30th November 1947 on account of debit already intimated to Pakistan	4·20
(*b*) Further debit on account of joint expenditure (mostly arrear charges pertaining to the	

I STATEMENT SHOWING AMOUNTS DUE FROM PAKISTAN IN REGARD TO MILITARY STORES—*contd.*

(In crores of Rs)

period 15th August 1947 to 30th November 1947)—rough estimate	2·00
(vii) Payments due to Indian High Commissioner in UK for stores supplied by DG, ISD, to Pakistan (Centre and Provinces)	1·43
Total ..	27·96

II STATEMENT SHOWING AMOUNTS DUE FROM PAKISTAN IN REGARD TO OTHER ITEMS

	Rs	a.	p.	Rs	a.	p.
B. *Railway Board*:						
(i) Up to end of July, 1948 ..	80,00,000	0	0			
(ii) Up to end of August, 1948 ..	18,00,000	0	0	98,00,000	0	0
C. *Food Ministry*:						
1. *Sums owed by the Pakistan Government*						
(i) Cost of imported wheat and barley supplied to Pakistan ..	17,949	0	0			
(ii) Cost of 3,000 tons of barley lying in West Punjab which are property of U. P. Government	11,43,333	5	0			
(iii) Cost of gunnies supplied to Pakistan ..	1,64,760	6	0			
(iv) Cost of Twill bags supplied to Pakistan ..	1,01,349	8	0			
(v) Balance due on account of price of cuban sugar supplied to Pakistan ..	1,37,030	13	0			

II STATEMENT SHOWING AMOUNTS DUE FROM PAKISTAN IN REGARD TO OTHER ITEMS—*contd.*

C. *Food Ministry:* contd.						
(vi) Cost of supplies to Pakistan Defence services under the joint procurement of foodstuffs for the Armed Forces during the period 15th August to 30th November 1947 ..	54,00,000	0	0			
2. *Sums owed by Pakistan Provinces and States*						
(i) Amounts due to Central Government from Kalat, Las Bella and Bahawalpur States on account of cost of imported foodgrains supplied to them	1,00,000	0	0			
(ii) Advances by various Indian Provinces and States before partition to different Units of Pakistan for supply of foodgrains under the Basic Plan ..	2,23,00,000	0	0	2,93,64,423	0	0
D. P. & T. Adjustments Savings Bank, etc.	12,00,00,000	0	0	12,00,00,000	0	0
Total ..				15,91,64,423	0	0
Total of Statement I ..				27,96,00,000	0	0
Grand Total ..				43,87,64,423	0	0

IAIP, Agreement No. XIII, p. 74.

59 6–14 *December* 1948

INTER-DOMINION CONFERENCE (AGREEMENT NO. XIV)

Whereas the Governments of the two Dominions agree that mass exodus of minorities is not in the interest of either Dominion and they are determined to take every possible step to discourage such exodus and to create such conditions as would check mass exodus in either direction and would encourage and facilitate, as far as possible, return of evacuees to their ancestral homes, the two Dominions agree as follows:

SECTION I

(1) The responsibility for protecting the lives and property of the minority communities and for ensuring that they receive justice and that their civic rights are fully safeguarded rests on the Government of the Dominion in which the minorities reside. The allegiance and loyalty of the minorities is to the State of which they are citizens and it is therefore their rights and duty to have their grievances redressed by the Government of their own State. Leaders in each Dominion should make public declarations to this effect at every suitable opportunity as part of the implementation of the provisions of the Agreement.

(2) (i) In Pakistan and in India every citizen shall have equal rights, opportunities, privileges and obligations; and there shall be no discrimination against the minorities whose cultural and religious rights shall be fully safeguarded.

N.B. ' Cultural ' rights include ' educational ' rights.

(ii) Where direct recruitment is made otherwise than by open competition, minorities shall be given fair representation in the services.

(3) Any propaganda for the amalgamation of Pakistan and India or of portions thereof including East Bengal on the one hand and West Bengal or Assam or Cooch Behar or Tripura on the other, shall be discouraged.

N.B. The word ' propaganda ' shall be taken as including any organisation which might be set up for the purpose.

(4) (i) Both Governments recognise that the wholehearted co-operation of the Press is essential for creating a better atmosphere and therefore agree that every effort should be made, in consultation with the representatives of the Press, wherever possible, to ensure that the Press in each Dominion does not—

(*a*) indulge in propaganda against the other Dominion,

(*b*) publish exaggerated versions of news of a character likely to inflame, or cause fear or alarm to, the population or a section of the population in either Dominion,

(*c*) publish material likely to be construed as advocating a declaration of war by one Dominion against the other Dominion or suggesting the inevitability of war between the two Dominions.

(ii) An Inter-Dominion Information Consultative Committee should be set up to meet once in two months, or more frequently if necessary, alternately in Delhi and Karachi and keep under review the activities of

(*a*) the press,

(*b*) books, pamphlets and publications,

(*c*) broadcasting, and

(*d*) films.

This Committee shall have an equal number of representatives from either Dominion consisting of one Minister from each Dominion, and not more than two Government officers and two representatives of the press of each Dominion. The subjects listed under (*b*), (*c*) and (*d*) shall be dealt with only by the official members of the Committee.

(iii) Both Governments shall ensure that their respective organisations handling publicity, including publicity through the radio and the film, refrain from and control—

(*a*) propaganda against the other Dominion, and

(*b*) publication of exaggerated versions of news of a character likely to inflame, or cause fear or alarm to, the population, or any section of the population in either Dominion.

(5) Complaints from minorities in both the Dominions, that action is not taken on their reports against oppression or unfair treatment, should be promptly and fairly looked into and early remedial measures taken.

(6) Both in East Bengal and West Bengal there shall be set up before the 15th of February, 1949, a Provincial Minorities Board and, under the Provincial Board, District Minorities Board for the express object of protecting the interests of the minorities, removing fear from their minds and inspiring confidence in them. These Boards shall ensure that the grievances of the minorities are promptly brought to the notice of the authorities and that they are satisfactorily and promptly dealt with.

It is suggested that the Provincial Minorities Board and the District Minorities Boards should each be composed of five members, three of whom at least should belong to the major minority community to be selected by the members of the Provincial Legislature belonging to the minority communities. The remaining two shall be persons of influence and shall be nominated by the Provincial Government. The District Magistrate shall be the Chairman of the District Minorities

Board and a Minister to be nominated by the Provincial Government shall be the Chairman of the Provincial Board.

(7) The two Dominions and their Provincial Governments shall declare and make it widely known to their officers and other employees that any Government servant proved to have been guilty either of dereliction of duty in protecting the lives and properties of the members of the minority community or of directly or indirectly ill-treating the members of the minority community or showing prejudice against the minority community in the discharge of his duties, shall receive exemplary and deterrent punishment, and such punishment shall be given full publicity in each Dominion.

(8) Severe action shall be taken against any person or group of persons creating or attempting to create any apprehension or fear of insecurity or alarm in the minds of the minority communities.

(9) (i) The two Dominions shall take adequate steps

(*a*) to remove complaints regarding discrimination in the grant of export and import licences and railway priorities to members of the minority community as such;

(*b*) to curb all tendencies towards an economic boycott of minorities or strangulation of their normal economic life.

(ii) The two Dominion Governments shall request their respective Provincial Governments to observe the same principles in their own sphere.

(10) (i) The Governments of East Bengal and West Bengal will promote legislation providing for the setting up of Evacuee Property Management Boards in districts or areas from where a substantial exodus has taken place. These Boards will assume management of properties only on the definite request of their owners. Their functions will be of a managerial character and they will not have the power to alienate the property entrusted to them for management. These Boards shall be composed of members of the minority community.

N.B. 'Evacuee' shall be defined as a person who has left the Province in question on or after 1st June, 1947, and who declares his intention to return as soon as normal conditions are restored to the satisfaction of the two Governments.

(ii) The two Chief Secretaries of East and West Bengal should meet at an early date to finalise the proposals for necessary legislation. The Governments of East and West Bengal will legislate by the 31st January 1949 for the setting up of an Evacuee Property Management Board in every district or area of their respective provinces referred to in sub-clause (i). These Boards should be set up as soon thereafter as possible.

SECTION II

(1) In order to ensure the smooth working of this Agreement in so far as they are concerned, the Chief Secretaries of the two Provinces, viz., East Bengal and West Bengal, shall meet at least once a month. Whenever matters concerning Assam, Cooch Behar and Tripura are likely to be discussed, the Chief Secretary, West Bengal shall arrange for their representatives to be present.

The Premiers of the two Provinces of East Bengal and West Bengal, or their nominees, shall meet not less than once in two months for the same purpose.

(2) (i) Each Dominion should set up an organisation at the Centre to watch the implementing of the agreements reached and to bring up cases of breaches. It will be the responsibility of each Dominion to ensure that its Provincial Governments and acceding States carry out these agreements in so far as they are concerned. If a Province or a State for any reason considers that an agreement or any part of it should not be implemented, it should report the matter to its Dominion Government who should bring up the matter at the monthly Inter-Dominion meetings referred to in (ii) below.

(ii) All such cases of breaches or non-implementation or possible modifications arising out of the experience of the arrangements made should be discussed at monthly meetings to be held at the Dominion Minister level alternately at Delhi and Karachi.

(iii) Each Dominion should nominate a Minister who for the next few months would be responsible for this work and who will attend those meetings.

(iv) All outstanding matters and such new matters as may arise from day to day relating to East Punjab, East Punjab States, including Alwar and Bharatpur, on the one side, and West Pakistan including acceding States, on the other, will also be brought up for discussion and settlement at these meetings.

(3) The question of migration of Muslims from East Bengal to Assam and the migration of Muslims who have been in Assam prior to partition into East Bengal shall also be dealt with at the Inter-Dominion meetings at the Minister level provided in paragraph 2(ii) above.

(4) It is agreed that if any criminal proceedings have been started in any of the two provinces of East and West Bengal, by the Government of the Province against Government servants, of the other Province in respect of matters arising in course of execution of their duties, such proceedings should be withdrawn and the Government servants concerned, if taken into custody, should be released simultaneously in the two Provinces on a date not later than the 1st January 1949.

(5) In regard to migration to East Bengal from India and to West Bengal from Pakistan, the Government of each of the two Dominions and the Governments of the two Provinces of East Bengal and West Bengal should be implementing this Agreement and otherwise create as early as possible conditions which would remove fear from and infuse confidence into the minds of those citizens who have migrated to the other Dominion and should instruct the Deputy High Commissioner (located in East or West Bengal according as the migration has been from India to Pakistan or from Pakistan to India) to make it known amongst evacuees there and to render to them all possible assistance so as to enable them to return to their original homes, lands and occupations. The Government of the Province to which migration has taken place should give all facilities and assistance to the Deputy High Commissioner and to the evacuees.

SECTION III

On receipt from Pakistan of relevant data relating to exodus on a large scale from areas in India other than West Bengal, Assam, Cooch Behar, Tripura, East Punjab, East Punjab States, Bharatpur and Alwar, another Inter-Dominion Conference should be called to consider action on the lines similar to those proposed above or on any other suitable lines in respect of

(*a*) protection and other safeguards for the property of refugees who have gone out from one Dominion to the other temporarily or otherwise; and

(*b*) creation of conditions in any affected area which will reassure the minorities that their interests and rights are fully safeguarded and will prevent exodus or will induce evacuees to return to their homes.

N.B. The above sections of the Agreement were drawn up in accordance with the recommendations of the Political Committee, a note on which is at Appendix I.

SECTION IV

Economic Committee

The Conference considered the report of the Economic Committee which reviewed the agreements and made recommendations on certain other related matters. The Conference made certain modifications and these have been incorporated in the report which is at Appendices IV A, B and C.

The Committee was not able to reach any decision on the question of rebates of excise duties levied by India on exports to Pakistan. The

Conference considered the points of view of the two Governments and agreed to defer the matter for further consideration.

It had been agreed by India to make available 750,000 lbs. of tobacco to Pakistan under the Karachi Agreement. It was represented by Pakistan that it would not be possible for it to lift this quantity as India wished to impose maximum duty. It was suggested that an *ad hoc* arrangement might be reached on this point and sufficient reduction may be allowed to enable Pakistan to import this quantity of tobacco. The Government of India agreed to consider this suggestion.

SECTION V

Boundary Disputes and Border Incidents

The report of the Committee for Boundary Disputes and Border Incidents between East Bengal and West Bengal, between East Bengal and Assam, and between East Punjab and West Punjab was considered by the Conference and approved with certain amendments which have been incorporated in the report at Appendix V.

SECTION VI

Evacuee Property

(1) The recommendations of the Evacuee Property Committee and of the Steering Committee (Appendix VI) were discussed at the Conference, and it was agreed at the request of the Pakistan representatives who wished to have an opportunity for further consultation with their Government that the following points should be further discussed at an Inter-Dominion Conference at Minister level commencing on the 10th January 1949:

(i) Extended areas as agreed to in para. 2 of the minutes of the Conference of July 22nd.

(ii) Further extension of areas as proposed in para. 4 of the minutes of the Conference of July 22nd.

(iii) Whether Pakistan agree that the settlement of agricultural property should be on a governmental level or consider that it should be as between individual evacuees (*see* para. 5 of the minutes of the Conference of July 22nd and Part II of the draft agreement of March 22–25).

(iv) Setting up of a Joint Urban Assessment Board (*vide* para. 9 of the minutes of Inter-Dominion Conference of July 22nd and para. 4(2) of Part III of the draft agreement of March 22–25).

(v) Whether Pakistan are prepared to agree to India's Proposal that the settlement should be by unrestricted exchanges between

individual evacuees in respect of all urban immovable property (*vide* last two sentences of para. 9 of minutes of Conference of July 22nd).

(2) It was agreed further by the Conference that the following items will be included in the agenda of the next Inter-Dominion Conference to be held at Karachi on the 10th January 1949:

(i) Consideration of trust property *vide* para. 14 of the Conference of July 22nd.

(ii) Jagirs and Muafis *vide* page 11 para. D of record of discussions in Evacuee Property Committee of the Inter-Dominion Conference held on the 6th–9th December.

(3) The Conference decided that para. 16 of the report of the Evacuee Property Committee should for purposes of convenience of reference be added as an annexure to the draft scheme of the Secretariat level conference of March 22–25 and to the minutes of the Inter-Dominion Conference of July 22nd.

(4) Subject to the above, the Conference accepted the Committee's Report.

SECTION VII

Provincial Partition Matters (Assam, Bengal and Punjab)

The Conference considered the report of the Committee on Provincial Partition matters (Appendix VII) and while approving its conclusions directed that the Provinces concerned should do everything possible to expedite the final settlements.

SECTION VIII

Stores

The Conference considered the report of the Stores Committee (Appendix VIII) and accepted it.

SECTION IX

Insurance

The Conference accepted, after consideration, the report of the Insurance Committee (Appendix IX).

SECTION X

Museums

The Conference considered the views of the members of the Museum Committee and directed that the two Dominions should proceed to implement points on which agreement was reached, leaving over points of disagreement for consideration at a subsequent meeting.

APPENDIX I—REPORT OF THE POLITICAL COMMITTEE APPOINTED BY THE INTER-DOMINION CONFERENCE

Terms of reference. To review the progress so far made in implementing the political clauses of the Calcutta Agreement and in particular to examine the complaints made by each Dominion in respect of—

(i) the press in the other Dominion;

(ii) treatment of minorities; and

(iii) the exodus of minorities from one Dominion to the other; and

(*a*) to suggest measures to ensure the implementation of the Calcutta Agreement and to recommend such other steps as may be necessary to ensure that such complaints do not arise in future; and

(*b*) to examine all causes (including economic causes, though these need be considered only in a general way in the Committee) which have the effect of worsening Inter-Dominion relations, or of causing the exodus of minorities on a considerable scale, and to make recommendations calculated to stem the exodus of minority communities, to encourage their return and generally to improve Inter-Dominion relations.

(2) The Committee met on the 8th, 9th, 10th and 11th December, 1948. It reviewed the clauses in Sections I, II and III of the Inter-Dominion Agreement reached in Calcutta in April last. It modified some of the clauses and made certain additions.

(3) The Committee considered the statement entitled 'Draft Charter of Minority Rights (revised)', which was placed before it by the Leader of the Pakistan Delegation. On the question of preservation of the personal law of minorities, the Committee recorded the following statement:

'The Committee recognise that while each Dominion has the inherent right to legislate with regard to all its citizens, there is no intention on either side to interfere with the existing personal law of the minorities except in matters of vital national interest.'

(4) In regard to the other paragraphs of the 'Draft Charter', the Leader of the Indian Delegation explained that the provisions in some of the paragraphs have already been accepted by the Indian Constituent Assembly or in the Calcutta Agreement and the provisions in the other paragraphs are covered by clauses of the Draft Constitution which have not yet been considered by the Indian Constituent Assembly.

The Pakistan representatives said that on their part while the principles of the 'Draft Charter' are generally acceptable to them, they could not bind the Constituent Assembly of Pakistan.

IAIP, Agreement No. XIV, pp. 87-93.

59 (a) *December* 1948

REVIEW OF KARACHI AGREEMENTS OF MAY AND OCTOBER 1948 (AGREEMENT NO. XIV)

The Agreement signed at Karachi in May 1948 had been reviewed at another conference in October 1948. The developments since then were further reviewed. The position in regard to the various commodities and the conclusions reached in respect of them are summarised below:

India's Exports to Pakistan

(1) Coal. The latest available figures showed a distinct improvement on the earlier ones and India agreed to do everything possible to see that the full quantity of coal as agreed to at Karachi was supplied each month. India also agreed to consider supplying a larger proportion of the total quantity by rail.

Pakistan complained that no supplies of hard coke had been received. This had been due to a serious fall in Indian production and it was pointed out that even the original agreement was not a firm one in respect of hard coke supplies.

It was agreed that Pakistan would supply to India a list of its essential requirements of metallurgical hard coke in order of priority and India would try to meet these requirements as far as possible. The Indian delegation further stated that an improvement was expected by the end of January when it would be possible to make larger supplies to Pakistan.

(2) Cloth and yarn. Arrangements had only recently been finalised by a conference between the two Dominions held at Bombay.

(3) Steel, pig iron and scrap. India explained that there were no supplies in the first few months of the agreement as it took about five months for supplies to become available after orders had been placed.

India hoped to step up deliveries with a view to supply the entire quantity of steel agreed to at Karachi during the period of the agreement. If any appreciable portion remained undelivered, India would extend the time-limit.

(4) Paper and board. Monthly allocations on the various mills were made by the Industry and Supply Ministry and export licences were issued accordingly. Pakistan asked that the licences should not lapse at the end of each month. It was explained that export licences were normally valid for a period of three months and a similar validity would be given to the paper and board licences; if any licences had

expired owing to a shorter time-limit having been given, they would be extended.

(5) Chemicals and pharmaceuticals. The sulphates did not need any export licences and there was no hold up on the Indian side in the normal free movement of sulphates to Pakistan. The quantities of acids that have so far been licensed were communicated to the Pakistan Delegation who intimated that some orders for acids had been placed by the Pakistan Government on Bombay and Calcutta firms. The Pakistan Delegation would communicate the particulars to the Indian Chief Controller of Exports, who would issue export licence to them within the quota if they are eligible.

(6) Asbestos cement sheets. No applications had been received for exports when applications had been invited from manufacturers. A licence for 200 tons had been given so far to Asbestos Cement Ltd. It was agreed that licences at the rate of 500 tons a month should be given to the same firm who were the only manufacturers, so that the full quota could be supplied within the period of the agreement.

(7) Paints and varnishes. Many varieties are de-controlled. It was agreed that licences should issue for half the agreed quantity of paints, enamels and varnishes to be supplied by India in respect of the controlled categories containing lead and zinc. Licences for the remaining half would be in the de-controlled varieties. The Pakistan Delegation would communicate particulars to the Indian Chief Controller of Exports to enable him to issue licences to eligible parties within the quota.

(8) Leather and footwear and myrobalans, were de-controlled items.

(9) Jute manufactures were allowed to go to Pakistan without export licence being necessary.

(10) Woollen and worsted goods. Practically the whole quantity had been licensed already.

(11) Groundnut oil. Licences have been issued for a portion, but movement has been slow.

(12) Mustard Oil. The quantity licensed was satisfactory but there was complaint regarding actual movement. The Indian figure of actual movement was very much higher than the one of which Pakistan appeared to be aware. To expedite supplies it was decided that all licence-holders should be told by the Government of India that unless they moved the oil within the time for which the licence was valid, the licence would be given to other parties and they would be permanently debarred from getting any licences in the future. It was further agreed that particulars of licences issued and quantities moved would be supplied regularly to the Pakistan authorities.

(13) Tyres and tubes. Approximately half the quantity had been licensed for export by India and it was agreed that the full quantity should be immediately licensed.

(14) Tobacco. There was no export control over tobacco in India. The Pakistan Delegation pointed out, however, that if India insisted on charging the maximum rate of excise duty on the flue-cured tobacco, the agreement would in fact be ineffective since the importers would not lift the tobacco on those terms.

(15) Seed potatoes. Pakistan pointed out that although India had agreed to supply one lakh maunds of seed potatoes they had no information of any quantity having moved. India stated that movement of potatoes, both table and seed, from Assam to Pakistan had been made free.

(16) Additional matters. Pakistan asked for the export of bauxite to Pakistan at the rate of two wagons a month. India agreed to this.

Pakistan asked for a quota of 6,000 tons of linseed oil. India promised to examine the matter and to make a suitable allocation to Pakistan during 1949.

It was agreed that India will do everything possible to ensure that the goods licensed for export actually did move and for this purpose would

(*a*) issue export licences expeditiously,

(*b*) take suitable action against parties who having got export licences failed without reasonable excuse to move the goods in time, and

(*c*) ensure that transport difficulties were removed as expeditiously as possible.

India also agreed to give special consideration to orders placed by the Pakistan Government with suppliers in India within the framework of the general export licensing policy, provided timely intimation of Pakistan Government's orders was received.

Pakistan's Exports to India

(1) Raw jute. The Indian Delegation expressed concern over supply position and the slow movement of raw jute to India and considered that in view of the final forecast figure issued by East Bengal (Agriculture Ministry) namely 54·7 lakh bales the maintenance by Pakistan of exports of raw jute to other destinations at the level mutually agreed to in Karachi in July last might have the effect of causing a shortfall in the agreed supply to India.

The Pakistan Delegation assured the Indian Delegation that they need not apprehend any reduction in the quantities earmarked for

India under the Karachi Agreement. According to Pakistan's latest and most reliable estimates of the jute crop the actual crop in Pakistan would not be less than 60 lakh of bales after allowing for local consumption and therefore they were satisfied that Pakistan's exports to other countries on the existing scale would not actually interfere with the delivery of 5 million bales of raw jute to India. In regard to movements, Pakistan agreed to upgrade the priority under which raw jute was moving to the mills in Calcutta to the extent necessary with a view to maintaining movements approximately at 1946 level. In order to improve matters in connection with the movement of jute traffic on the E. B. Railway, representatives of Railway Board (India) agreed to supply Broad Gauge empties to the extent necessary. The General Manager, E. B. Railway should intimate his exact requirements to the East Indian Railway. It was agreed that the position should be reviewed again in the near future. Pakistan also suggested that a Joint Committee consisting of competent representatives of the two railway systems and transport and jute interests concerned should be set up in Calcutta so as to keep the problem of raw jute transport by road, rail and river under constant review.

(2) Raw cotton. India drew attention to the recent orders issued by Pakistan which required that India should not only purchase 325,000 bales of cotton before the 31st January 1949 but should also export them out of Pakistan to India. India took the view that the Karachi Agreement of 20th October, 1948 was clear and unambiguous on the point that India was required only to purchase the cotton by the end of January and there could be no objection to the physical export taking place later. Pakistan agreed that this was the correct interpretation. India stated that as the time-limit for making purchases of raw cotton was very short and Indian importers had to be asked to start buying immediately after the Karachi Agreement of October last, the system of distribution of quotas to India through different shippers which was being adopted by Pakistan was bound to give rise to difficulties in actual practice. For example it might happen that some of the contracts entered into by Indian importers were not with parties who got export licences from Pakistan. It was agreed therefore that for the current licensing period, special consideration should be given to India's difficulties in this respect and an officer should go from India to Karachi in order that any possible difficulties might be resolved on the spot. Pakistan added that as a substantial portion of the quota was being given to shippers who were exporting before partition it would be possible in most instances to accommodate Indian orders within the framework of Pakistan export licensing.

(3) Foodgrains. (i) The estimated loss of the rice crop in the normally surplus Provinces of West Punjab, Sind and Baluchistan in the current Kharif year due to floods was shown by Pakistan as in statement attached (Schedule A). As the loss was above 4 annas of the average of the past five years production of rice in the said provinces Pakistan urged that it was not in a position to supply any foodgrains to India.

(ii) India claimed that the basis for reckoning the percentage of loss should be the total rice crop of the dominion as a whole. In substantiation India stated that in the case of a normal crop in West Pakistan and serious failure in East Pakistan, the dominion of Pakistan would certainly have pleaded extenuation and diverted rice earmarked for India to its Eastern Wing. Pakistan urged that if that interpretation was accepted it would imply that Pakistan would have to supply 175,000 tons of rice even if there was total loss of rice crop in West Pakistan plus a loss of 1 million tons in the rice crop in East Pakistan. Therefore, the intention could not have been to apply the escape clause to the rice crop of Pakistan as a whole.

(iii) Pakistan Government agreed that if during the current Kharif year the surplus declared by the surplus areas turns out to be in excess of the requirements of the deficit areas in Pakistan and becomes available for export it will be supplied to India and no rice will be exported to any other country.

(iv) Pakistan also agreed that if a surplus of wheat becomes available for export during Rabi 1949-50 Pakistan will supply 175,000 tons of foodgrains under the Karachi Agreement and no wheat will be exported to any other country during Rabi 1949-50 until 250,000 tons have been supplied.

(v) In order to ascertain if a surplus of wheat is available for export to India for the purposes of para. 4 above India suggested that if the procurement of wheat in the wheat surplus areas exceeds a figure agreed between the two dominions the excess should be deemed to be available for export. This matter will be settled between the Food Ministries of the two dominions.

(vi) The restriction against export referred to in paras. 3 and 4 will not cover token exports of small quantities sent to meet requirements of Pakistan Embassies, etc., abroad.

(vii) Even on the basis suggested by Pakistan in para. 1 the loss works out to about 28 per cent. The actual figures of acreage and yield of these areas are not available yet. India, therefore, reserves the right to re-open the question of supply of rice by Pakistan if finally the loss of rice works out to less than 25 per cent. of the average referred to in para. 1.

Schedule A

Rice (Pakistan)

	Five years average 1943–44 to 1947–48	1947–48	1948–49	
			Acreage	Yield
	(000 tons)	(000 tons)	(000 tons)	(000 tons)
Baluchistan	20	21	51·5	27 (paddy)
Sind	5,97	5,53	Not available	N. A. *
West Punjab	3,21	2,94	do.	N. A. *
East Bengal	75,28	67,37	1,91,27	66,34
N. W. F. P.	12	Not available	53·7	†45
Bahawalpur	12	11	Not available	N. A.
Khairpur	9	9	do.	N. A.
	8,499	76,25		

* The estimates of acreage and yield for 1948-49 are not available but the estimate of loss received by Pakistan Government in terms of rice is as follows :

Sind	150,000 tons
West Punjab	109,000 tons

† Doubtful. To be confirmed.

(4) Additional matters. It was agreed that the movement of soft wood should be made free of all control on both sides.

APPENDIX IV

INTER-DOMINION CONFERENCE

Report of the Economic Committee
New Delhi, 12th December, 1948

Economic Committee

Report of the Economic Committee appointed by the Inter-Dominion Conference at New Delhi in December, 1948.

(1) The Calcutta Agreement of April 1948 was reviewed in detail. The result of the review as well as the fresh recommendations which the Committee found it necessary to make in order to achieve the main objects in view are shown in Appendix I.

(2) The agreement signed at Karachi relating to the mutual supply of certain essential commodities by one Dominion to the other were reviewed and the result of the examination as well as the fresh recommendations made by this Committee are indicated in Appendix II.

(3) The case of stores sold through the disposals organisation lying in one Dominion and purchased by a person who resided or had since

evacuated to the other Dominion had been considered at previous Conference without any agreement having been reached. The present Committee having reviewed the matter recommends the following solution:

(*a*) All such purchasers should be given the option either to take delivery or to have cancellation of the sale.

(*b*) Where the purchaser prefers the former alternative every facility should be provided to him by the Dominion where the goods are lying to take these goods to the other Dominion if the purchaser so desires.

(*c*) Where the purchaser exercises his option to have the sale cancelled, any money deposited by him should be refunded in full without deducting any demurrage, rent, etc., by the Dominion in which the stores are located.

(*d*) The arrangement outlined above should apply even to persons who fall in the category of an evacuee and payment should be made to him and not to the Custodian of Evacuee Property. If necessary, the relevant law of either Dominion should be amended in order to let the purchaser have the full benefit of this recommendation.

(4) The review of the Agreements reached so far has shown that while the two Dominions have found it easy and even necessary to agree on fair and equitable principles in dealing with the wide variety of problems arising out of partition, in actual implementation there have been frequent and recurrent lapses on both sides. The Committee therefore recommends that the machinery set up in Section II, clauses 2(i), (ii) and (iii) of the Agreement should also be utilised for the purpose of ensuring the implementation of the various agreements reached by this Committee in the spirit in which they are entered into.

(5) A number of instances, where there had been lapses in the implementation of the agreements reached so far or there had been other difficulties, came up before the Committee and agreed decisions were taken as indicated in Appendix III.

APPENDIX V

REPORT OF THE COMMITTEE FOR BOUNDARY DISPUTES AND BORDER INCIDENTS BETWEEN EAST BENGAL—WEST BENGAL, BETWEEN EAST BENGAL—ASSAM, AND BETWEEN EAST PUNJAB—WEST PUNJAB

Terms of Reference. To discuss the boundary disputes and incidents on the East-West Bengal, East Bengal-Assam and East Bengal-Tripura borders and the border incidents on the East-West Punjab border and suggest the machinery necessary for—

(*a*) settlement of disputes; and

(*b*) prevention of such incidents

(1) The Committee met on the 6th, 9th, 10th, 11th and 12th December 1948. On the last two days it was assisted in its deliberations by the members of the Steering Committee, Messrs H. M. Patel and G. A. Faruque.

(2) *Boundary Disputes.* The Committee makes the following recommendations for the settlement of the East-West Bengal and East Bengal-Assam boundary disputes:

(i) Tribunal, Terms of reference. A Tribunal should be set up at as early a date as possible and not later than 31st January, 1949, for the adjudication and final settlement of the following boundary disputes arising out of the interpretation of the Radcliffe Award and for demarcating the boundary accordingly:

(*a*) East-West Bengal disputes concerning—

(*i*) the boundary between the district of Murshidabad (West Bengal) and the district of Rajashahi including the thanas of Nawabganj and Shibganj of pre-partition Malda District (East Bengal); and

(*ii*) that portion of the common boundary between the two Dominions which lies between the point on the River Ganges where the channel of the river Mathabhanga takes off according to Sir Cyril Radcliffe's award and the northernmost point where the channel meets the boundary between the thanas of Daulatpur and Karimpur according to that Award.

(*b*) East Bengal-Assam disputes concerning—

(*i*) the Patharia Hill Reserve Forest; and

(*ii*) the course of the Kusiyara river.

(ii) The Tribunal shall consist of three members as follows:

One member nominated by each of the two Dominions of India and Pakistan, such person being one who is holding or has held high judicial office and a Chairman who is holding or has held high judicial office and is acceptable to both Dominions. In the event of disagreement between the members, the decision of the Chairman shall be final in all matters. The Tribunal shall report within three months from the date of its first sitting.

(iii) After the Tribunal has adjudicated upon the disputes, the boundaries shall be demarcated jointly by the experts of both Dominions. If there is any disagreement between the experts regarding the actual demarcation of the boundary *in situ*, such disagreement shall be referred to the Tribunal for decision and the boundary shall be demarcated finally in accordance with such decision.

(iv) The Tribunal shall prescribe the procedure to be followed for adjudicating upon the disputes as well as for deciding the point or points of disagreement, if any, arising from the demarcation of boundary.

(3) (i) The Committee further recommends that the entire boundary between East-West Bengal (other than the portion described in paragraph 2 above) should also be demarcated without further delay by the Directors of Land Records of the two Provinces assisted by such staff and in such manner as they might mutually agree upon, areas where disputes have arisen or may arise being taken up first.

(ii) The Committee recommends that the boundary between East Bengal on the one hand and Assam, Tripura State and Cooch Behar State (India) on the other, except the portions described in para. 2 above, should also be demarcated as soon as possible by the Directors of Land Records of the Provinces or States concerned, assisted by such staff and in such manner as they might mutually agree upon.

(4) The cost of the Tribunal and of implementing the recommendations contained in paragraphs 2 and 3 above other than that of the staff normally employed by the two Governments shall be borne equally by both Dominions.

(5) In order to prevent border incidents on the East Bengal-West Bengal and East Bengal-Assam borders, the Committee recommends that all border incidents other than those involving questions of policy shall be settled by the District Magistrates and failing them by the Commissioners of the Provinces concerned or where there are no Commissioners, by officers of equivalent rank and steps shall be taken to prevent the recurrence of such incidents in the future.

(6) Regarding the incidents on Tripura-East Bengal border, the Committee agreed that both Governments must take all possible steps to prevent the recurrence of such incidents in future. Such incidents shall be settled by the District Magistrates of the districts concerned in East Bengal and the Dewan of Tripura State who should meet as soon as practicable, with a view to holding a joint enquiry, if necessary, followed by such other action as the circumstances may necessitate. In the event of disagreement between the District Magistrates and the Dewan, the matter shall be referred to His Excellency the Governor of Assam and the Honourable the Premier of East Bengal or their nominees, for decision.

(7) Both Governments agree that henceforth no attempt will be made by either side to settle boundary disputes by force.

(8) Interim Arrangements—

(i) East Bengal-Assam border. The Committee recommends the following proposals for the interim administration of the Patharia Reserve Forest on the East Bengal-Assam border:

(*i*) There shall be no armed forces of either Government of any description within 5 miles of the periphery of the Reserve Forest.

(*ii*) East Bengal Government shall be in possession of the Reserve Forest West of the Radcliffe Line and Assam Government shall be in possession of the Reserve Forest East of the Radcliffe Line.

The strength of the Forest staff to be employed by each of the two Governments on each side of the Radcliffe Line shall be determined jointly by the Conservators of Forests, East Bengal and Assam.

(*iii*) Each side undertakes not to make any new construction of any description within the areas of the Reserve Forest, of which it will be placed in charge, for the interim administration, provided, however, that there shall be no objection to any special operations necessary in connection with the oil boring by the B.O.C. on either side of the Radcliffe Line within the Reserve Forest.

(*iv*) In order to satisfy themselves that each of them is carrying out the undertakings set out above, the two Governments will agree to the areas of the Forest placed in their respective charges being inspected by a joint Committee of Officers, one of each Government, not below the rank of a Divisional Forest Officer assisted by such advisers as each might consider necessary.

(ii) East Bengal-West Bengal border (Rajshahi-Murshidabad). It was agreed that without prejudice to the rights of either Government to the area in dispute each Government shall continue to maintain possession of the areas which are now in its possession along the East Bengal-West Bengal border. The area now in actual possession of West Bengal at Ghughumari Ghat (Rainapur) shall be cordoned off by East Bengal on its periphery on the East Bengal side and shall continue to remain in possession of West Bengal provided that

(*a*) both West Bengal's and East Bengal's anti-smuggling staff may be stationed in this area and may freely patrol the river bank along this area; and

(*b*) that West Bengal will exercise Civil and Criminal jurisdiction over this area and shall post a Magistrate on the spot to deal with local cases.

(9) Border incidents on the East Punjab-West Punjab border. The following arrangement was agreed upon by the Chief Secretaries of West and East Punjab and recommended by the Committee.

(i) It was agreed that there was a need for having a line of demarcation between East and West Punjab, especially in area where the boundary line was not very clear. The possibility of setting up boundary pillars in this area should be immediately explored. We further recognise the difficulties that arise on account of some villages belonging to one Dominion being on the wrong side of the river in the other Dominion. It is suggested that the two Financial Commissioners on either side assisted by such expert revenue officers as they consider necessary may meet and go into this problem with a view to making definite recommendations. The two Financial Commissioners will also immediately go into the question of the erection of boundary pillars in the area where the boundary is not clear.

(ii) (*a*) It was agreed that the Inspectors-General of Police of East and West Punjab should meet at least once a month to review the situation arising out of border incidents on both sides, assisted by the local District Magistrates and the Superintendents of Police. They will discuss the individual incidents and devise measures to ensure that such incidents are not repeated.

(*b*) For this purpose the two Inspectors-General of Police must take steps to institute immediately enquiries into all serious incidents which will be reviewed by them in their monthly conferences, and

(*c*) The two Inspectors-General of Police will submit a monthly report of the progress of their work to their respective Governments for their onward submission to the Dominion Governments.

(iii) A warning shall be issued by the two Provincial Governments to the local border police, home guards and national guards, etc., asking them to desist from giving any direct or indirect assistance to the raiders on both sides. Similar warning should be issued to the military along the border by the two Dominion Governments. Where as a result of the monthly conferences between the two Inspectors-General it appears that military or police personnel are involved in the raids, immediate and effective disciplinary action shall be instituted by the Provincial or the Dominion Governments concerned.

(iv) Where the residents of a village are proved to have been involved in such raids, apart from other action, the question of levying collective fine on the village shall be immediately considered by the Provincial Government concerned.

(v) The two Provincial Governments shall take steps to publicize these decisions along the border areas so that the miscreants and raiders on either side know that effective action shall be taken against them in the event of their participation in such activities.

APPENDIX VI

(Extract)

RECORD OF THE DISCUSSIONS OF THE EVACUEE PROPERTY COMMITTEE OF THE INTER-DOMINION CONFERENCE HELD IN NEW DELHI ON 6-9 DECEMBER 1948, IN THE ROOM OF SECRETARY, MINISTRY OF RELIEF AND REHABILITATION

Introductory

(1) The representatives of the Government of Pakistan stated that they were not in a position to give their considered views on certain important items in the Minutes of the Inter-Dominion Conference of July 22, 1948, such as the areas to which the agreement should be extended or the treatment of urban immovable property. The Government of Pakistan had been actively examining the important points involved and as they had not been able to collect all the important data which was necessary to enable them to come to a decision, it was impossible for their representatives to put forward any definite proposals in this Conference.

It was for this reason that they had requested India not to include this item in the agenda but had finally agreed only after India had insisted on its inclusion.

The Government of Pakistan representatives also said that their Government was under the impression that these minutes were subject to ratification by both Governments and that the Government of Pakistan for the reasons given above, had not yet ratified them.

They further stated that, in their opinion, another conference should be held shortly in, say, a month's time and by then they would be able to come to a final decision on the outstanding points and be in a position to put before the Conference definite proposals.

(2) The Indian Dominion representatives, on the other hand, were of the opinion that certain agreements had already been reached at the Minister-level Conference of 22nd July 1948, and there could be no question of re-opening the agreements already arrived at. Agreements in the past had invariably been acted upon without any formal ratification by either Government. They were rather disappointed at the protracted negotiations, as, in their opinion, very little had been achieved since the Inter-Dominion negotiations in March 1948. Refugees in either Dominion had been led to believe that they would be able to dispose of their property before long and in

the meanwhile secure the income accrued to them from their property. These hopes had, unfortunately been deferred too long. It was the firm conviction of the Indian representatives that a very early and expeditious settlement of the property question would go a long way towards the rehabilitation of refugees in either Dominion thus removing a very potent cause of friction which exists at present between the two Dominions.

(3) Pakistan representatives regretted that a misunderstanding had occurred but they fully agreed with India that an early settlement of the property question was of vital importance and that Pakistan would do everything in its power to expedite the settlement.

Part I—General, of the Minutes of the Conference of 22nd July

I. Areas to which agreement will apply—

(4) The representatives of Pakistan Government said that they regretted they were unable to accept at present the proposals contained in the minutes of the Conference of 22nd July 1948 for the extended areas as these have not been approved by their Government. They would prefer to leave the matter open for consideration at the next Conference and in the meantime they would like to work on the old areas as agreed to in the Conference in March 1948, viz., the whole of Western Pakistan, and, in India, the Province of East Punjab, East Punjab States less Malerkotla State, the States of Alwar, Bharatpur and Bikaner, and the Province of Delhi. The India Government representatives stated that the areas had already been agreed upon on 22nd July 1948 and there was no justification for re-opening the question.

II. General principles—

(5) Paragraph (3) of the 22nd July 1948 minutes was accepted by representatives of both India and Pakistan.

(6) Paragraph (4) of the 22nd July 1948 minutes. The representatives of Pakistan stated that they would prefer to keep this open till the next Conference.

Part II—Agricultural Property

(7) Paragraph (5) of the minutes of 22nd July 1948 Conference. It was agreed that considerable progress had been made in the preparation and exchange of copies of revenue records of West Punjab and East Punjab districts and the East Punjab States. In regard to the other States in India, namely Alwar, Bharatpur and Bikaner, and

for the Province of Delhi the records were being prepared, but exchange had not yet taken place. In Pakistan similarly, the revenue records of the Provinces of North West Frontier and Sind and the administered area of Baluchistan and the other States in West Pakistan particularly, Bahawalpur and Khairpur, were being prepared but had not yet been exchanged. It was agreed that the following procedure should be adopted for the exchange of the remaining copies of the revenue records and that every effort should be made to complete the work by the 15th January 1949:

Copies of all the revenue records of the remaining areas in Pakistan should be handed over to the Deputy High Commissioner for India in Lahore.

Copies of the revenue records for the remaining areas in India should be handed over to the Deputy High Commissioner for Pakistan at Jullundur.

It was agreed that a Joint Committee of the two Deputy High Commissioners at Jullundur and Lahore should be set up to see to the work of procurement of the copies of the revenue records and for their expeditious transfer to the representatives of the other Dominion.

(8) Paragraph (6) of the minutes of Inter-Dominion Conference of 22nd July 1948—

(*a*) Representatives of both Dominions agreed that a Liaison Officer of the other Dominion should be appointed to be in close touch with the Custodian of Evacuee Property, for the purpose of—

(i) obtaining information on general principles being followed with regard to management of evacuee property;

(ii) making representations—general or in respect of cases of particular evacuees or properties—for the consideration of the Custodian;

(iii) obtaining information regarding demand statements and account statements regarding properties of evacuees, and generally to expedite by references to the Custodian the implementation of paragraphs 9 and 10 of Part III of the draft scheme of the Joint Official Committee of March 22nd-25th;

(*b*) The Liaison Officer will be attached to the High or Deputy High Commissioner of the Dominion to which he belongs, but will have office accommodation in the office of the Custodian to which he is attached;

(*c*) The Pakistan representatives agreed to the above on the condition that the office of the Custodian of Evacuee Property, East Punjab, was and would remain at Jullundur.

Part III—Urban Immovable Property

(9) Paragraph (7) of the minutes of the Inter-Dominion Conference of 22nd July 1948. The Pakistan representative said that they were not prepared at the present moment to consider the question of settlement of urban immovable property. They would like this question to be held over for consideration at the next Inter-Dominion Conference.

(10) Paragraph (9) of the minutes of 22nd July. The Pakistan representatives stated that Pakistan was not prepared at the present moment to agree to any proposal for the unrestricted private exchange of urban property. They would like this proposal to be held over and considered at the next Inter-Dominion Conference.

In regard to the proposal for the Joint Urban Assessment Board made in paragraph (9) of the minutes of 22nd July, 1948, the Pakistan representatives stated that in the present circumstances it was impossible for Pakistan to agree to such an elaborate organisation being set up.

It was, however, agreed by the representatives of both the Dominions that it was desirable that steps should be taken for early collection of rents for evacuee property and settlement of accounts in accordance with the provisions contained in paragraphs 9-10 of Part III of the Inter-Dominion Draft Scheme dated 22nd-25th March 1948.

Part V—Movable Property

(11) Paragraph (11) of the minutes of 22nd July, 1948. The Pakistan representatives stated that the Joint Government Agency proposed in the July Agreement was not acceptable at the present moment and suggested that a Joint Committee of the Deputy High Commissioner at Jullundur and Lahore should go into the question and suggest alternative measures for the evacuation of movable property.

The representatives of India stressed the need of a Joint Government Agency, but they had no objection to the two Deputy High Commissioners meeting together to make proposals for consideration.

(12) Paragraph (12) of the minutes of 22nd July 1948. The proposals in this paragraph have been agreed to and are being acted upon.

(13) Paragraph (13) of the minutes of 22nd July, 1948. It was agreed that the Inter-Dominion Commission should now start functioning.

(14) Paragraph (14) of the minutes of 22nd July, 1948. As the question was not specifically referred to the Pakistan Government before this meeting, their representative would prefer to postpone a discussion of this item to the next Inter-Dominion Conference.

(15) Paragraph (15) of the minutes of 22nd July 1948. May be referred to the Inter-Dominion Commission.

(16) Paragraphs (16) to (19) of the minutes of 22nd July 1948.

Assessment to Income-tax on Refugee Assessees. Proposals agreed to by the C.B.R. India and Pakistan for the consideration of the Committee.

Government of India will appoint special officers at Delhi and Bombay to whom the refugee assessees in India who have come from West Punjab, N.W.F.P., Sind and Baluchistan will furnish (in duplicate) particulars of their addresses, etc., as given in the letter dated 28th October 1948 to the Central Board of Revenue, Pakistan. The Press Note will be modified accordingly.

The special officer in India will forward a copy of these particulars to his counterpart in Pakistan who will distribute them among the Income-tax Officers having jurisdiction to deal with the cases.

The Income-tax Officer concerned will then send the notices calling for returns or evidence through the special officer of Pakistan who will forward them in batches each week to the special officer in India and he will send them to the assessees concerned.

The Income-tax Officer in Pakistan should make an *ex parte* assessment only after he hears from the special officer in India, that the notice could not be served on the assessee as his whereabouts are not known or that the assessee without valid cause has failed to comply with the notice. In cases where assessments would otherwise become time-barred, an *ex parte* assessment may be made after the due date for the receipt of return but full facilities should be given for re-opening the assessment on valid cause being shown in appeal.

Each Government will arrange for assessees being represented before the Income-tax Officer, if they so desire by authorised agents to whom the accounts, etc., will be sent through the respective High Commissioners.

As soon as an assessment is completed in Pakistan one copy of the demand notice should be sent to the special officer in Pakistan and he will forward it to his counterpart in India who will pass it on to the assessee. Another copy will be sent to the Custodian of Evacuee Property in Pakistan.

The Custodian will adjust against the demand any amount to the credit of the assessee and if the full demand could not be met, the balance shall be communicated to the assessee through the special officer.

Property of the assessee may be attached for the balance of the tax if any due, but shall not be sold in auction except with the consent of the assessee within one year after they are permitted to sell or exchange the properties.

Any *ex parte* assessments made before the introduction of this procedure on evacuee assessees to whom the ' stand-still ' agreement applied will be cancelled by the Commissioner and revised assessments made in accordance with the procedure contained herein. As regards other evacuees, appeals against *ex parte* assessments already made shall be entertained irrespective of the time-limit, provided the appeals are filed before the 15th January 1949.

The notices intended for assessees in India shall be sent to the special officer in India in special bags through the respective High Commissioners, and the special officer shall send them to the assessees at the addresses given in the statement, and shall after service of the notices, forward the acknowledgements to his opposite number in Pakistan.

Arrangements in Pakistan shall be exactly similar to those in India, and special officers will be appointed at Karachi and Lahore.

When owners of properties are permitted to sell or exchange their properties, such sale or exchange shall be subject to the claim for arrears of tax if any and shall not become final till tax is paid.

The proposals contained in the Central Board of Revenue India's letter to the Central Board of Revenue Pakistan mentioned above shall be acted upon except to the extent modified above.

This new procedure shall be announced in the Press simultaneously by both Dominions on the 17th December 1948.

Other subjects discussed by the Representatives of the two Governments

(*a*) *Sale and transfer of shares.* Pakistan representatives mentioned that correspondence was going on between the Governments of India and Pakistan regarding the existing restrictions on transfer and sale of shares in West Punjab. Pakistan representatives stated that if restrictions on such sale and transfer of shares in East Punjab and Centrally Administered Areas were removed, restrictions in West Punjab and other areas wherever they exist will be withdrawn by Pakistan Government.

The Indian representatives stated that the restrictions in India were imposed only because they existed in Pakistan and they would be prepared to withdraw the restrictions on a reciprocal basis.

It was agreed that restrictions shall be withdrawn by both the Governments immediately.

(*b*) *Money due to evacuees from Government and quasi-Government bodies.* It was represented by the Pakistan representatives that restrictions existed to contractors who have now become evacuees and to Government servants, to servants of Universities and local funds and other bodies. It was mentioned by the Pakistan representative that at present

money payable to contractors was deposited with the Custodian and not paid to the contractor concerned by the Governments on either side. India also pointed out that in the case of the Punjab University employees who had migrated to India, the Provident Fund money had not been paid to the employees for lack of Custodian's permission. Similarly restrictions have been imposed in Delhi. Court deposits and Provident Funds of teachers employed by local bodies were similarly being held up in either Dominion. It was decided that all money due from Government or quasi-Government bodies like the University, the District and Municipal Boards and other local bodies should be payable by them direct to the evacuee concerned without the intervention of the Custodian and should be subject only to any agreements regarding exchange control between the two Governments.

Examples of such payments were sums due to the contractors for work done or goods supplied or otherwise under the contract, pay, leave salary and provident fund amounts of Government servants and servants of Universities, local bodies and quasi-Government institutions, security deposits of contractors and public servants, court deposits and scholarships due to students. These items are illustrative only and not exhaustive.

To enable this agreement to be implemented, immediate amendment of the Custodian of Evacuee Property Ordinance will be necessary in both the Dominions. In the meantime instructions should be issued not later than the 15th January, 1949, to the Custodian to grant general permission for the free movement of money relating to such items.

The Indian representative pointed out that on both sides a large number of claims from Government and semi-Government departments and institutions are outstanding and evacuees entitled to moneys are not being paid. It was agreed by both the representatives that effective measures should be taken to have all such claims considered and paid as early as possible. It was decided that both Governments should issue instructions to Government departments, semi-Government institutions and to local bodies to expedite payment of claims of evacuees.

Teachers other than those included in (b) above. It was agreed that teachers other than those employed by Government and quasi-Government bodies will also be given the benefit of the arrangements agreed to in (*b*) above.

(*c*) *Changes in Evacuee Property Law in Pakistan.* The Indian representatives pointed out that the latest Pakistan Ordinance appeared to be stricter in certain respects than the older law, and contrary to the spirit of the negotiations between the two Dominions. The

Pakistan Representatives agreed to examine the points raised by the Indian representatives. A detailed note on the subject is to be given to the Pakistan Government representatives and the matter will be discussed at the next Conference.

(*d*) *Jagirs and Muafis.* The question of Muafi, land grants, assignment of land revenue and jagir grants, etc. was raised by the Pakistan representatives and it was decided that both the Governments should examine the position and discuss the matter further in the next Inter-Dominion Conference.

(*e*) *Estates under Court of Wards.* It was agreed that whether the estates were still under the Court of Wards or had been released and handed over to the Custodian after partition, the wards or ex-wards and dependants or ex-dependants may continue to be paid a suitable allowance direct by the Court of Wards or the Custodian as the case may be, as a special case.

(*f*) *Improvement Trust Plots.* It was agreed that the rights of the evacuee owner should not be forfeited. The sale of Improvement Trust plots generally include a condition that the failure to build within a specified period, or to pay the necessary number of instalments, would mean forfeiture of the plot of land by the Improvement Trust. It was agreed that such penal conditions should be held in abeyance. This does not preclude the state from acquiring or requisitioning the land for the purpose of rehabilitation of refugees.

(*g*) *Government servants who have migrated from one Dominion to another and who were in pensionable service but had not earned their pension.* The concensus of opinion was that something must be done for these persons, but the question must pend the settlement of an agreement between the two Dominions on the bigger issue of the pensions already earned.

(*h*) *Exchange of undertrial prisoners on bail.* It was agreed by the representatives of both the Dominions that since the persons who were in prison have already been transferred, there is no reason why those who were on bail should not be considered eligible for transfer. Pakistan representatives pointed out that this matter was under consideration of their Governments ; but pending the final decision, it was agreed that no action should be taken to forfeit the bail-bonds or personal securities.

(*i*) *Transfer of cases in mental hospitals.* It was agreed that non-Muslim patients in the mental hospitals in Pakistan and Muslim patients in similar hospitals in India whose relatives have gone over to the other Dominion may be transferred to India and Pakistan respectively subject to the adjustment of any amounts that may be due on their accounts. This will be applicable only to persons already in hospitals on 1st December, 1948. . . .

REPORT OF THE COMMITTEE ON EVACUEE PROPERTY RECOMMENDATIONS OF THE STEERING COMMITTEE

The Evacuee Property Committee has submitted a report in which there is disagreement between the representatives of India and Pakistan on the following principal points:

(1) area to which the agreement would be applicable;
(2) transfer and sale of agricultural property;
(3) transfer and sale of urban immovable property; and
(4) disposal or transfer of movable property.

The Steering Committee had a prolonged discussion with the representatives of the two Dominions and agreement was reached on point No. 4. It was agreed that the two Deputy High Commissioners should work as a joint committee for facilitating the movement of the movable property from one Dominion to the other.

With regard to the other points, the Pakistan delegation maintained that they were not in a position to express any opinion or proceed further with implementation until the agreement reached at the Minister level conference held on the 22nd July, 1948 at Lahore was ratified by their Government. Indian representatives on the other hand stated that they had all along proceeded on the assumption that there will be no question of the agreement being subject to any ratification. Having regard to the time that has elapsed since the Lahore Agreement was signed by the representatives of the two Governments, the Steering Committee would recommend to the Conference that where there were actual agreements in substance between the two Governments in Lahore they should stand and should be implemented. This is a matter to which considerable importance is attached by the private individuals whose property lies in one or the other Dominion. The Steering Committee would further recommend that the implementation of the points on which agreement had been reached should be completed with the utmost expedition.

Where at Lahore certain points were left over for further consideration, the Steering Committee would recommend that the two Governments should make up their minds within a month and intimate their considered views on those points to each other. If a further conference is necessary to settle these points, it should be held within six weeks.

AGREEMENT XIV, APPENDIX VII—INTER-DOMINION CONFERENCE REPORT OF THE COMMITTEE ON PROGRESS IN SETTLEMENT OF FINANCIAL MATTERS ARISING OUT OF THE PARTITION OF PROVINCES

A. Bengal Partition

The Committee considered the (Appendix I) Report drawn up after discussion by the representatives of East Bengal and West Bengal. On the various points raised in the Report it was agreed as follows:

(*a*) The debit balance on account of the undivided Government of Bengal on the books of the Reserve Bank which was provisionally cleared by equal payments by the two Governments should be taken as the liability of the undivided Government and shared in the general proportion fixed by the Arbitral Tribunal.

(*b*) The outstanding amounts due to the Central Government by the undivided Government of Bengal should be allocated between the two Provinces in the general ratio fixed by the Arbitral Tribunal and each Province will owe its share to its Central Government.

(*c*) The two Provinces should appoint actuaries to determine the capital value of the pensionary liability of undivided Bengal. Pending this valuation each Province should continue to pay the pensioners in accordance with the interim arrangements already entered into subject to final adjustment of the capital liability as determined. The basis and method of this eventual adjustment will have to be settled as part of the financial settlement between the two Provinces arising out of partition.

(*d*) In the case of deposits, each Province will continue to pay the liabilities arising in its area without prejudice to the eventual settlement between the two Provinces.

(*e*) The method of allocation of the amounts at the credit of the Post-war Services Reconstruction Fund should be examined by the two Governments and an early decision reached.

(2) In the course of discussion the question of how the net liability of one Province to the other which may arise out of the partition settlement should be liquidated was raised. It was decided that West Bengal which is likely to emerge the net debtor should consider and formulate proposals in this behalf at an early date.

(3) It was agreed that the two Governments should use their good offices in securing an equitable distribution of the assets of the funds of non-official organisations other than charitable endowment which before the partition used to serve the undivided provinces.

(4) The East Bengal representatives also raised the question of the interpretation of Section 8(ii) (*a*) of the Indian Independence (R.P. & L.)

Order, 1947, read with para. 16 of the Arbitral Tribunal's Award on Issue No. 2. It was suggested to East Bengal that this matter should be taken up by them with the Pakistan Government who had interpreted corresponding provision of the Order affecting Pakistan differently in respect of similar liabilities at the Centre. It was represented on behalf of East Bengal that they were not concerned with what happened between the Dominion Governments. In their view the settlement between the two Provinces must be governed only by the Award, in cases in which it has been sought and given by agreement between the Provinces themselves and in this case the Award was clear and specific and should be adhered to and implemented by both the parties.

(5) The East Bengal representatives also raised the question of the division of the securities held by the Reserve Bank on behalf of undivided Bengal. The West Bengal Government were asked to examine the matter and inform East Bengal Government.

(6) It was agreed that the various outstanding points mentioned in the note of the representatives of the two Governments and the above note should be settled as early as possible and in any case not later than a period of three months.

(7) Stores record, etc. As regard the flat *Rundel, S.T. Chitpore* and two coal barges and three mud barges with their tools, plant and stores (being component parts of the Dredger *Burdwan*), D Tug 113 etc. belonging to the Irrigation Department of undivided Bengal, the Chief Engineers of East and West Bengal should meet and take steps for effecting exchange on the lines already agreed upon.

As regards police arms and ammunition claimed by either Province from the other, the Inspector-General should meet and try to come to an agreement, failing which they should report the facts to their respective Governments.

As regards arms, ammunition, animals, library and other stores of Sarda Police Training College, West Bengal requested that if there be a surplus over present requirements of East Bengal of any item that should be supplied in kind by East Bengal to West Bengal. East Bengal stated that there could be no question of the physical division of any of the assets of the Police Training College. They admitted that financial adjustment would be, however, necessary.

As regards bulbs, shades and other equipment of the Electrical Division of undivided Bengal, the Province should check up and see if West Bengal has made over such stocks as are due to East Bengal, failing which early steps should be taken to supply the remaining bulbs etc.

As regards Nissen huts, West Bengal should supply to East Bengal materials for 21 such serviceable huts, the materials being as far as possible, similar in condition and completeness to those which remained in West Bengal when the partition took place.

As regards historical records of the Government of undivided Bengal, two representatives from the two Governments of East and West Bengal should meet before the 15th January 1948 and make their agreed recommendations. If they fail to come to an agreement, they should tender their advice to East and West Bengal who should then meet before the 15th February and try to come to an agreement.

As regards furniture it was agreed that these should be supplied by West Bengal to East Bengal expeditiously.

As regards equipment of the Record Room of undivided Bengal, East Bengal should supply the detail wanted by West Bengal on receipt of which arrangements should be made to deliver such of these to East Bengal as are due to that Province.

As regards books of reference the decision of the Separation Council should be implemented early by West Bengal.

As regards the share of the common records of the divided district of Nadia claimed by East Bengal and the share of the divided districts of Dinajpur and Jessore claimed by West Bengal, the West Bengal representatives stated that orders have already been issued by West Bengal for the return of the records of Nadia. The East Bengal representatives said that they would check up and see that West Bengal gets her share of the records of the divided districts.

As regards the motor launch *Marie* of the Excise Central Detective Department claimed by West Bengal as allotted to that Province of the Assets and Liabilities Committee of the Separation Council, the East Bengal representatives agreed to look into the matter and ensure a decision by the 15th of January 1949.

As regards one of the Forest launches still claimed as due by West Bengal from East Bengal, the representatives of East Bengal agreed to settle the matter by 31st January 1949 in consultation with the representatives of the Government of West Bengal.

As regards the fittings, accessories and other essential stores of *M.L. Rescue* of the Forest Department which are stated to have been retained before the return of the launch to West Bengal the representatives of East Bengal agreed to look into the complaint and return the fittings etc. to West Bengal, so far as the allegations are found correct.

As regards the Police Harbour Defence motor launch 1104 and jeep BLB 7093 claimed by West Bengal as due from East Bengal, the representatives of East Bengal promised to look into these cases and

return these to the Government of West Bengal not later than 31st January 1949.

As regards the Prime Mover at Jalpaiguri on account of the W & B Department workshop, the Pakistan representative said that his claim was on the strength of a sub-committee's decision and promised to send a copy of that to the West Bengal Government as early as possible, and West Bengal undertook to intimate their views to East Bengal within a fortnight of the receipt of the above-mentioned communication.

B. Punjab Partition

(8) The Committee considered the report (Appendix 2) prepared by the representatives of the East Punjab and West Punjab.

(9) As regards the payment of outstanding claims relating to the pre-partition period the following decisions were reached.

(10) It was agreed that the joint committee consisting of two representatives of each of the Governments of East and West Punjab to examine outstanding claims of third parties against undivided Punjab for supplies and services made before the 15th August, 1947, should be immediately set up. It was also agreed that after this Committee have passed the claims, payments should be made by the two Governments in respect of claims arising within their area, and that these payments should be currently shared in the ratio fixed by the Arbitral Tribunal, namely 60 per cent, for West Punjab and 40 per cent, for East Punjab. The Committee will be set up before the 1st of January 1949 and all claims will be examined and sanctioned for payments within a period of six months, i.e., by 30th June 1949.

(11) It was also agreed that the expenditure, other than that referred to in para. 1 above, relating to the period before the 15th August, 1947, but paid up to and including the 31st March 1948, in either Province should, after necessary scrutiny, be shared between the East and West Punjab in the prescribed ratio ; and that expenditure relating to the period before the 15th August, 1947, but paid after the 31st March 1948 be finally adjusted against the balances of the Province making the payment. Arrears of pensions relating to the pre-partition period will, however, be finally borne by the Province in whose list the pensioners concerned are included.

(12) It was also agreed that each Province should finally retain to itself whatever arrears of revenue pertaining to pre-partition period it may collect after the 15th August, 1947.

(13) The East Punjab representative raised the question of the return of the Securities held by the Provincial Co-operative Bank

on behalf of the Co-operative Societies now located in East Punjab as also the funds and deposits in Co-operative institutions in either Province. It was agreed that these questions should be considered at the meeting to be held in Lahore towards the end of this month to consider banking and allied problems.

(14) The East Punjab representative also raised the question of the refund of the Provident Fund Deposits and gratuities of former employees of the Punjab University, the Lahore Public Library and similar non-Government institutions. In the case of the Punjab University, it was pointed out that the arrangements made at the conference held on the 22nd to 24th November in respect of the payment of Provident Funds and local Funds would apply. In the case of the Provident Funds of the Punjab Public Library and similar institutions, it was agreed that the West Punjab Government should use their good offices to secure an early settlement of the claims.

(15) The West Punjab representatives handed two notes, one (to the East Punjab Government and to the Government of India) relating to security deposits pledged to the West Punjab Government and forwarded to the Reserve Bank for reinforcement on Pakistan, and the other (to the Government of India) dealing with certain securities said to be held by the Deputy Accountant General, Posts and Telegraphs, Calcutta, on behalf of the Aitchison College, Lahore. It was agreed that the Government of East Punjab and the Government of India should look into the matter and reach an early decision.

(16) The West Punjab representatives also handed a note regarding the short supply of water from the Bari Doab Canal system to certain West Punjab distributaries. The East Punjab representative promised to have the matter looked into expeditiously in consultation with the Chief Engineer of his Province.

(17) The Committee agreed that the Provincial Governments should expedite the appointment of actuaries to evaluate the pension liabilities and meantime the existing arrangements for the payment of pensions by the two Provinces should continue.

(18) It was also agreed that the Implementation Committee and other Committees dealing with partition matters should be convened as early as possible and all the outstanding work in connection with the partition should be completed by the 30th June, 1949.

(19) The representatives of West Bengal raised the question of the transfer of two Electrical Generators ordered by undivided Punjab and now held by the Electrical Commissioner with the Government of India. They contended that these two generators had been ordered for Lahore and should be made over to them. The East Punjab repre-

sentatives contended that these two generators had been ordered for balancing the equipment for the Distribution System of the Mandi Project, and should, therefore, be retained by East Punjab. They also mentioned that the matter had been referred to the Partition Council for a decision.

The Steering Committee recommended that an *ad hoc* decision should be taken and propose that the two Provinces should take one generator each. They consider that this settlement would be fair to the two Provinces.

C. Assam Partition

(20) The Committee could not consider the latest position in regard to the settlement of partition matters between Assam and East Bengal as the representatives of the two Governments had not come with the necessary papers. It is agreed that the two Governments should meet at an early date and submit to the two Dominion Governments within a month's time a report of the steps being taken by them to expedite a final settlement.

Appendix I—Note on the Bengal Partition Items

An exposition of the financial results accruing from the implementation of the Award of the Arbitral Tribunal was given by a representative of East Bengal. According to his version the total assets of Bengal were of the value of Rs 47,20,30,762 out of which the share of East Bengal and West Bengal worked out to Rs 30,54,51,240 and Rs 16,65,79,522 respectively. This included the assets of a few Departments regarding which specific agreement had not been reached but as the valuation was based on Book Values there was little fear of a serious dispute. The two provinces had taken possession of the assets of the following value :

East Bengal : Rs 15,49,50,306.
West Bengal : Rs 31,70,80,522.

It will thus be seen that West Bengal had taken over assets in excess of her share to the extent of Rs 15,05,00,934 which amount was due from her to East Bengal.

(2) As regards liabilities it was stated on behalf of East Bengal that the Arbitral Tribunal took as the basis of the Award the statement of liabilities included in the case of East Bengal submitted to the Tribunal. Except Pensions for which a ratio of 41.83 (East Bengal) and 52.17 (West Bengal) had been determined, the other liabilities were to be shared in the general ratio. Mr Said Hasan read out the list of liabilities which he had taken into account in arriving at the

figures. Mr Das Gupta said that he was not in a position to go into detailed figures but an obvious omission was the sum of approximately Rs 514 lakhs representing the overdraft on the Reserve Bank against Bengal and cleared in equal moiety by the two provinces. This omission, it was stated on behalf of East Bengal, was deliberate. The Committee for the Implementation of the Award had, after discussion, decided not to consider it as a divisible liability because the Arbitral Tribunal had not treated this sum as an outstanding liability requiring adjustment between the two Governments. It was argued by Mr Das Gupta that the Implementation Committee was not empowered to take final decision without the orders of Government and that if Mr Rajagopal, the representative of West Bengal on the Committee, had made an omission it should be rectified. He also stated that Mr P. N. Rajagopal had not agreed to the amount being dropped, but only no mention had been made of the item. The representatives of East Bengal averred that the Application Committee, of which the Committee for the Implementation of the Award was a part, had full powers to come to decisions on behalf of the Governments which they represented and only when the Committee made a recommendation to Government instead of coming to a decision itself, was it necessary that the Separation Council should decide a matter. This Committee had dealt with all the liabilities and given its decision. It had disregarded the amount paid to the Reserve Bank because it had not considered the amount to be an outstanding liability needing an adjustment. Mr Das Gupta argued that the Application Committee had not yet concluded its work so it cannot be said that it had disregarded the amount and the full picture is not yet before us and many things are still to be worked out by the Committee.

(3) Mr Rangachari then raised the question of the loan from the Centre. He averred that while it had been agreed that the amounts due from Pakistan provinces to the Government of (undivided) India would be payable to the Pakistan Government, it (the decision) did not contemplate that East Bengal should recover in cash from West Bengal the latter's share in these loans owed to the Central Government by Bengal which would need separate consideration.

(4) As regards Pensions it was stated on behalf of East Bengal that as far as the existing pensions were concerned that Province had undertaken to pay all Pensions registered for payment in Pakistan and UK. These amounted to Rs 38,71,776 per year in East Bengal and Rs 26 lakhs (according to the Budget of 1946-47) in UK, i.e., a total of about Rs 65 lakhs a year. The Budget of 1946-47 showed total expenditure of Rs 119 lakhs on pensions out of which East Bengal's share would be approximately Rs 57 lakhs. This showed that East

Bengal was paying Rs 8 lakhs per year in excess of her share. It was further argued on behalf of East Bengal that according to the Indian Independence (R. P. and L.) Order, the liability for the payment of all pensions devolved on East Bengal and they were entitled to recover immediately 52.17 per cent. of the Capitalised Value of Pensions. Mr Das Gupta said that East Bengal was not paying all the pensions of undivided Bengal and she must therefore in terms of the Award and West Bengal must therefore in terms of the Award be given credit for the capitalised value of all such pensions which were being paid by her (West Bengal) as East Bengal also must get credit for the capitalised value of pensions which were being paid by her. According to the estimates of West Bengal both in respect of pensions in issue and accrued, large sums (Rs 2 crores under each head) would be payable by East Bengal.

Mr Das Gupta raised the question of Contractual liabilities and argued that final settlement could not take place till these had been cleared. It was explained to him by Mr Patel and others that these liabilities did not enter into Inter-Governmental settlement and as payments were due to outsiders and were being made by East Bengal, who were entitled to recover 35.2 per cent. currently from West Bengal, these liabilities should be disregarded for the purpose of settlement. Mr Das Gupta did not agree to this view as these were the liabilities of undivided Bengal as well as any other liability. West Bengal had agreed to pay Rs 35 lakhs for every crore paid by East Bengal only with a view to assist East Bengal quickly to clear these liabilities. That did not, according to him, mean that they should be taken out of the reckoning.

(6) Discussion then proceeded to the adjustment of 'Other' and 'Miscellaneous' Deposits. It was stated on behalf of East Bengal that the responsibility for the payment of all deposits devolved on East Bengal and they were assuming this liability and were entitled to receive a contribution of 35.2 per cent. from West Bengal. Actually the same procedure should cover Provident Fund Deposits, though the Committee for the Implementation of the Award had recommended to the two Governments to come to a settlement by which each Province would receive credit for the accounts of the personnel who had opted to serve under it. This procedure would entitle West Bengal to receive a credit of about 2 crores from East Bengal on this account. In Assam the members representing the Province in the Separation Council had insisted on adherence to the Indian Independence (R. P. and L.) Order, 1947, in respect of Miscellaneous Deposits. East Bengal too wanted to adhere to the provisions of the aforesaid Order and it would not cause any particular inconvenience. The relevant registers

of Deposits would be transferred to East Bengal and all applications for refunds would be submitted to East Bengal for verification of amounts due and payments. Mr Das Gupta pointed out that it was not clear what the 'Order Deposits' were, as District Board, Municipal, Civil and Criminal Court Deposits, Education Fund, etc. were being disregarded. In any case whatever the deposits were, each province was paying all those which were lying in its territory and each province should therefore get credit of what it was paying and a complete analysis of these deposits was therefore necessary.

It was appreciated that an analysis of all deposits would be a long and difficult task and that alone could render it possible to make a division of deposits now. It was mentioned that in the case of District Board and Municipal Deposits, Civil and Criminal Court Deposits, Education Fund, etc., it had been decided that each Government should pay the deposits pertaining to its territory without any adjustment. One of the possible methods of dealing with Miscellaneous Deposits would be to follow the agreement about Municipal and Court Deposits, viz., each Government to make refunds in its area without adjustment. Representative of East Bengal stated that if adjustments are to be made, the provision of the Independence (R. P. & L.) Order, 1947, should be adhered to.

(7) The amount due to the Post War Services Reconstruction Fund was next taken up. The total amount due to this Fund by the Government of Bengal was, according to Mr Said Hasan, Rs 65,60,573 which had to be contributed by the two Governments in the general ratio, according to the Award of the Tribunal. It was stated on behalf of East Bengal that the Fund had been divided by West Bengal itself and the share of East Bengal had been communicated by the Hon. Treasurer of Endowments of Bengal.

(8) Finally the question of payment by West Bengal of the amount due by her to East Bengal was raised. The representative of Pakistan stated that except Pensions whose Capitalised Value had to be assessed, all other items of assets and liabilities had been valued and a Balance Sheet had been prepared. The Committee for the Implementation of the Award had agreed on the valuation of most assets and about the few remaining ones there was not likely to be any dispute as in all cases the Book value had to be taken. The liabilities had been determined from the books of West Bengal. Nothing now remained except to decide on payment. As regards Pensions, East Bengal was paying more than her share and if adjustment of Capitalised Value was to be made, the provisions of the Indian Independence (R. P. & L.) Order, 1947 had to be adhered to. In any case adjustment of Pensions could be left over and need not delay general settlement. Mr Das Gupta said

that until the final accounts of undivided Bengal were issued, the capitalised value of pensions (in issue and accrued) were determined and the other figures yet unknown were worked out, no Balance Sheet could be drawn; and until it was drawn the position would remain unknown and hence the question of payment by one Government to the other was premature. It was necessary that the Application Committee should work for some time more and Actuaries should be appointed in terms of the Award so that it could arrive at a Balance Sheet as soon as possible. It was not impossible that when the final Balance Sheet was prepared it would be found that West Bengal did not owe anything to East Bengal.

(9) Mr Said Hasan pointed out that the liabilities taken into account by the Arbitral Tribunal would not be affected by the annual accounts except Provident Fund, which accounts had already been written up to 14th August, 1947.

Appendix II—Note on the Punjab Partition Items

Contractors' Claims

It was suggested by East Punjab representatives that the Committee consisting of two representatives each of East and West Punjab as decided in the Partition Committee meeting held at Lahore on 26th May, 1948, should start work immediately. Both Governments will provide the Committee full facilities in regard to their work and the Committee should finish their work in respect of the contractors' claims, within a period of three months, if possible. All the preparation claims of contractors that are admitted by the Committee should be paid forthwith by the Governments of West and East Punjab as the case may be and adjustment carried out immediately in the accepted ratio of 60 : 40. A progress report shall be submitted after three months to the two Dominion Governments so that a meeting may be called to discuss the position. All doubtful claims should be put up to the Punjab Partition Committee for decision.

The West Punjab representatives would accept the above view but suggest that the Partition Committee decision in this matter has been pulled out of its context in a shape in which it cannot be implemented unless a balance of the decisions relating to the other preparation expenditure is also implemented. The question really relates to expenditure as such and not only to third party liabilities. As regards the third party liabilities, the fact is that the West Punjab Government is already meeting these third party liabilities on the usual departmental scrutiny and the only thing to which the West Punjab Government has not agreed is to allow the East Punjab Government to

interfere in these payments through the agency of the two officers whose appointment is suggested in the East Punjab view stated above. The West Punjab view that they cannot allow the East Punjab to let their officers interfere with their departmental working is based on the fact that the East Punjab Government is not willing to treat the whole expenditure as a liability adjustable between the two Punjabs and insists on isolating only one of the items of expenditure, namely, contractors' claims. West Punjab view further is that if the East Punjab Government can, as it thinks it should, agree to the adjustment of the total expenditure, they will adopt the suggestion of the East Punjab made above and also agree to the two Accountants General being instructed to exchange net debits or credits at stated intervals, say of a month or two months, as may be convenient.

Civil Supplies Contractors

(2) It was suggested by East Punjab representatives that the Civil Supplies Sub-Committee consisting of Director-General Food and a senior Accounts Officer of each province should meet and scrutinize the claims of civil supplies contractors. Such of the claims as are admitted should be paid forthwith by the Governments of East and West Punjab as the case may be. This work should be completed within a period of three months whereafter a report shall be submitted to the Punjab Partition Committee for transmission to the Dominion Governments, if necessary. The Sub-Committee meetings should be held frequently at Lahore and, if it can be so arranged, at Amritsar and the settlement of these claims expedited.

The above view was acceptable to the representatives of the West Punjab Government.

(3) It was suggested by representatives of East Punjab Government that the Inter-Dominion agreement relating to the transfer of the Government securities, certificates, bonds, debentures and shares of Joint Stock Companies and fund of Co-operative Societies, etc., should be referred to a Committee consisting of one Dominion representative from each side and two representatives each from East and West Punjab. They should meet immediately.

Messrs Majid and Azhar do not know of the relevant decision on these points and suggest that these matters should be raised in the Economic Committee of this Inter-Dominion Conference.

(4) As regards the implementation of the Arbitral Tribunal awards, the representatives of East Punjab Government handed over a statement to West Punjab representatives showing the amounts as worked out departmentally which are owing to either of the two provinces. It was explained that this statement had not been thoroughly

checked and was, therefore, subject to further scrutiny and correction. The representatives of West Punjab gave representatives of East Punjab another copy of the statement which they had furnished in August last. It was decided that the whole case should now be carefully scrutinized by the Implementation Committee at its next meeting and agreed figures worked out. It was also stressed that the meetings of the Implementation Committee should be held at least once a fortnight so as to finalize these figures at as early a date as possible. If no final settlement is reached within a period of three months, the matter shall be referred to the Partition Committee and to the Dominion Governments for further action.

Pensionary Liabilities

(5) It was agreed that the final settlement between the two new provinces in respect of the pensionary liabilities of the old Punjab province cannot be arrived at till—

(i) lists are prepared by the Accountant General, and

(ii) these lists are scrutinized by actuaries who have to give the capitalized figures. This work will obviously take considerable time. In the meanwhile pensioners are being paid in accordance with the standing agreement between the two Governments.

Lahore Museum

(6) It was suggested by representatives of East Punjab that the exhibits which had been separated and kept in a separate room by Mr Gupta under instructions of the Arbitral Tribunal should now be handed over to East Punjab Government and that this should be done within a fortnight.

West Punjab Government representatives made it quite clear that they have no intention of holding back the exhibits which have fallen to the share of East Punjab but the work has to be postponed for some time on account of the following reasons:

(i) Some exhibits of this Museum were sent to India in connection with some exhibition or exhibitions and have to come back yet. These have fallen to the share of West Punjab.

(ii) The Dominions have not yet settled their disputes regarding the exchange of Museum exhibits, and

(iii) Feelings in West Punjab are rather strong on the subject of the Arbitral Tribunal Award in respect of the Museum exhibits and it is feared that if transfer of exhibits to East Punjab is unnecessarily hurried there may be ugly incidents at Lahore.

In these circumstances it is considered that the question of transfer of the exhibits to East Punjab should remain pending till the balance sheet of the final settlement has been drawn up and India has returned the Pakistan articles to the Pakistan Museums.

Historical Records

(7) It was agreed that the East Punjab's share of the Historical Records, as determined by the Arbitral Tribunal's Award, shall be made available within a month or even earlier, if possible. The East Punjab Government will send their representative to Lahore and Mr Majid suggested that one week's notice should be given by East Punjab Government before their representative visits Lahore to collect the East Punjab's share of the records. This was agreed on by East Punjab representatives.

(8) It was agreed that other items of the Arbitral Tribunal's Award should be implemented within a period of one month. This applied to physical apportionment under the Awards. A report shall be submitted to the Dominion Governments after the position has been reviewed by the Partition Committee after one month.

(9) The question of the Provident Fund accounts shall be considered by the Implementation Committee at its next meeting at which the Accountant General, East Punjab and the Deputy Accountant General, West Punjab, who are members of the Implementation Committee shall be present. It was agreed that where balances were required of certain individuals who had retired or whose cases presented hardship otherwise for lack of this information their cases should, when specifically brought to the notice of the other Accountant General concerned, be promptly attended to. It was agreed that as the Accountants General had to act under their own Auditors General the matter should be brought to the notice of the two Dominion Governments for requesting the Auditors General to have the matter expedited.

(10) The question of loans raised by undivided Punjab from the Central Government and the open market was left to be discussed in the next meeting of the Implementation Committee.

(11) The question of the Provident Fund, etc., of Municipal and local body employees has already been under the consideration of the two Governments of East and West Punjab and it was agreed that the preparation of the statements should be expedited and the matter taken up by the Implementation Committee in their next meeting.

(12) It was suggested by the representatives of East Punjab that the Government of West Punjab should help the non-Muslim employees of the Punjab University and of the Punjab Public Library to get back their Provident Funds and gratuities which are still lying with the Punjab University or the Punjab Public Library. Messrs Majid and Azhar stated that this was not a matter with which they were concerned, but they had heard that this matter was discussed some days ago at the Inter-Dominion Secretariat level Conference and that any decision arrived at at that meeting would naturally be implemented by those concerned.

(13) It was agreed that the question relating to litigants' deposits in Courts and other cases pending in the Provinces, the return of Deposits and valuables lying in Treasuries and Malkhanas, and securities deposited by newspapers with Districts shall be taken up at the next meeting of the Implementation Committee.

(14) It was agreed that the Punjab Partition Committee meetings should be held once a month and that these should be preceded by meetings of the Implementation Committee which, as already stated, should be held once a fortnight so that all decisions of the Punjab Partition Committee and Arbitral Tribunal's awards can be implemented.

IAIP, Agreement No. XIV, pp. 106-38.

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INTER-DOMINION CONFERENCE (AGREEMENT NO. XV, APPENDIX I)

PART I—GENERAL

1. *Areas to which applicable.* (*a*) In regard to agricultural property, the areas in Pakistan would be West Punjab, Sind, N.W.F.P. and Baluchistan, and the States of Bahawalpur and Khairpur (N.W.F.P. and Baluchistan should be taken to include States which have acceded to Pakistan and to exclude un-Administered Agency Areas). In India, the areas would be the Provinces of East Punjab and Delhi, Province of Himachal Pradesh, the Patiala and the East Punjab States Union, and the States of Bharatpur, Alwar and Bikaner.

(*b*) In regard to urban immovable property the areas in Pakistan would be the same as for agricultural property but in regard to India, the areas would be extended to include Ajmer Merwara, Dholpur

and Karauli States (now included in the Matsya Union), the Rajasthan Union, Saurashtra (as both these Unions stood on 22nd July 1948) and the States of Jaipur and Jodhpur, and the districts of Saharanpur, Dehra Dun, Meerut and Muzaffarnagar in the United Provinces.

N.B. Pakistan further suggested that while it was not agreeable to the area in India being extended to the whole of the country, it was prepared to agree to the area being so extended in regard to Government servants and persons holding office under the Crown in either Dominion. India thought it would not be justifiable to make this distinction and suggested that the areas might well be extended to cover the whole of the Dominion. India further suggested that in addition to the 4 districts of the U.P. mentioned above, namely Saharanpur, Dehra Dun, Meerut and Muzaffarnagar, 8 more districts should be added, namely: Aligarh, Mathura, Agra, Mainpuri, Etah, Bareilly, Moradabad and Budaun, all of which are ordinarily described as Western Districts of the U.P. Pakistan after consideration stated that it was not prepared to accept the extension to these 8 districts.

2. *General Principles.* (1) Except in accordance with the terms of this agreement the evacuee's rights in his immovable property shall not be affected by reason of the vesting of his property in the Custodian.

(2) In the evacuee's absence, the duty of preserving his property and safeguarding his rights and interests therein shall devolve upon the Government concerned.

(3) 'Evacuee Property' shall be so defined as to exclude from its operation property belonging to Joint Stock Companies with Head Offices in India, maintaining branches in Pakistan and vice versa.

Provided that where the Custodian or the Rehabilitation Authorities have already taken over the property, which owing to the disturbances was wholly or partially abandoned, such occupation shall continue, if so desired by the Government concerned for the following periods:

(*a*) agricultural, commercial and residential property, 3 years and (*b*) industrial property, 5 years.

Note. The position of Joint Stock Companies which claim to have transferred their head offices from one Dominion to the other after the 15th August 1947 may have to be examined separately.

(4) Throughout this agreement whatever has been laid down as applicable to a Dominion or to its Government shall be applicable to any States or to the Government of any such States as have acceded

to the Dominion and are included in the area to which this agreement now becomes or hereafter becomes applicable.

3. *Administration of Evacuee Property.* (1) There shall be appointed one or more Custodians of Evacuee Property in each Dominion.

(2) Evacuee property situated within the jurisdiction of a Custodian shall, for purposes of management, be vested in him.

(3) It shall be the duty of the Government concerned to take all necessary action for the preservation of evacuee property and for safeguarding all the evacuee's rights and interests therein. In particular the Government concerned shall require its Custodian or Custodians of Evacuee Property to:

(*a*) compile and maintain full and complete record of all evacuee immovable property, separately for each town and village;

(*b*) make arrangements to be in a position as soon as possible to furnish to the evacuee (on demand by him) information in respect of administration of his property;

(*c*) take into consideration such information as the evacuee may give him regarding his property while dealing with matters connected with the administration of the property concerned;

(*d*) keep the interests of the evacuees paramount save in accordance with the provision of any law for the time being in force;

(*e*) provide full facilities to the other Dominion or its representatives to represent to the Custodian the view-point and interests of any evacuee.

4. (*a*) A Liaison Officer of the one Dominion should be appointed to be in close touch with the Custodian of the Evacuee Property of the other Dominion for the purpose of

(i) obtaining information on general principles being followed with regard to management of evacuee property;

(ii) making representations—general or in respect of cases of particular evacuees or properties—for the consideration of the Custodian;

(iii) obtaining information regarding demand statements and account statements regarding properties of evacuees, and generally to expedite by references to the Custodian the implementation of sections (8) and (9) of Part III.

(*b*) The Liaison Officer will be attached to the High or Deputy High Commissioner of the Dominion to which he belongs, but will have office accommodation in the office of the Custodian to which he is attached;

(*c*) Pakistan agreed to the above on the condition that the office of the Custodian of Evacuee Property, East Punjab, was and would remain at Jullundur.

PART II—AGRICULTURAL PROPERTY

1. *Definitions.* (1) 'Agricultural Property' means:

(*a*) all land not included within the limits of a Corporation, Municipal Committee, Notified Area Committee, Town area, Small Town Committee and Cantonment as those limits stood on the 15th August 1947.

(*b*) buildings and other structure (including wells) erected on such land (excluding industrial and commercial buildings, such as factories, workshops and the sites thereof);

(*c*) other rights and interests in lands, buildings and structures referred to in (*a*) and (*b*) above, e.g. rights of a lessee, grantee, mortgagee, etc., but not including assignments of land revenue.

Note. The problem of substantial houses and shops in rural areas has been dealt with in Part IV.

(2) 'Evacuee owner' in this Part means an owner of evacuee agricultural property or a holder of any rights or interests therein.

2. The consideration of sections 1(3), 2, 3, 4, 5, 6, 7 and 8 of the Draft Scheme was deferred. With a view, however, to collecting data which would enable an early decision to be reached regarding the disposal of agricultural property, it was agreed to exchange copies of revenue records and of existing records bearing on the question of land prices. It was also agreed that for expediting this work, three joint committees should be appointed. One of these three committees will be composed of the Deputy High Commissioner (Pakistan) at Jullundur and the Deputy High Commissioner (India) at Lahore, who will be concerned with the agreed areas of Western Pakistan less Sind, Baluchistan and Khairpur and with the agreed areas in India less Delhi and the States of Bharatpur, Alwar and Bikaner. The second committee will be composed of the High Commissioner for Pakistan in Delhi or an officer nominated by him and an officer of the Ministry of Relief and Rehabilitation (India) for areas Delhi and the States of Bharatpur, Alwar and Bikaner; and the third committee will be composed of the High Commissioner for India in Pakistan at Karachi or an officer nominated by him and an officer of the Ministry of Refugees and Rehabilitation (Pakistan) for Sind and Baluchistan and the State of Khairpur.

3. *Section 9.* Applicability of certain provisions of Part III to this Part.—Until a scheme is agreed to for the disposal of agricultural property, the following provisions shall apply to such property:

(*a*) Section 2 of Part III, *mutatis mutandis*, provided that the maximum period for which agricultural property may be requisitioned shall be three years;

(*b*) Clause (*a*) of sub-section (1) of section 7 of Part III;

(*c*) Sections 8 and 9 Part III (*mutatis mutandis*).

PART III—URBAN IMMOVABLE PROPERTY

1. *Definition.* (1) 'Urban Immovable Property' means

(*a*) all immovable property situated within the limits of a Corporation, a Municipal Committee, a Notified Area Committee, a Town Area, a Small Town Committee and a Cantonment as those limits existed on the 15th August 1947;

(*b*) other rights or interests in such property, e.g., rights of a lessee or a mortgagee;

(*c*) commercial and industrial structures, such as factories, workshops outside the limits referred to in (*a*) above and sites thereof;

(*d*) commercial and industrial undertakings including goodwill of such undertakings.

Note 1. The township known as Model Town in the vicinity of Lahore is an urban area and shall be deemed to be included within the municipal limits of Lahore.

Note 2. The question of including 'substantial' houses and shops in rural areas as urban immovable property was deferred.

(2) 'Evacuee Owner' means an owner of evacuee urban immovable property or a holder of any rights and interests therein.

(*N.B.* Pakistan suggested that 'evacuee' should be defined as a person who has moved over from one Dominion to the other before 30th September 1948 and the property belonging to such a person should be defined as 'evacuee property'. India was of the view that the fixation of a date in this way, particularly one which would have to be given effect to retrospectively, would be unfair to persons who will have left one or the other Dominion after the fixed date; the position would be different if some suitable date in the future were to be fixed. Pakistan stated that they would consider this point further and see what action on their own side would be feasible).

2. *Rights of Provincial Government.* (*a*) The Government of the Province in which evacuee urban immovable property is situated shall have the right to acquire such property as it may need for a public purpose, which may include the rehabilitation of refugees or the economic rehabilitation of the Province, on payment of fair compensation to be determined in accordance with the principles laid down in the Land Acquisition Act or any other law which is applicable as it stood on August 15, 1947. The amount of compensation would be determined in the following way:

The Administrative Officer who would ordinarily be charged with the duty of making an award himself shall submit a report to the Court of the District Judge which for this purpose will consist of two members,

one from each Dominion. If the two members are agreed they will make an award which will be final. If they disagree, a reference shall be made to the High Court of the Dominion in which the property in question is situated. The decision of the High Court shall be final.

(*b*) The Government of the Province in which evacuee urban immovable property is situated shall have the right to requisition such property as it may need for a public purpose which may include rehabilitation of refugees or the economic rehabilitation of the Province on payment of a fair compensation. The maximum period for which the Provincial Government is entitled to requisition shall be limited in the case of—

(i) residential property to 3 years;

(ii) commercial property to 3 years; and

(iii) industrial establishments to 5 years.

The fair compensation shall be assessed in accordance with the principles laid down in the law in force at the time of requisitioning or in accordance with any modification or amendment of that law or any substitution of it, or promulgation of a new law. The draft of any law, or any new rule shall, however, be communicated to the Inter-Dominion Commission (Part VII) and any recommendation made by that Commission shall be taken into consideration.

Note 1. The term 'requisition' shall include taking over and assuming control of evacuee property for the purpose of rehabilitation under any law for the time being in force.

Note 2. Property owned by institutions and trusts will also be governed by this paragraph unless and until a separate agreement is arrived at regarding such property.

Note 3. Copies of all orders passed requisitioning any property and fixing compensation therefor shall be furnished by the officer requisitioning the property to the Liaison Officer attached to the Custodian.

3. *Conditions of Leases.* (1) The conditions on which such requisitioned property is leased out shall be such as to cast upon the lessee an obligation to:

(*a*) safeguard and preserve the leased property;

(*b*) give full facilities to the proprietor or his duly authorised agent to arrange for inspection and to take all such action as may be necessary for canvassing buyers and for effecting sales or exchanges.

(2) In the case of industrial and commercial undertakings the lease conditions may also provide for depositing security against loss or damage.

(3) The conditions shall provide for the imposition of a penalty for any breach thereof.

4. *Responsibility of Dominion Government.* (1) The Government of the Dominion in which the evacuee immovable property is situated shall provide facilities (i) to evacuees (as also to private agencies working on their behalf) to enable transfers to be effected by sale, exchange, or otherwise, (ii) for the registration of the exchanges and sales of evacuee property, as well as for special concessions relating to registration fees and stamp duties. It was agreed that the details of these concessions and facilities should be worked out by the Inter-Dominion Commission.

(2) It shall be the duty of the Custodian plus the Liaison Officer attached to him to give property owners such information as might assist them in the disposal of their property. Such staff as the Custodian and the Liaison Officer may require for this purpose shall be provided.

5. *Rights of Evacuees.* (1) The evacuee owner shall have the right to transfer his property by sale, exchange or otherwise, subject to such right as may have been acquired by the Provincial or the Dominion Government as the case may be (or by other persons claiming through the Provincial or the Dominion Government as the case may be) as a result of the exercise of powers referred to in section (2) above.

(2) All such transfers shall be registered with the Custodian of the area concerned, who shall register the transfer unless:

(*a*) the transferer fails to produce a certificate signed by the prescribed income-tax authority certifying that the transferer has paid all taxes due from him to the Income Tax Department in respect of his property, business or undertaking, or has made satisfactory arrangements for the payment thereof; or

(*b*) he has failed to pay any other dues outstanding against him in the Custodian's registers in respect of (i) his own property; (ii) third party claims recognised *ex parte* by the Custodian:

Provided that provision is made for review by the Custodian of third party claims thus recognised.

Note. Taxes due from him in (*a*) means ' taxes assessed but not paid ' and also ' taxes not yet assessed ' provided that in the latter case the transferer shall be permitted to obtain registration of his transfer if he deposits with the Custodian in respect of each year for which assessment is pending an amount equal to the average of the tax assessed for the last three years for which assessment has been made.

In considering the question of satisfactory arrangements for payment as in clause (*a*) the income-tax authorities shall consider the value of other immovable property owned by the transferer in that Dominion.

6. *Responsibility of Governments.* (1) The Government shall manage, through the Custodian appointed by it for the purpose, such evacuee

urban immovable property as has not been acquired or requisitioned by it.

(2) The Custodian shall be free to take such action as he may deem fit in the interest of efficient management of such property.

(3) The provisions of Section (2) and (3) of this Part apply, *mutatis mutandis*, to the leases given by the Custodian.

7. *Deductions from lease money.* (1) From the lease money, assessed and realised in accordance with the provisions of this part, the Custodian will be entitled to make the following deductions:

(*a*) 10 per cent of the realised rents for management, and

(*b*) 10 per cent of the assessed rents for normal repairs.

(2) In the case of special repairs, the Custodian will be entitled to incur expenditure against the capital value of the property.

8. *Returns of rental collection information.* The Custodian shall prepare for the six monthly periods ending 30th June and 31st December each year, lists in duplicate for each locality, giving particulars of evacuee urban immovable property situated therein, the names of evacuee owners, and the lease money assessed, with additional columns showing the rents collected, deductions made therefrom and the balance payable to each evacuee owner.

9. *Inter-Dominion Adjustment.* The Custodians in each Dominion will send the lists thus prepared in duplicate to the Auditor General of their Dominion Government. That officer will forthwith forward one copy of each list to the Auditor General of the other Dominion and proceed to consolidate the amounts in these lists. The two Auditors General will adjust the net amount payable by one Dominion to the other through the Exchange Accounts of the two Dominions. If all the lists are not received within two months of the prescribed dates, namely, 30th June and 31st December, by the Auditor General of the other Dominion, adjustment shall be made to the extent of 50 per cent of the total amounts in the lists received at the expiry of the said two months, the balance being credited to the account of the Dominion to which it is due as soon as the outstanding lists from that Dominion are received.

Note. This procedure is provisional and will be reviewed as soon as after the 1st adjustment.

10. *Restoration.* Where the owner of any evacuee urban immovable property produces a certificate from the Rehabilitation Commissioner or an authority empowered by the Rehabilitation Department in this behalf that the property is not required for the purpose of rehabilitation of refugees or the economic rehabilitation of the Province, the Custodian shall restore the property to the owner or his agent for management or disposal. Where the management has not been taken

over by the Custodian, and the owner produces the above certificate, the Custodian may, on the owner's request, allow him to retain or assume management of such property.

11. *Prevention of Attempts to prevent unfair fall of prices.* The Dominion and the Provincial Governments in whose area the property is situated will do everything in their power to see that no organised attempts are made to keep the price of evacuee property below the market level by forming rings, syndicates, boycotting or otherwise.

PART IV. HOUSES AND SUBSTANTIAL SHOPS IN RURAL AREAS

The question of whether Substantial Houses and Substantial Shops in rural areas should be treated as urban immovable property or otherwise should be examined by the Inter-Dominion Commission.

PART V. MOVABLE PROPERTY

1. *General Provisions.* (1) Except in accordance with the terms of this agreement the evacuee's right in his movable property shall not be affected by reason of the vesting of his property in the Custodian.

(2) In the evacuee's absence, the duty of preserving his property and safeguarding his rights and interest therein shall be entrusted by the Government concerned to the Custodian of the Province in which the property is situated.

(3) It shall be the duty of the Custodian to:

(*a*) take all possible precautions for the proper and safe keeping of evacuee movable property;

(*b*) ensure that full compensation is recovered for movable property requisitioned by the Provincial Government or their officers for a public purpose, which may include the rehabilitation of refugees or of the economic life of the Province;

Explanation.—The term 'requisitioning' includes taking over for purposes of the rehabilitation of refugees or the economic life of the Province.

(*c*) make arrangements for the disposal of such movables as cannot be preserved to the best advantage of the evacuee owner;

(*d*) restore on application to the evacuee owners their movables and to give facilities to them to dispose of or remove the movables so restored;

(*e*) on application by an evacuee owner, arrange for the disposal of his movable at the best possible price.

2. *Rights of Government.* (1) Provincial Government—The Government of the Province in which evacuee movable property is situated shall have the right to acquire or requisition such movable property as it may need for a public purpose, which may include

rehabilitation of refugees or the economic life of the Province, on payment of a fair compensation to be determined in accordance with Sub-Section (6) of Section 4.

(2) *Dominion Government.* The Government of one Dominion shall have the right to prohibit or restrict the export of items of evacuee movable property which may be essential for the life of the community after giving notice to the other Dominion of their intention to do so.

3. *Procedure for Acquisition or Requisition or Sale.* (1) A record will be kept of the goods acquired, requisitioned or sold by the Provincial Government or its officers, including the Custodian and officers subordinate to him. The record shall include separately for each evacuee owner an inventory of the items and quantities acquired, requisitioned or sold, the name and designation of the officers making the order and the price payable or paid.

(2) Reasonable facilities shall be given to evacuee owners and their representatives to inspect the entries concerning them in this record.

(3) The general procedure for preparation of inventories and fixation of prices shall be in accordance with the provisions of Section 4 of this Part.

(4) A nominal roll giving the name of each evacuee owner and the total amount due to him on account of goods acquired, requisitioned or sold, shall be compiled and furnished every six months by the Custodian to the Auditor General of his Dominion. The Inter-Dominion settlement will be made in the manner prescribed in Section 10 of Part III.

(5) Opportunity shall be given to evacuee owners or their authorised agents to bring to the notice of the Provincial Government or the Custodian concerned instances of:

(i) deliberate misdescription of goods sold;

(ii) gross undervaluation.

(6) The Custodian may effect the sale of evacuee movable property:

(i) on application by the evacuee himself;

(ii) after adequate notice (not less than a month) to the evacuee owner individually or to a general class of evacuee owners.

N.B. If in response to the notice the evacuee owner desires to make arrangements to dispose of his property himself or through his agent, the Custodian will normally accord permission to do so.

(iii) without notice, in cases in which, for reasons to be recorded in writing he holds:

(*a*) the interest of the evacuee owner is best served by the sale, or

(*b*) the sale is necessitated by requirements of rehabilitation.

N.B. The sale of movable property shall, as far as possible, be by auction. The evacuee owner or the representative of the Dominion to which he has evacuated will be given an opportunity to be present at the sale.

(7) Abandoned movable which cannot be assigned to any particular evacuee shall be disposed of according to the law for the time being in force for the disposal of unclaimed property.

4. *Procedure for preparation of Inventories and Valuation.* Evacuee owners of movables especially those forming assets of commercial or industrial undertakings, will be given the following facilities in respect of inventories and valuation.

(1) Each Government will have the right to appoint representatives acceptable to the other Dominion in such local areas of the other Dominion as they deem fit. The rehabilitation authorities will inform those representatives whenever possession of a commercial or industrial undertaking is to be taken over by them giving not less than a week's notice. The representatives will have the right to be present either personally or by an authorised agent at the time of the preparation of the inventory.

(2) If the owner wishes to be present either personally or by an authorised agent at the time of the preparation of the inventory, his presence will not be objected to, provided that the preparation of the inventory shall not be delayed merely to ensure his presence.

(3) After the preparation of the inventory a date shall be fixed for the valuation of the property and the representative or owner or agent who has been present at the preparation of the inventory shall be informed of that date by the officer preparing the inventory. On the date fixed, the representative of the Dominion, the owner or his agent shall have the right to be heard.

(4) Where an order of valuation has been passed by an authority subordinate to the Custodian and the order required confirmation by the Custodian, the representative of the Dominion or the owner may signify his desire to be heard before the order is confirmed, and the Custodian will give him an opportunity to be so heard.

The Custodian shall not pass an order of confirmation until 10 days have elapsed from the decision of the subordinate officer.

(5) Where an order of valuation has been passed by an authority subordinate to the Custodian himself, and the order does not require confirmation by the Custodian, the owner shall have the right to appeal to the Custodian within 10 days of the passing of the order by the subordinate officer. It shall not be necessary to give any notice to the representatives of the Dominion or the owner regarding the fixation of value by the subordinate authority.

(6) The rate of compensation will be on the basis of fair value, that is, the price which the property would fetch in the open market under the present conditions provided that no organised attempt is made to keep it low by forming a ring or syndicate, or by boycott or otherwise.

5. *Rights of Evacuees.* (1) The evacuee owner shall have the right to apply for restoration of his movable property. This application shall be normally granted except in cases in which the property in question has been acquired or requisitioned by the Provincial Government or taken over by the Rehabilitation authorities.

(2) The evacuee shall have the right to apply to the Custodian requesting him to sell or dispose of his movable property in accordance with the procedure outlined in sections 3 and 4.

(3) On restoration, the evacuee shall have the right to manage or dispose of his movable property by himself or through his agent, which term may include Liaison Officers appointed by the Dominion to which he has been compelled to migrate, in any manner he deems fit, including export to any destination in the other Dominion, subject to any export restrictions that may be imposed under sub-section (2) of section 2 of this Part.

(4) The evacuee shall on application be given permission and facilities to inspect his movables held in the charge of the Custodian or persons claiming through him or any other person.

(5) Evacuee owners who before the evacuation were engaged in organised trades, such as timber, grain, cotton, sugar, iron and steel, non-ferrous metals, etc., shall have the right to form syndicates and to depute small representative committees, on behalf of the owners to various localities to arrange for the restoration and, subject to the permission of the Custodian, for the disposal or management of the stock in trade belonging to the members of such syndicates.

6. *Responsibility of Governments.* (1) The Government concerned shall be responsible for taking all steps necessary to ensure the safety of the evacuee owners and their agents engaged in managing, disposing of or removing their movables.

(2) The Government concerned shall also give to evacuee owners and their agents all possible assistance, including, wherever necessary police protection, to dispose of their movables or to dispatch them by rail or road to any destination in the other Dominion.

(3) The Dominion Governments shall also give all possible transport facilities, including provision of petrol on payment, and grant, wherever necessary, a sufficiently high priority for transport by rail.

(4) There should be set up joint committees as for the exchange of revenue and other records in para. 3 of Part II, for the purpose of

removal and disposal of evacuee property. It will be the function of these committees:

(*a*) to supervise the working of the agreed arrangements in regard to evacuee movable property and in particular, to assist evacuee owners in the expeditious disposal of their requests for help for police protection or special transport facilities;

(*b*) to set up an organisation for facilitating movement by rail or road (This Committee will run its own trucks and secure special booking facilities and, whenever possible and necessary, run special goods-trains for the movement of evacuee movable property);

(*c*) to receive complaints and arrange for the redress of grievances of evacuees in the disposal or transport of their movables.

Note. The two Dominion Governments shall make available all reasonable facilities to these joint committees to enable them to discharge their functions effectively.

(5) The Committees will pay particular attention to facilities being provided for the disposal, recovery, restoration and movement of: (*a*) goods lying pledged with banks; (*b*) goods lying at railway stations; (*c*) goods lying at docks; (*d*) parcels and money orders lying undelivered or unremitted at the post offices.

(6) The Committees will also pay special attention to assisting evacuee owners in the recovery and removal of movables buried underground.

7. *Special Categories of Movable Property.* (1) The previous sections of this Part will apply generally to all movable property.

(2) Without prejudice to this generality, both Dominions recognise that certain special categories or special articles may require special additional treatment and each Dominion will, if requested by the other Dominion, refer to the Inter-Dominion Secretariat Level Commission proposed in Section I of Part VII of this Scheme or, if necessary, to an *ad hoc* meeting, any case requiring such treatment.

(3) The following special additional treatment is hereby agreed upon in respect of the special categories hereinunder specified:

(*a*) *Household goods.* (i) The evacuee owner shall be given permission and facilities to remove all items of sentimental, literary and professional value and such personal effects as beddings, personal clothing, radio sets, gramophones, musical instruments, sewing machines, refrigerators, carpets and rugs, etc.

(ii) Refugees at present residing in the houses vacated by evacuees will have the first claim for the purchase or hiring of all items which are not covered by (*a*) above, on payment of fair price.

(iii) A list of the items required by the refugees at present residing in the evacuee's house shall be prepared. This list shall so far as is

possible be prepared in the presence of the evacuee or his authorised representative and as far as possible in the manner laid down in Section 4 of this part.

(iv) For the items required by him, the refugee shall pay to the evacuee fair compensation calculated in accordance with the provisions of sub-section (6) of Section 4 of this part.

(v) The evacuee shall be given permission and facilities to remove all items which are not required by the refugee or for which he is not prepared to pay or does not pay fair compensation.

(vi) Facilities will be made available to the evacuee or the representative of the Dominion to which he has evacuated, to represent to the Custodian cases of misappropriation of the evacuee's household goods.

(*b*) *Goods buried underground.* (i) The evacuee owner wishing to recover buried valuables shall apply for facilities to the Liaison Officer of the Dominion to which he has evacuated.

(ii) It will be the duty of Liaison Officer to arrange in consultation with the local Custodian and Police Officers for the search of buried valuables being conducted under conditions of secrecy and security.

(iii) Police protection will be provided by the local authorities.

(iv) Supervision of the arrangements in this connection will be a special responsibility of the Joint Committees set up under sub-section (4) of Section 6 of this Part.

(*c*) *Motor Vehicles.* As soon as possible after this agreement is concluded, the Governments concerned on both sides must implement the provisions of Sections 2 and 3, sub-sections (4), (5) and (6) of Section 4 and Section 6 of this Part in regard to acquisition, requisitioning, sale, valuation, payment of compensation and release of motor vehicles. If either Dominion considers any further special arrangements to be necessary, it shall without delay refer its proposals to the Inter-Dominion Secretariat Level Commission mentioned in Section I of Part VII.

PART VI. REMITTANCE FACILITIES—CUSTOMS AND EXPORT AND IMPORT CONTROLS

Both Dominions will provide reasonable exchange facilities for remittances arising out of this agreement if and when foreign exchange control between India and Pakistan is instituted.

(2) The Pakistan representatives expressed the view that such facilities would be governed by the separate agreement which is at present under negotiations between the two Dominions regarding the terminating of the Reserve Bank of India's functions as the exchange and currency authority in Pakistan.

(3) The representatives of India, however, were of the view that some special provision would have to be made whether in the agreement referred to by the Pakistan representatives or in an agreement ancillary thereto, in view of the special character and magnitude of remittances arising out of this agreement.

(4) In regard to Customs and Export and Import Controls, arrangements should be made in accordance with the agreement set out in Annexure A.

ANNEXURE A. AGREEMENT REGARDING CUSTOMS AND EXPORT AND IMPORT CONTROLS IN RESPECT OF EVACUEE PROPERTY AND GOVERNMENT STORES AND VEHICLES

(1) It is agreed that goods which are allowed to be moved by evacuees from one Dominion to the other in pursuance of the arrangements arrived at between the two Dominions shall be exempt from export and import trade regulations as well as from export and import duties. Such goods will cover the following:

(i) Goods carried in evacuee special trains;

(ii) persons and household effects intended for personal and household use, including articles like motor cars, cycles, gramophones, radios and radiograms, electrical goods, musical instruments, sewing machines, typewriters, private libraries, professional instruments, apparatus and equipment, cattle and other animals, jewellery, currency notes, shares, bond securities, and licensed arms and ammunition. This exemption will cover accompanied as well as unaccompanied goods, provided that such goods shall be covered by a permit granted by an authority to be designated in this behalf by each Dominion;

(iii) goods carried by evacuees proceeding by motor convoys straight from district camps in one Dominion to the other. This exemption will also cover vehicles forming such convoys; and

(iv) trade goods and merchandise including stock in trade belonging to an evacuee excluding gold and silver bullion provided that they are covered by a permit granted by an authority to be designated in this behalf by each Dominion.

(2) Evacuees travelling by evacuee special trains or road convoys should be made to declare whether they have with them any bullion. Searches should be restricted to suspicious cases and should be conducted by Customs officials only in the presence of a responsible officer.

(3) It is agreed that military stores consigned by one Dominion Government to the other, or carried by the M.E.O. or vehicles under the command of the M.E.O. whether carrying such stores or not, shall be exempt from export and import trade regulations as well as from export and import trade duties if any, on production of a certificate

from the Ministry of Defence of the Dominion from which they are being exported, or from an officer authorised by such Ministry in this behalf that they are such stores or vehicles.

(4) It is agreed that all Government stores other than those covered by paragraph (3) above, e.g., Railway and P. and T. stores, allocated to each of the two Dominions as a result of partition shall be exempt from export and import trade regulations as well as from export and import duties, if any, on production of a certificate from the Ministry concerned of the Dominion from which they are being exported, or from an officer authorised by such Ministry in this behalf that they are such stores. This exemption will also cover vehicles carrying such stores.

(5) It is agreed that all vehicles crossing the border if covered by Movement Orders issued by the Joint M.E.O. shall be exempt from export and import trade regulations as well as from export and import duties. This exemption does not apply to the goods carried in such vehicles.

(6) It is agreed that all vehicles used by officers of either Dominion in the discharge of their duties and crossing the border shall be exempt from export and import trade regulations as well as from export and import duties on production of a certificate from the High Commissioner or the Deputy High Commissioner of the Dominion to which the officer belongs, or from an officer authorised by them in this behalf that the vehicle is so employed.

(7) Subject to the conditions specified in paragraph (2) above, it is agreed that the Customs authorities will conduct a search on the border only in cases where the import or export of goods is, under the aforesaid provisions, required to be covered by a certificate or permit from an appropriate authority. No searches will however be undertaken in cases covered by paragraphs (3) and (4) above.

(8) It is agreed that if, for any reason, any articles are detained by the Customs authorities, a receipt giving details of the articles detained shall be furnished by these authorities to the owner of the articles.

(9) It is agreed that adequate publicity should be given to the arrangements in both Dominions and machinery set up for receiving complaints of alleged violations and their investigation.

PART VII

1. *Inter-Dominion Commission.* (1) A permanent Inter-Dominion Commission shall be set up at Secretariat level, which will meet at regular intervals, or according to the urgency of the work before it, in each Dominion in turn.

(2) The functions of the Commission will, *inter alia,* include:

(*a*) Review and supervision of the working of the agreed arrangements in regard to:

(i) the administration, sale and transfer of evacuee property in both Dominions, and

(ii) the payment and remission of moneys etc., connected therewith.

(*b*) Consideration of matters other than important questions of policy, that may arise in regard to refugees and evacuees between the two Dominions.

(*c*) Consideration of other matters referred to it by the Government of either Dominion.

(3) The Commission shall consist of the Secretary and one other officer of the two Dominion Ministries dealing with refugees, with the addition of such officers as it may be necessary to include for the purpose of any meeting.

2. *Inter-Dominion Refugees and Evacuees Council.* In addition an Inter-Dominion Refugees and Evacuees Council shall be set up composed ordinarily of two Ministers each from India and Pakistan. This Council will meet, whenever necessary, to resolve matters on which the Inter-Dominion Commission is unable to agree or to consider questions of policy which require settlement at Ministerial level.

APPENDIX III—INTER-DOMINION CONFERENCE HELD AT KARACHI ON 10TH TO 12TH JANUARY, 1949

Subject. Division of Survey of India assets between Pakistan and India.

The Conference appointed a sub-committee consisting of the following to go into the question:

(1) Mr K. L. Panjabi, Secretary, Ministry of Agriculture (India);

(2) Mr H. S. M. Ishaque, Joint Secretary, Ministry of Food, Agriculture and Health (Pakistan); and

(3) Major R. C. A. Edge, Director-General, Survey of Pakistan.

The sub-committee met on the 11th and 12th January, 1949. Mr S. S. Haider, Under Secretary, Ministry of Food, Agriculture and Health (Pakistan) was also present.

The facts of the case may briefly be stated as follows:

(1) The Departmental Partition Sub-Committee recommended that stores and equipment shall be divided in accordance with the following formula:

Pakistan will be given the stores and equipment required by it provided—

(i) that the Indian Survey Department is not embarrassed in respect of any particular item; and

(ii) that the overall share of Pakistan does not exceed 4/15th in respect of any particular item; and of India; the area of British India to be surveyed in Pakistan being 4/15th of that in the rest of India.

Col. G. W. Gemmel will prepare a detailed list of all stores and equipment. In doing so, he will be assisted by one Hindu and one Muslim officer. When this list is ready, the Surveyors General of Pakistan and India will jointly frame proposals for the division of the stores and equipment as between India and Pakistan in accordance with the above formula. Actual division will take place as soon as these proposals are approved by the two Governments.

The preparation of the detailed list may take up to two or three months. Meantime should any stores and equipment now lying in India or Pakistan be urgently required by either Government for carrying on its survey work, the Surveyor General concerned will permit the transfer of such stores or equipment, but the stores and equipment so moved will be debited against the share of the Government receiving them as determined by the above formula. It is also agreed that pending the removal to Pakistan of Pakistan's share of stores and equipment, such stores and equipment may be stored in Survey Department godowns in India, custody of which will remain with the Pakistan Government.

(2) Preparation of lists of assets by the representatives of the two Governments continued till October, 1947, whereafter the Muslim member (Pakistan's representative) due to communal disturbances had to be withdrawn from Dehra Dun. About the same time, the neutral chairman, Col. G. W. Gemmel, also proceeded on leave preparatory to retirement. In consequence, lists and recommendations prepared fall under two categories, viz:

(*a*) lists of assets and recommendations prepared and agreed to jointly by the representatives of the two Governments and by Col. Gemmel; and

(*b*) lists and recommendations which were prepared by Survey of India officers but not finally scrutinised nor agreed to by a Pakistani representative.

(3) Pending the completion and examination of the lists of assets and in accordance with the provision in the Partition Sub-Committee's decision mentioned above, the Director-General, Survey of Pakistan sent a list of immediate requirements to the Surveyor General of India on the 21st of May, 1948, and Government of India agreed to the

despatch of those with minor modifications. These were estimated to constitute about 26 wagon-loads, out of which only 4 wagons have so far been received. The movement of the balance is held up. The total number of wagon-loads due for transfer from India to Pakistan is estimated by both India and Pakistan to be 40. The total number of wagon-loads due for transfer from Pakistan to India is estimated by Pakistan as about 3 and by India as about 10. Out of this, Pakistan has already sent one wagon.

AGREEMENT

(1) That the two Governments should take immediate steps to scrutinise and approve the lists of assets and recommendations contained in partition appendices with a view to their finalisation, acceptance and implementation by both sides.

(2) That a fresh committee, consisting of representatives of the Survey Departments of India and Pakistan, be constituted for further consideration of partition appendices mentioned in para. (2) (*b*) above.

(3) That points on which India and Pakistan representatives fail to agree, be referred to the Surveyor General of India and the Director-General, Survey of Pakistan, to resolve by mutual consultation, and that if they also fail to arrive at an agreed recommendation, the matter be referred to the two Governments for settlement provided that such differences shall not be allowed to hold up progress of scrutiny and of making of recommendations regarding other items not in dispute.

(4) That India would forthwith send the appendices which have not so far been received by Pakistan.

(5) That the Pakistani and Indian representatives in the proposed committee should be empowered to recommend suitable adjustments in physical transfers of expendable items and other items of which physical transfer for any reason is not in the best mutual interest of India and Pakistan, e.g. bulky items of furniture, and record the book values of the assets so adjusted.

(6) That both sides will do their best to meet forthwith each other's immediate requirements, in the case of Pakistan, these requirements having been already stated and accepted by India with minor modifications on 21st May, 1948. According to representation of Pakistan the bulk of these assets have already been packed for transfer at the expense of the Government of Pakistan. However, in view of the lapse of time, India desired to re-examine the above list of requirements in the light of the recommendations of the Partition Sub-Committee mentioned in (i) above and agree to communicate their decision to Pakistan by the 31st January, 1949. In the meantime, four additional

wagon-loads of stores have already been permitted to be moved from India to Pakistan.

(7) That reciprocity both in the qualitative and quantitative sense, in the movement of assets between the two Dominions shall be maintained as far as possible in proportion to the total assets due to be transferred by either side.

(8) That in the event of any dispute arising out of this agreement regarding the application of any of its provisions or of the recommendations of the Departmental Partition Sub-Committee, the matter should be referred for decision to the next Inter-Dominion Conference.

Taken from Constituent Assembly of India (Legislative) Inter-Dominion Agreements between India and Pakistan. (December, 1947 – January, 1949).

APPENDIX IV—A COMMITTEE COMPRISING MR H. M. PATEL AND MR NIZAMUDDIN ARRIVED AT THE FOLLOWING DECISION

Item 11. Movement of petrol from Karachi to India.

(1) It is agreed that there should be an uninterrupted flow of petrol and other oil traffic from Karachi to stations on the East Punjab Railway, and to ensure this:

(*a*) the East Punjab Railway should see that all N.W. Railway oil tank wagons are returned back to the N.W.R. immediately after being emptied and normal turn round is maintained;

(*b*) the N.W. Railway will continue to provide tank wagons for loading this traffic as hitherto;

(*c*) the N.W. Railway in consultation with the E.P. Railway should work out the total number of tank wagons required for this service on the basis of the normal turn round, and the number of tank wagons which would ordinarily remain in the E.P. area at any one time. This would facilitate a check at short notice as to where there is hold up, if such a hold up occurs.

IAIP, Agreement No. XV, pp. 161-76.

61 22 *April* 1949

INFLUX FROM PAKISTAN (CONTROL) ACT, 1949 (ACT NO. XXIII OF 1949)

An Act to control the admission into, and regulate the movements in, India of persons from Pakistan

WHEREAS it is expedient to control the admission into, and regulate the movements in, India of persons from Pakistan;

It is hereby enacted as follows:

1. *Short title and extent.* (1) This Act may be called the Influx from Pakistan (Control) Act, 1949.

(2) It extends to the whole of India.

2. *Definitions.* In this Act, unless there is anything repugnant in the subject or context,—

(*a*) 'enter' means to enter by water, land or air;

(*b*) 'officer of Government' means any officer of the Central Government or of a Provincial Government or of the Government of an Acceding State;

(*c*) 'permit' means a permit issued or renewed or the period whereof has been extended in accordance with the rules made under this Act.

3. *Control of admission into India of persons from Pakistan.* No person shall enter India from any place in Pakistan, whether directly or indirectly, unless—

(*a*) he is in possession of a permit, or

(*b*) being a person not domiciled in India or Pakistan, he is in possession of a valid passport as required by the Indian Passport Act, 1920 (XXXIV of 1920), or

(*c*) he is exempted from the requirement of being in possession of a permit by or in accordance with the rules made under this Act.

4. *Power to make rules.* The Central Government may, by notification in the official Gazette, make rules

(*a*) prescribing the authorities by which and the conditions subject to which permits may be issued or renewed or the period thereof extended, the conditions to be satisfied by the applicants for such permits and the forms and classes of such permits;

(*b*) regulating the movements in India of any person who is in possession of a permit;

(*c*) providing for the exemption, either absolutely or on conditions, of any person or class of persons from the requirement of being in possession of a permit or from the operation of any rule made under this section; and

(*d*) generally, providing for any other matters ancillary or incidental to the carrying out of the purposes of this Act.

5. *Punishment of offences.* (1) Whoever enters India in contravention of the provisions of section 3, or having entered India contravenes the provisions of any rule made under section 4, or commits a breach of any of the conditions of his permit, shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

(2) Whoever, in any statement made by him in pursuance of any of the provisions of this Act or of any rules made thereunder, furnishes

any information, which is false and which he either knows or believes to be false or does not believe to be true, shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

6. *Power of arrest.* (1) Any officer of police, not below the rank of a sub-inspector, any officer of the customs department of the Central Government or any other officer of Government empowered by a general or special order of the Central Government in this behalf may arrest without warrant any person who has committed or against whom a reasonable suspicion exists that he has committed an offence under this Act.

(2) Every officer making an arrest under this section shall, without unnecessary delay, take or send the person arrested before a Magistrate having jurisdiction in the case or to the officer in charge of the nearest police station, and the provisions of section 61 of the Code of Criminal Procedure, 1898 (V of 1898) or of the corresponding law for the time being in force in the Acceding State shall, so far as they may be applicable apply in the case of any such arrest.

7. *Power of removal.* Without prejudice to the provisions contained in section 5, the Central Government may, by general or special order, direct the removal from India of any person who has committed, or against whom a reasonable suspicion exists that he has committed, an offence under this Act, and thereupon any officer of Government shall have all reasonable powers necessary to enforce such direction.

8. *Protection to persons acting in good faith.* No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under this Act.

9. *Repeal of Ordinance XXXIV of 1948.* (1) The Influx from Pakistan (Control) Ordinance, 1948, is hereby repealed.

(2) Notwithstanding such repeal, any rules made, action taken or thing done in the exercise of any power conferred by the Influx from Pakistan (Control) Ordinance, 1948, shall for all purposes be deemed to have been made, taken or done in the exercise of the powers conferred by this Act, as if this Act had commenced on the day such order was made or such action was taken or such thing was done.

Gazette, 22 April 1949.

62 18 *October* 1949

ADMINISTRATION OF EVACUEE PROPERTY ORDINANCE, 1949

WHEREAS an emergency has arisen which makes it necessary to provide for the administration of evacuee property and for certain matters connected therewith;

NOW, THEREFORE, in exercise of the powers conferred by section 42 of the Government of India Act, 1935 (26 Geo. 5, c. 2), the Governor-General is pleased to make and promulgate the following Ordinance:

CHAPTER I

Preliminary

1. *Short title, extent and commencement.* (1) This Ordinance may be called the Administration of Evacuee Property Ordinance, 1949.

(2) It extends to all the Provinces of India (except Assam and West Bengal), and also to every Acceding State to the extent to which the Dominion Legislature has power to make laws for that State with respect to the matters dealt with in this Ordinance.

(3) It shall come into force at once.

2. *Definitions.* In this Ordinance, unless there is anything repugnant in the subject or context,

(*a*) 'allotment' means the grant by the Custodian, or any other person duly authorised by the Custodian in this behalf, of a temporary right of use and occupation of any immovable property of an evacuee to any person otherwise than by way of lease;

(*b*) 'Custodian-General' means the Custodian-General of Evacuee Property in India appointed by the Central Government under section 5;

(*c*) 'Custodian' means the Custodian for the Province, and includes any Additional, Deputy or Assistant Custodian of evacuee property appointed for that Province;

(*d*) 'evacuee' means any person,—

(i) who, on account of the setting up of the Dominions of India and Pakistan or on account of civil disturbances or the fear of such disturbances, leaves or has, on or after the 1st day of March 1947, left, any place in a Province for any place outside the territories now forming part of India, or

(ii) who is resident in any place now forming part of Pakistan and who for that reason is unable to occupy, supervise or manage in person his property in any part of the territories to which this Ordinance extends, or whose property in any part of the said territories has ceased

to be occupied, supervised or managed by any person or is being occupied, supervised or managed by an unauthorised person, or

(iii) who has, after the 14th day of August, 1947, acquired by way of allotment or by means of unlawful occupation or other illegal means any right to, interest in or benefit from any property which is treated as evacuee or abandoned property under any law for the time being in force in Pakistan;

(*e*) ' intending evacuee ' means any person who, after the 14th day of August, 1947,—

(i) has transferred to Pakistan his assets or any part thereof situated in any part of the territories to which this Ordinance extends:

Provided that the transfer to Pakistan of any reasonable sum of money, for the purpose of financing any transaction in the ordinary course of his trade or for the maintenance of any member of the family of such person shall not be deemed to be a transfer of assets within the meaning of this sub-clause, or

(ii) has acquired, if the acquisition has been made in person, in any mode other than any of the modes specified in sub-clause (iii) of clause (*d*) of section 2, or, if the acquisition has been made by or through a member of his family, in any mode whatsoever, any right to, interest in or benefit from any property which is treated as evacuee or abandoned property under any law for the time being in force in Pakistan, or

(iii) has, by the execution of any document of transfer in writing, whether registered or not, or by means of any other document in writing, sought to effect an exchange of the whole or any part of his property situated in any part of the territories to which this Ordinance extends, with any property situated in Pakistan;

(*f*) ' evacuee property ' means any property in which an evacuee has any right or interest (whether personally or as a trustee or as a beneficiary or in any other capacity), and includes any property—

(1) which has been obtained by any person from an evacuee after the 14th day of August 1947, by any mode of transfer, unless such transfer has been confirmed by the Custodian, or

(2) belonging to any person who, after the commencement of this Ordinance, does any of the acts specified in clause (*e*) of section 2, or in which any such person has any right or interest, to the extent of such right or interest,

but does not include—

(i) any ornament and any wearing apparel, cooking vessels or other household effects in the immediate possession of an evacuee;

(ii) any property belonging to a joint stock company, the registered office of which was situated before the 15th day of August, 1947, in

any place now forming part of Pakistan and continues to be so situated after the said date;

(*g*) ' member of the family ' means any member of the family of an intending evacuee who is wholly dependent upon the earnings of such evacuee for the provision of the ordinary necessaries of life or who shares with such evacuee in the ordinary expenses of the household to which they jointly belong or who owns property or carries on business jointly with such evacuee;

(*h*) ' prescribed ' means prescribed by rules made under this Ordinance;

(*i*) ' property ' means property of any kind, and includes any right or interest in such property, but does not include a mere right to sue or a cash deposit in a bank;

(*j*) ' unauthorised person ' means any person (whether duly empowered in this behalf by the evacuee or otherwise) who, after the 14th day of August, 1947, has been occupying, supervising or managing the property of an evacuee without the approval of the Custodian.

3. *Rule of construction in applying Ordinance to Acceding States.* In the application of this Ordinance to any Acceding State, unless there is anything repugnant in the subject or context,

(*a*) references to the Provinces shall be construed as references to that Acceding State;

(*b*) references to any Provincial Government shall be construed as references to the Government of that Acceding State;

(*c*) references to the official Gazette shall be construed as references to the official Gazette or other similar official publication of that Acceding State; and

(*d*) references to any enactment in force in the Provinces of India but not in force in that Acceding State shall be construed as references to the corresponding law in force in that State.

4. *Ordinance to override other laws.* The provisions of this Ordinance and of the rules and orders made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any such law.

CHAPTER II

Evacuee Property and Vesting thereof in the Custodian

5. *Appointment of Custodian-General.* The Central Government may, by notification in the official Gazette, appoint a person to be the Custodian-General of Evacuee Property in India for the purpose of discharging the duties imposed on the Custodian-General by or under this Ordinance.

6. *Appointment of Custodians, etc.* (1) The Provincial Government may, by notification in the official Gazette, appoint for the Province a Custodian, and as many Additional, Deputy or Assistant Custodians of evacuee property as may be necessary for the purpose of discharging the duties imposed on the Custodian by or under this Ordinance.

(2) Subject to the provisions of this Ordinance, all Custodians, Additional, Deputy or Assistant Custodians of evacuee property shall discharge the duties imposed on them by or under this Ordinance under the general superintendence and control of the Custodian-General.

(3) Subject to the provisions of sub-section (2), Additional, Deputy and Assistant Custodian shall discharge the duties imposed on them by or under this Ordinance under the general superintendence and control of the Custodian for the Province, but the Provincial Government may, by general or special order, provide for the distribution of work among them.

7. *Notification of evacuee property.* (1) Where the Custodian is of opinion that any property is evacuee property within the meaning of this Ordinance, he may, after causing notice thereof to be given in such manner as may be prescribed to the persons interested, and after holding such inquiry into the matter as the circumstances of the case permit, pass an order declaring any such property to be evacuee property.

(2) Pending the determination of the question whether any property is evacuee property or otherwise, any property in respect of which a notice has been issued under sub-section (1) shall, from the date of the notice be deemed to have been attached by the Custodian, and any transfer or delivery of such property or of any right or interest therein and any payment to any person contrary to such attachment shall be void against all claims enforceable under the attachment.

(3) The Custodian shall, from time to time, notify, either by publication in the official Gazette or in such other manner as may be prescribed, all properties declared by him to be evacuee properties under sub-section (1).

8. *Vesting of evacuee property in the Custodian.* (1) Any property declared to be evacuee property under section 7 shall vest in the Custodian.

(2) Where immediately before the commencement of this Ordinance any evacuee property in a Province had vested in any person exercising the powers of a Custodian under any law repealed hereby, the evacuee property shall, on the commencement of this Ordinance, be deemed to have vested in the Custodian appointed or deemed to have been appointed for the Province under this Ordinance, and shall continue to so vest.

(3) Where any property in a Province belonging to a joint stock company had vested in any person exercising the powers of a Custodian under any law repealed hereby, then nothing contained in clause (*f*) of section 2 shall affect the operation of sub-section (2), but the Provincial Government may, by notification in the official Gazette, direct that the Custodian shall be divested of any such property in such manner and after such period as may be specified in the notification.

(4) Where after the vesting of any evacuee property in the Custodian any person is in possession of any such property, he shall be deemed to be holding it on behalf of the Custodian and shall on demand surrender possession of it to the Custodian or to any other person duly authorised by him in this behalf.

9. *Power of Custodian to take possession of evacuee property vested in him.* If any person in possession of any evacuee property refuses or fails on demand to surrender possession thereof to the Custodian or to any person duly authorised by him in this behalf, the Custodian may use or cause to be used such force as may be necessary for taking possession of such property and may, for this purpose, after giving reasonable warning and facility to any woman not appearing in public to withdraw, remove or break open any lock, bolt or any door or do any other act necessary for the said purpose.

10. *Powers and duties of the Custodian generally.* (1) Subject to the provisions of any rules that may be made in this behalf the Custodian may take such measures as he considers necessary or expedient for the purposes of securing, administering, preserving and managing any evacuee property which has vested in him and may, for any such purpose as aforesaid, do all acts and incur all expenses necessary or incidental thereto.

(2) Without prejudice to the generality of the provisions contained in sub-section (1) the Custodian may, for any of the purposes aforesaid,—

(*a*) carry on the business of the evacuee;

(*b*) appoint a manager for the property of the evacuee or for carrying on any business or undertaking of the evacuee and authorise the manager to exercise any of the powers of the Custodian under this section:

(*c*) enter, or authorise any other person to enter, any land or premises to inspect any evacuee property;

(*d*) take all such measures as may be necessary to keep any evacuee property in good repair;

(*e*) complete any building which has vested in him and which requires to be completed;

(*f*) require any person, notwithstanding anything to the contrary contained in any other law for the time being in force relating to the

disclosure of any information by a public servant or any other person, to furnish such returns, accounts or other information in relation to any property and to produce such documents in his possession as the Custodian considers necessary for the discharge of his duties under this Ordinance;

(*g*) require any banking company to furnish such information as the Custodian may require with respect to any remittance made by any person to any place outside India after the 14th day of August, 1947;

(*h*) search, or authorise any other person to search, any building or place in which the Custodian has reason to believe that any evacuee property or any document tending to show that any person is an evacuee or that any property is evacuee property is being kept or concealed and take possession thereof;

(*i*) take such action as may be necessary for the recovery of any debt due to the evacuee;

(*j*) institute, defend or continue any legal proceeding in any civil or revenue Court on behalf of the evacuee or refer any dispute between the evacuee and any other person to arbitration or compromise any claims, debts or liabilities on behalf of the evacuee;

(*k*) raise on the security of the evacuee property such loans as may be necessary;

(*l*) in any case where the evacuee property which has vested in the Custodian consists of a share or shares in a company, exercise, notwithstanding anything to the contrary contained in the Indian Companies Act, 1913 (VII of 1913) or in the articles of association of the company, the same rights in the matter of making a requisition for the convening of a meeting or of presenting a petition to the Court under the provisions of the Indian Companies Act, 1913, or the articles of association of the company or in any other matter as the evacuee shareholder himself could have done had he been present, although the name of the Custodian does not appear in the register of members of the company;

(*m*) incur any expenditure, including the payment of taxes, duties, cesses and rates to Government or to any local authority or of any amounts due to any employees of the evacuee or of any debt due by the evacuee to any person;

(*n*) pay to the evacuee, or to any member of his family or to any other person as in the opinion of the Custodian is entitled thereto, any sums of money out of the funds in his possession;

(*o*) transfer in any manner whatsoever any evacuee property, notwithstanding anything to the contrary contained in any law or agreement relating thereto:

Provided that the Custodian shall not sell any immovable property or any business or other undertaking of the evacuee, except with the previous approval of the Custodian-General;

(*p*) invest any money held by him in any of the securities approved by the Central Government or in the prescribed manner;

(*q*) delegate, by general or special order, all or any of his functions under this Ordinance to such officers or persons as he thinks fit;

Provided that the Custodian shall not delegate any of his functions under clause (*g*) or clause (*h*) to any officer or person below the rank of a Deputy Custodian.

11. *Special provisions with respect to certain trust properties.* (1) Where any evacuee property which has vested in the Custodian is property in trust for a public purpose of a religious or charitable nature, the property shall remain vested in the Custodian only until such time as fresh trustees are appointed in the manner provided by law, and pending the appointment of fresh trustees the trust property and the income thereof shall be applied by the Custodian for fulfilling, as far as possible, the purpose of the trust.

(2) In respect of any *Wakf-alal-aulad,*

(*a*) where the mutawalli is an evacuee, the property forming the subject matter of the *wakf* shall vest in the Custodian subject to the rights of the beneficiaries under the *wakf*, if any, who are not evacuees;

(*b*) where not all the beneficiaries are evacuees, the rights and interests of such of the beneficiaries as are evacuees shall alone vest in the Custodian.

12. *Power to vary or cancel leases or allotments of evacuee property.* (1) Notwithstanding anything contained in any other law for the time being in force, the Custodian may cancel any allotment or terminate any lease or amend the terms of any lease or agreement under which any evacuee property is held or occupied by any person, whether such allotment, lease or agreement was granted or entered into before or after the commencement of this Ordinance.

(2) Where by reason of any action taken under sub-section (1), any person has ceased to be entitled to possession of any evacuee property, he shall on demand by the Custodian surrender possession of such property to the Custodian or to any person duly authorised by him in this behalf.

(3) If any person fails to surrender possession on demand under sub-section (2), the Custodian may, notwithstanding anything to the contrary contained in any other law for the time being in force, eject such person and take possession of such property in the manner provided in section 9.

13. *Payments to Custodian to be valid discharge.* (1) Any amount due to any evacuee in respect of any property which is vested in the Custodian or in respect of any transaction entered into by the evacuee, shall be paid to the Custodian by the person liable to pay the same.

(2) Any payment made otherwise than in accordance with sub-section (1) shall not be deemed to discharge the person paying it from his obligation to pay the amount due, and shall not affect the right of the Custodian to enforce such obligation against any such person.

14. *Recouping of expenditure by Custodian.* Any expenditure incurred by the Custodian in the exercise of any power conferred by or under this Ordinance shall, in relation to any evacuee property in respect of which it has been incurred, be a charge on such property and shall, subject to the provisions of section 48, have priority over all other charges on the property, and such expenditure may be met or recouped by the Custodian out of the income accruing from such property or the sale proceeds thereof.

15. *Maintenance of accounts by Custodian.* (1) The Custodian shall maintain a separate account of the property of each evacuee possession whereof has been taken by him, and shall cause to be made therein entries of all receipts and expenditure in respect thereof.

(2) The accounts shall be maintained in such form and in such manner as may be prescribed.

(3) The Provincial Government shall cause the accounts maintained under this section to be inspected and audited at such intervals and by such persons as may be prescribed.

16. *Restoration of property.* (1) The Custodian may, on application made to him in this behalf in writing by an evacuee or any person claiming to be the heir of an evacuee, restore, subject to such terms and conditions as he may think fit to impose, the evacuee property to which the evacuee or other person would have been entitled if this Ordinance were not in force:

Provided that the applicant produces in support of his application a certificate from the Central Government, or from any person authorised by it in this behalf, to the effect that the evacuee property may be so restored if the applicant is otherwise entitled thereto.

(2) On receipt of an application under sub-section (1), the Custodian shall cause public notice thereof to be given in the prescribed manner and, after holding a summary inquiry into the claim in such manner as may be prescribed, may—

(*a*) make a formal order declaring that the property shall be restored to the applicant; or

(*b*) reject the application; or

(*c*) refer the applicant to a civil Court for the determination of his claim and title to the property:

Provided that no order for restoration shall be made under this section, unless provision has been made in the prescribed manner for the recovery of any amount due to the Custodian in respect of the property or the management thereof.

(3) Upon the restoration of the property to the evacuee or to the heir, as the case may be, the Custodian shall stand absolved of all responsibilities in respect of the property so restored, but such restoration shall not prejudice the rights, if any, in respect of the property which any other person may be entitled to enforce against the person to whom the property has been so restored:

Provided that every lease granted in respect of the property by or on behalf of the Custodian shall have effect against the person to whom restoration is made until such lease is determined by lapse of time or by operation of law.

(4) The Custodian shall, on demand, furnish to the evacuee or to the heir, as the case may be, a statement containing an abstract of the account of the income received and expenditure incurred in respect of the property.

CHAPTER III

Certain Consequences of Property Vesting in Custodian

17. *Exemption from attachment, sale, etc.* (1) Save as otherwise expressly provided in this Ordinance, no property which has vested in the Custodian shall be liable to attachment, distress or sale in execution of an order of a Court or of any other authority, and no injunction in respect of any such property shall be granted by any Court or other authority.

(2) Save as otherwise expressly provided in this Ordinance, any attachment or injunction subsisting on the commencement of this Ordinance in respect of any evacuee property which has vested in the Custodian shall cease to have effect on such commencement, and any transfer of evacuee property under orders of a Court or any other authority made after the 14th day of August, 1947, shall be set aside, if an application is made to such Court or authority by or at the instance of the Custodian within three months from the commencement of this Ordinance.

18. *Occupancy or tenancy right not to be extinguished.* Nothing contained in any other law for the time being in force shall be deemed to extinguish the right of occupancy in any land of an evacuee which has vested in the Custodian and, notwithstanding anything contained in any such law, neither the evacuee nor the Custodian, whether as an

occupancy tenant or as a tenant for a fixed term of any land, shall be liable to be ejected or deemed to have become so liable on any ground whatsoever for any default of the Custodian.

CHAPTER IV

Property of Intending Evacuees

19. *Declaration of person as intending evacuee.* (1) Where the Custodian has reason to believe that a person is an intending evacuee, he may, by notice served in the prescribed manner, call upon such person to show cause why he should not be declared an intending evacuee, and shall, after holding such inquiry into the matter as the circumstances thereof permit, and after taking such evidence as may be produced by or on behalf of the person showing cause, pass an order (stating the reasons therefor) either declaring such person to be an intending evacuee or closing the case.

(2) Any declaration made under sub-section (1) shall be published in the official Gazette.

(3) The Custodian may, pending determination of the question whether any person is an intending evacuee or otherwise, attach in the prescribed manner any property in the Province in which such person has a right or interest, and where any such attachment has been made, any transfer or delivery of the property attached or of any right or interest therein and any payment to any person of any debt contrary to such attachment shall be void as against all claims enforceable under the attachment.

20. *Consequences of declaration that a person is an intending evacuee.* No person, in respect of whom a declaration has been made under section 19 that he is an intending evacuee, shall transfer in any manner whatsoever any immovable property, in which he has any right or interest, situated in any part of the territories to which this Ordinance extends, except with the previous approval of the Custodian, and any transfer made in contravention of the provisions of this section shall be void and of no effect.

21. *Powers of Custodian generally in respect of property of intending evacuees.* For the purposes of preserving any property in which any person in respect of whom a declaration has been made under section 19 that he is an intending evacuee has any right or interest, the Custodian may,—

(*a*) by order in writing, require any such person to furnish such returns, accounts or other information in relation to any such property and to produce such documents in his possession as the Custodian may require;

(*b*) inspect the books of account or other documents maintained by or in the possession of such person;

(*c*) pass such orders or direct such action to be taken in relation to any such property;

(*d*) by order in writing, prohibit the transfer to Pakistan of any sum of money belonging to any such person or permit such transfer subject to such conditions and restrictions as the Custodian may think fit to impose.

22. *Effect of intending evacuee contravening any provision of this Chapter.* If any person, in respect of whom a declaration has been made under section 19 that he is an intending evacuee, makes any transfer of any property in contravention of section 20 or fails to comply with any order made under clause (*c*) or clause (*d*) of section 21, the Custodian may, by notification in the official Gazette, declare any property situated in the Province in which any such person has any right or interest to be evacuee property, and on the issue of such notification any property specified in the notification shall be deemed to be evacuee property which has vested in the Custodian within the meaning of this Ordinance.

23. *Intending evacuee acquiring evacuee or abandoned property in Pakistan for inadequate consideration to make good the deficiency.* (1) Where any person in respect of whom a declaration has been made under section 19 that he is an intending evacuee has either personally or through any member of his family acquired, whether before or after the commencement of this Ordinance, any right to, interest in, or benefit from any property which is treated as evacuee or abandoned property under any law for the time being in force in Pakistan for a consideration which, in the opinion of the Custodian is neither reasonable nor adequate, the Custodian may, after notice to such person and after affording him a reasonable opportunity of being heard and after holding such inquiry as the circumstances of the case permit, determine, by order in writing, the amount, if any, by which the consideration in his opinion, falls short of the real value of the property so acquired, and require such person to pay the amount to the Custodian within such time as may be specified in the order.

(2) If the amount is not paid within the time specified, or within such further time as the Custodian may allow, the Custodian may take possession of so much of the property of such intending evacuee as would be sufficient to cover the amount, in the case of movable property, or as would afford a reasonable security for the recovery of the amount, in the case of immovable property.

(3) The Custodian may, for the purpose of realising any amount payable by such intending evacuee under the provisions of this section,

transfer in any manner whatsoever any immovable property which has been taken possession of by him under sub-section (2).

CHAPTER V

Appeals, Review and Revision

24. *Appeals from orders under sections 7, 16, 19 and 38.* (1) Any person aggrieved by an order made under section 7, section 16, section 19 or section 38 may prefer an appeal in such manner and within such time as may be prescribed,

(*a*) to the Custodian, where the original order has been passed by a Deputy or Assistant Custodian;

(*b*) to the Custodian-General, where the original order has been passed by the Custodian, an Additional Custodian or an Authorised Deputy Custodian:

Provided that where the appeal is preferred on the ground that the person aggrieved is not an evacuee within the meaning of sub-clause (iii) of clause (*d*) of section 2, or that the property is not evacuee property within the meaning of sub-clause (2) of clause (*f*) of section 2, the appeal shall be preferred in the manner prescribed in section 25.

(2) The Custodian to whom an appeal is preferred under clause (*a*) of sub-section (1) may dispose of it himself or may make it over for disposal to an Additional Custodian or to a Deputy Custodian authorised by the Custodian in writing in this behalf (in this Chapter referred to as the Authorised Deputy Custodian):

Provided that no appeal from an order of a Deputy Custodian shall be made over for disposal to the Authorised Deputy Custodian.

25. *Appeals from other orders.* (1) Any person aggrieved by an order,—

(*a*) under section 7 notifying his property as evacuee property on the ground that he is an evacuee within the meaning of sub-clause (iii) of clause (*d*) of section 2, or that the property is evacuee property within the meaning of sub-clause (2) of clause (*f*) of section 2, or

(*b*) under section 22 declaring any property of an intending evacuee to be evacuee property,

may prefer an appeal, in such manner and within such time as may be prescribed, to the District Judge designated in this behalf by the Provincial Government.

(2) For the purpose of hearing any appeal under sub-section (1) the Provincial Government shall designate one or more District Judges and define the local limits of their jurisdiction.

26. *Powers of review or revision of Custodian, etc.* (1) The Custodian, Additional Custodian or Authorised Deputy Custodian may at any

time, either on his own motion or on application made to him in this behalf, call for the record of any proceeding under this Ordinance which is pending before, or has been disposed of by, an officer subordinate to him for the purpose of satisfying himself as to the legality or propriety of any orders passed in the said proceeding, and may pass such order in relation thereto as he thinks fit:

Provided that the Custodian, Additional Custodian or Authorised Deputy Custodian shall not pass an order under this sub-section revising or modifying any order prejudicial to any person without giving such person a reasonable opportunity of being heard:

Provided further that if one of the officers aforesaid takes action under this sub-section, it shall not be competent for any other officer to do so.

(2) The Custodian, Additional Custodian or Authorised Deputy Custodian (but not a Deputy or an Assistant Custodian) may, after giving notice to the parties concerned, review his own order.

27. *Powers of revision of Custodian-General.* (1) The Custodian-General may at any time, either on his own motion or on application made to him in this behalf, call for the record of any proceeding in which any District Judge or Custodian has passed an order in appeal under the provisions of this Chapter for the purpose of satisfying himself as to the legality or propriety of any such order and may pass such order in relation thereto as he thinks fit:

Provided that the Custodian-General shall not pass an order under this sub-section prejudicial to any person without giving him a reasonable opportunity of being heard.

(2) Notwithstanding anything contained in sub-section (1), where in respect of any proceeding called for under sub-section (1), the Custodian-General is of opinion that the District Judge is in error in holding any person not to be an evacuee or any property not to be evacuee property, he shall not pass any order in relation thereto but shall refer the matter, with his own opinion thereon, to the High Court to which the District Judge is otherwise subordinate.

(3) Any reference made under sub-section (2) shall be heard by a Bench of the High Court consisting of not less than two Judges and the Custodian-General shall dispose of the proceeding in accordance with the decision of the High Court.

28. *Finality of orders under this Chapter.* Save as otherwise expressly provided in this Chapter, every order made by the Custodian-General, District Judge, Custodian, Additional Custodian, Authorised Deputy Custodian, Deputy Custodian or Assistant Custodian shall be final and shall not be called in question in any Court by way of appeal or revision or in any original suit, application or execution proceeding.

CHAPTER VI

Penalties and Procedure

29. *Penalty for failure to surrender possession of evacuee property.* Any person who fails to comply with a notice or demand by or on behalf of the Custodian under the provisions of this Ordinance to surrender possession of any evacuee property shall be punishable with imprisonment for a term which may extend to six months, or with fine, or with both.

30. *Penalty for concealing evacuee property.* Any person who wilfully conceals any property which he knows or has reason to believe to be evacuee property shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both.

31. *Penalty for causing damage to evacuee property.* Any person who wilfully destroys or causes damage to any evacuee property or unlawfully converts it to his own use shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both.

32. *Penalty for false declaration in certain cases.* Any person who—

(i) for the purpose of obtaining an allotment or lease of any evacuee property, makes a declaration or statement which is false or which he either knows or has reason to believe to be false, or does not believe to be true, or

(ii) furnishes any return, account of information which is material to any of the purposes of this Ordinance and which is false or which he either knows or has reason to believe to be false or does not believe to be true,

shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both.

33. *Penalty for offences not expressly provided for.* Whoever contravenes any provision of this Ordinance or of any rule or order made thereunder, or obstructs the lawful exercise of any power conferred by or under this Ordinance shall, if no express provision is made by this Ordinance for the punishment of such contravention or obstruction, be punishable with imprisonment for a term which may extend to six months, or with fine, or with both.

34. *Penalty for abetment.* Whoever abets any of the offences punishable under this Ordinance shall be punishable with the punishment provided for the offence.

35. *Offences to be cognizable.* Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (Act V of 1898), all offences under this Ordinance shall be cognizable.

36. *Procedure for prosecution.* No prosecution for any offence punishable under this Ordinance shall be instituted except with the

previous sanction of the Provincial Government or of any officer authorised in this behalf, by general or special order, by the Provincial Government.

37. *Offences may be tried summarily.* Any Magistrate empowered to try in a summary way the offences specified in sub-section (1) of section 260 of the Code of Criminal Procedure, 1898 (Act V of 1898), may, if an application is made in this behalf by the complainant and the Magistrate thinks fit, try any offence under this Ordinance in accordance with the provisions contained in sections 262 to 265 of that Code but nothing contained in sub-section (2) of section 262 of that Code shall apply to any such trial.

CHAPTER VII

Miscellaneous

38. *Restriction on transfer by evacuees.* (1) No transfer of any right or interest in any property made in any manner whatsoever after the 14th day of August 1947, by or on behalf of an evacuee or by or on behalf of a person who has become an evacuee after the date of the transfer, shall be effective so as to confer any rights or remedies on the parties to such transfer or on any person claiming under them unless it is confirmed by the Custodian.

(2) An application for confirmation of such transfer may be made by the transferor or the transferee or any person claiming under, or lawfully authorised by, either of them to the Custodian within two months from the commencement of this Ordinance.

(3) The provisions of section 5 of the Indian Limitation Act, 1908 (IX of 1908) shall apply to an application under sub-section (2).

(4) The Custodian shall hold an inquiry into the application in the prescribed manner and may reject the application, if he is of opinion that—

(*a*) the transaction has not been entered into in good faith or for valuable consideration, or

(*b*) the transaction is prohibited under any law for the time being in force, or

(*c*) the transaction ought not to be confirmed for any other reason.

(5) If the application is not rejected under sub-section (4), the Custodian may confirm the transfer either unconditionally or subject to such terms and conditions as he thinks fit to impose.

39. *Prohibition of registration of documents in certain cases.* (1) Where any document required to be registered under the Indian Registration Act, 1908 (XVI of 1908), purports to transfer any right or interest in any property in contravention of the provisions contained in section 20 or section 38, no registering officer shall register any such document and

no revenue officer shall sanction any mutation of names in respect thereof, unless the party presenting the document for registration produces a certificate from the Custodian declaring that the property is not property belonging to an intending evacuee or that it is not evacuee property or that the transaction has been confirmed or that the Custodian has given his previous approval to the transfer.

(2) Save as otherwise expressly provided herein, nothing contained in sub-section (1) shall be deemed to affect the provisions contained in the Payments of Taxes (Transfer of Property) Act, 1949 (XXII of 1949), or in any other law for the time being in force relating to the registration of documents.

40. *Custodian's right to take possession not affected by death of evacuee, etc.* Where in pursuance of the provisions of this Ordinance, the Custodian has taken possession of any evacuee property, such possession shall not be deemed to be wrongful, nor shall anything done in consequence thereof be deemed to be invalid or affected by reason only that at the material time the evacuee who had a right or interest in the property had died or had ceased to be an evacuee.

41. *Certain officers to be public servants.* The Custodian-General, the Custodian and every other person duly appointed to discharge any duties imposed on them by this Ordinance or the rules or orders made thereunder shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code (Act XLV of 1860).

42. *Power of the Custodian while holding inquiry.* For the purposes of holding any inquiry under this Ordinance, the Custodian shall have the same powers as are vested in a civil Court under the Code of Civil Procedure 1908 (Act V of 1908), when trying a suit, in respect of the following matters, namely:

(*a*) enforcing the attendance of any person and examining him on oath;

(*b*) compelling the discovery and production of documents;

(*c*) any prescribed matter;

and the inquiry by the Custodian shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code (Act XLV of 1860), and the Custodian shall be deemed to be a Court within the meaning of sections 480 and 482 of the Code of Criminal Procedure, 1898 (Act V of 1898).

43. *Jurisdiction of civil Courts barred in certain matters.* Save as otherwise expressly provided in this Ordinance, no civil Court shall have jurisdiction—

(*a*) to entertain or adjudicate upon any question whether any property is or is not evacuee property or whether an evacuee has or has not any right or interest in any evacuee property; or

(*b*) to entertain or adjudicate upon any question whether any person is or is not an intending evacuee; or

(*c*) to question the legality of any action taken by the Custodian-General or the Custodian under this Ordinance; or

(*d*) in respect of any matter which the Custodian-General or the Custodian is empowered by or under this Ordinance to determine.

44. *Protection of action taken in good faith.* (1) No suit, prosecution or other legal proceeding shall lie against the Custodian-General or the Custodian or any person acting under the direction of the Custodian in respect of anything which is in good faith done or intended to be done in pursuance of this Ordinance or of any rules or orders made thereunder.

(2) No suit or other legal proceeding shall lie against the Central Government, the Provincial Government, the Custodian-General or the Custodian or any other person in respect of any damage caused or likely to be caused by anything in good faith done or intended to be done in pursuance of this Ordinance or of any rules or orders made thereunder.

45. *Recovery of arrears.* Any sum due to the Provincial Government or to the Custodian under the provisions of this Ordinance may be recovered as if it were an arrear of land revenue.

46. *Record to be public documents.* All records prepared or registers maintained under this Ordinance shall be deemed to be public documents within the meaning of the Indian Evidence Act, 1872 (I of 1872), and shall be presumed to be genuine until the contrary is proved.

47. *Notice of suits to the Custodian.* (1) If in any suit it appears to the civil or revenue Court that a question relating to the property of an evacuee or an intending evacuee is involved, the Court shall not proceed to determine that question until after notice has been given to the Custodian.

(2) A Court may, at any stage of a suit or proceeding, either on its own motion or on application made in this behalf by the Custodian, make an order that the Custodian shall be added as a party to the suit or proceeding, if the Court is satisfied that such addition is necessary or proper for the satisfactory determination of the suit or proceeding.

48. *Fees payable to the Custodian.* (1) The Provincial Government may fix the fees payable to the Custodian for the management or disposal of any property vested in him.

(2) Such fees shall be payable out of the income or sale proceeds of such property and shall be a first charge on the property.

49. *Power to exempt.* The Central Government may, by notification in the official Gazette, exempt any person or class of persons or any

property or class of property from the operation of all or any of the provisions of this Ordinance.

50. *Power to give directions.* The Central Government may give directions to any Provincial Government as to the carrying into execution in the Province of any of the provisions contained in this Ordinance or of any rules or orders made thereunder.

51. *Power of Central Government to take action with regard to evacuee property.* The Central Government may, for the purpose of regulating the administration of any property which has vested in the Custodian under the provisions of this Ordinance, pass such order or direct such action to be taken in relation thereto as, in its opinion, the circumstances of the case require and as is not inconsistent with any of the provisions contained in this Ordinance.

52. *Delegation of powers.* (1) The Central Government may direct that any power exercisable by it under this Ordinance shall be exercisable also by such officer or authority subordinate to the Central Government or by the Provincial Government or by such other authority subordinate to the Provincial Government as may be specified in the direction.

(2) The Provincial Government may, by general or special order, direct that any power exercisable by it under this Ordinance shall, in such circumstances and under such conditions, if any, as may be specified in the order, be exercised by an officer subordinate to the Provincial Government.

(3) Subject to the provisions of this Ordinance and the rules and orders made thereunder, the Custodian may delegate all or any of his powers under this Ordinance to any Additional, Deputy or Assistant Custodian, subject to such conditions, if any, as may be specified by the Custodian.

53. *Power to make rules.* (1) The Central Government may, by notification in the official Gazette, make rules to carry out the purposes of this Ordinance.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:

(*a*) the terms and conditions of service of the Custodian-General and other officers appointed by him in the discharge of his duties;

(*b*) the manner in which inquiries under this Ordinance may be held;

(*c*) the manner in which evacuee properties which have vested in the Custodian may be notified;

(*d*) the manner in which possession of any evacuee property may be taken by the Custodian;

(*e*) the manner in which claims under any attachment made by the Custodian may be enforced by him;

(*f*) the manner in which trust properties which have vested in the Custodian may be administered or otherwise dealt with;

(*g*) the circumstances in which and the conditions subject to which the Custodian may sell any immovable property vested in him, and the procedure governing the grant of leases and the period for which leases may be granted;

(*h*) the circumstances in which leases and allotments may be cancelled or terminated or the terms of any lease or agreement varied;

(*i*) the securities in which the Custodian may invest any moneys held by him;

(*j*) the manner in which any moneys due to the Custodian may be recovered;

(*k*) the form and manner in which books of accounts and other records shall be maintained by the Custodian;

(*l*) the form in which any notice under this Ordinance may be issued, the manner of its service and publication and the form in which any demand may be made by the Custodian;

(*m*) the nature of cases and the circumstances in which and the conditions subject to which certificates for restoration of property under section 16 may be issued;

(*n*) the nature of cases and the circumstances in which the Custodian may refer an applicant under section 16 to a civil Court;

(*o*) the powers vested in a civil Court which may be exercised by the Custodian while holding any inquiry under this Ordinance;

(*p*) the nature of cases and the circumstances in which the Custodian may confirm or refuse to confirm a transfer under section 38;

(*q*) the form and manner in which and the time within which appeals and applications for revision may be preferred under Chapter V and the fees payable in respect thereof;

(*r*) any other matter which has to be or may be prescribed under this Ordinance.

(3) The Provincial Government may, by notification in the official Gazette, make rules providing for all or any of the following matters, namely:

(*a*) the terms and conditions of service of the Custodian and other officers appointed under this Ordinance and for the furnishing of security by them;

(*b*) the work to be performed by the Custodian and the Additional, Deputy and Assistant Custodians;

(*c*) the delegation of powers of the Custodian to the Additional, Deputy or Assistant Custodian;

(*d*) the fees payable to the Custodian for the management and disposal of any property vested in him and the manner in which such fees shall be paid;

(*e*) the persons by whom and the times at which books of account maintained under this Ordinance may be inspected and audited.

54. *Temporary amendment of section 54 of the Indian Income Tax Act, 1922.* During the continuance of this Ordinance, sub-section (3) of section 54 of the Indian Income-tax Act, 1922 (XI of 1922) shall have effect as if after clause (*o*) thereof, the following clause had been inserted, namely:

'(*p*) of any such particulars to the Custodian of Evacuee Property appointed under the Administration of Evacuee Property Ordinance, 1949, for the purpose of enabling him to discharge the duties imposed upon him by or under the said Ordinance.'

55. *Repeals and saving.* (1) The Administration of Evacuee Property Ordinance, 1949 (XII of 1949), as in force in the Chief Commissioners' Provinces and the Province of Madras and the United Provinces, is hereby repealed.

(2) If, immediately before the commencement of this Ordinance, there is in force in any Province other than any of the Provinces specified in sub-section (1) or in any Acceding State any law corresponding to the Administration of Evacuee Property Ordinance, 1949, that law also shall stand repealed.

(3) Notwithstanding the repeal by this Ordinance of the Administration of Evacuee Property Ordinance, 1949, or of any corresponding law, anything done or any action taken in the exercise of any power conferred by that Ordinance or law shall be deemed to have been done or taken in the exercise of the powers conferred by this Ordinance, and any penalty incurred or proceeding commenced under that Ordinance or law shall be deemed to be a penalty incurred or proceeding commenced under this Ordinance as if this Ordinance were in force on the day on which such thing was done, action taken, penalty incurred or proceeding commenced.

Gazette, 18 October, 1949.

63 28 *December* 1949

ABDUCTED PERSONS (RECOVERY AND RESTORATION) ACT, 1949 (ACT NO. LXV OF 1949)

An Act to provide, in pursuance of an agreement with Pakistan, for the recovery and restoration of abducted persons

WHEREAS an agreement has been reached between the Government of India and the Government of Pakistan for the recovery and restoration of abducted persons;

AND WHEREAS it is expedient to provide, in pursuance of the said agreement, for the recovery of abducted persons and for their temporary detention in camps pending restoration to their relatives;

AND WHEREAS the Governors of the United Provinces and East Punjab and the Rajpramukhs of Patiala and the East Punjab States Union and the United State of Rajasthan have, under the provisions of sub-section (1) of section 106 of the Government of India Act, 1935 (26 Geo. 5, c. 2), accorded their previous consent to the making of this law;

It is hereby enacted as follows:

1. *Short title and extent.* (1) This Act may be called the Abducted Persons (Recovery and Restoration) Act, 1949.

(2) It extends to the United Provinces, the Provinces of East Punjab and Delhi, the Patiala and East Punjab States Union and the United State of Rajasthan and shall remain in force up to 31st October 1951.

2. *Interpretation.* (1) In this Act, unless there is anything repugnant in the subject or context,

(*a*) 'abducted person' means a male child under the age of sixteen years or a female of whatever age who is, or immediately before the 1st day of March, 1947, was, a Muslim and who, on or after that day and before the 1st day of January, 1949, has become separated from his or her family and is found to be living with or under the control of any other individual or family, and in the latter case includes a child born to any such female after the said date;

(*b*) 'camp' means any place established, or deemed to be established, under section 3 for the reception and detention of abducted persons.

(2) In the application of this Act to any Acceding State, references to the Province and the Provincial Government shall be construed as references to that Acceding State or the Government of that State, as the case may be, and references to the official Gazette shall be construed as references to the corresponding official publication of that State.

3. *Establishment of camps and notification thereof and of officers in charge.* (1) The Provincial Government may establish as many camps in the Province as it may consider necessary for the reception and detention of abducted persons, and any place established in the Province before the commencement of this Act for the reception and detention of abducted persons shall be deemed to be a camp established by the Provincial Government within the meaning of this section.

(2) The Provincial Government shall, as soon after the commencement of this Act as may be practicable, notify in the official Gazette all camps in the Province and the names of officers in charge thereof.

4. *Powers of police officers to recover abducted persons.* (1) If any police officer, not below the rank of an Assistant Sub-Inspector or any other police officer specially authorised by the Provincial Government in this behalf, has reason to believe that an abducted person resides or is to be found in any place, he may, after recording the reasons for his belief, without warrant, enter and search the place and take into custody any person found therein who, in his opinion, is an abducted person, and deliver or cause such person to be delivered to the custody of the officer in charge of the nearest camp with the least possible delay.

(2) In exercising any powers conferred by sub-section (1) any such police officer may take such steps and may require the assistance of such female persons as may, in his opinion, be necessary for the effective exercise of such power.

5. *Maintenance of discipline in camp.* (1) The Provincial Government may make regulations for the transfer of abducted persons from one camp to another and for the maintenance of health and good order in the camp and of harmonious relations among the abducted persons detained therein.

(2) In making any regulations under this section, the Provincial Government may provide that a breach thereof shall be tried and punished by the officer in charge of the camp in such manner as may be prescribed in the regulations:

Provided that no abducted person shall be liable to be tried in a criminal Court in respect of any offence made punishable by any regulations made under this section.

6. *Determination of question whether any person detained is an abducted person.* (1) If any question arises whether a person detained in a camp is or is not an abducted person or whether such person should be restored to his or her relatives or handed over to any other person or conveyed out of India or allowed to leave the camp, it shall be referred to, and decided by, a tribunal constituted for the purpose by the Central Government.

(2) The decision of the tribunal constituted under sub-section (1) shall be final:

Provided that the Central Government may, either of its own motion or on the application of any party interested in the matter, review or revise any such decision.

7. *Handing over of abducted persons to persons authorised.* (1) Any officer in charge of a camp may deliver any abducted person detained in the camp to the custody of such officer or authority as the Provincial Government may, by general or special order, specify in this behalf.

(2) Any officer or authority to whom the custody of any abducted person has been delivered under the provisions of sub-section (1) shall be entitled to receive and hold the person in custody and either restore such person to his or her relatives or convey such person out of India.

8. *Detention in camp not to be questioned by Court.* Notwithstanding anything contained in any other law for the time being in force, the detention of any abducted person in a camp in accordance with the provisions of this Act shall be lawful and shall not be called in question in any Court.

9. *Protection of action taken under Act.* No suit, prosecution or other legal proceeding whatsoever shall lie against the Central Government, the Provincial Government or any officer or authority for, or in respect of, any act which is in good faith done or intended to be done in pursuance of this Act.

10. *Power to make rules.* (1) The Central Government may, by notification in the official Gazette make rules to carry out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for—

(*a*) the constitution and procedure of any tribunal appointed under section 6;

(*b*) the manner in which any application to review or revise any decision of the tribunal may be made under section 6;

(*c*) the manner in which any abducted person may be delivered to the custody of any officer or authority under section 7 or restored to his or her relatives or conveyed out of India by any such officer or authority.

11. *Repeal of Ordinance XVIII of 1949.* (1) The Abducted Persons (Recovery and Restoration) Ordinance, 1949 (XVIII of 1949), is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken in the exercise of any powers conferred by or under the said Ordinance shall be deemed to have been done or taken in the exercise

of the powers conferred by this Act, as if this Act were in force on the day on which such thing was done or action was taken.

Gazette, 28 December 1949.

64 7 *February* 1950

WHITE PAPER (INDIA-EXTRACTS)

On August 15, 1947, when the Indian sub-continent was partitioned and two separate States of India and Pakistan came into being, trade between territories which were until then parts of the same economic and political unit became international in character. It was obvious that the Inter-Dominion boundary line, which cut across railways, waterways and roadways, which divided provinces, districts, and even individual dwelling houses in certain cases, would create economic problems both immediate and ultimate, which could only be solved by mutual co-operation and long-term understanding between the two countries. Prior to Partition, an Expert Committee consisting of the representatives of the two Governments, which had still formally to come into existence, had studied the problem of inter-Dominion commercial relations and made certain recommendations which were approved by the Partition Council. The decision very briefly was that until the 29th February 1948, there would be no restrictions on the free flow of goods between the two Dominions and no trade or customs barriers would be set up. (Annexure 1.)

This arrangement was generally referred to as the Standstill Agreement and was merely intended to provide a breathing time in which a more lasting arrangement could be arrived at between the two Governments after they had started functioning as separate units. Even during the pendency of the agreement however difficulties began to arise. Within two months of Partition the Sind Government imposed certain restrictions on the movement of a large number of commodities with the result that not only was the free flow of goods stopped but even those goods intended for consumption in territories forming part of India, according to normal practice, which had been imported through the port of Karachi were held up. The protests of the Government of India to the Government of Pakistan did not succeed in securing the repeal of these restrictions so as to permit the kind of freedom of movement which was possible for indigenous as well as imported goods going from India to Pakistan and which enabled East Bengal, for example, to receive from Calcutta not only

goods originally meant for East Bengal but also those which were imported into the Calcutta market for local sale....

(3) An even more serious departure from the Standstill Agreement took place when Pakistan decided, while the Agreement was still in force and no Customs points had been established between the two countries, to treat India as foreign territory so far as the movement of raw jute from Pakistan to India was concerned. Pakistan first asked that India should give to Pakistan a share of the revenue earned from the export duty on raw jute at the port of Calcutta. On 30th October 1947, India handed over an *aide-mémoire* to the High Commissioner for Pakistan explaining that the existing arrangement was that each of the two countries retained the taxes which it levied and collected within its own territories and while this short-term arrangement was in force, it would not be possible to make an exception in regard to an individual commodity like jute. India therefore suggested that the possibility of a comprehensive and reasonable long-term settlement in respect of matters relating to freedom of trade, commerce, etc. should be examined and discussions towards that end should be initiated at once. India also indicated that if a comprehensive agreement was reached on these lines, she would be quite prepared to give effect to it retrospectively from the 15th August 1947 in order to deal with the claim of Pakistan Government regarding raw jute. The Pakistan Government however imposed an export duty on raw jute which would affect exports to India as well and stated that the receipt of the *aide-mémoire* had been delayed in transmission. They said however they welcomed the idea of comprehensive discussions. On 31st December 1947, the Finance Secretary of the Government of India addressed the Finance Secretary to the Government of Pakistan inviting him to send a senior officer to New Delhi so that ' a preliminary discussion might be held regarding the collection of all necessary statistics etc., and the procedure for further discussions '. A reply to this was received on 19th February 1948 that while the Government of Pakistan were prepared to send an officer, a comprehensive settlement could not in any case be reached before the end of the month when the Standstill Agreement would come to an end. The Pakistan Government therefore presumed that with effect from the 1st March 1948, ' the usual international facilities will be granted in respect of trade between the two Dominions '. On March 1, 1948, the normal licensing and tariff restrictions on trade between the two countries came into force. (Annexure 3.)

(4) The imposition of a trade and customs barrier naturally caused a certain amount of hardship and a great deal of inconvenience on both sides. At an Inter-Dominion Conference held at Calcutta in April 1948, the question of trade and commerce between the two Dominions was

reviewed and India suggested that the Standstill Agreement should be reviewed pending long-term arrangements. This, however, was not acceptable to Pakistan. The Economic Committee of that Conference made certain recommendations calculated to alleviate the lot of the common man on both sides and these proposals were approved by both Governments. The major points of agreement reached included permitting the free flow of certain articles of daily consumption like fresh fruits and vegetables, fish, fresh milk and milk products, etc., the grant of transit facilities by one country to the other and the principles governing the grant of permission to send imported goods lying in one country meant for the other. It was also agreed that another Conference should be held when the question of trade in general could be considered in greater detail. (Annexure 4.)

(5) In pursuance of the decision taken in Calcutta, an Inter-Dominion Conference was held in Karachi in May 1948 and an agreement valid for a period of one year from July 1948 to June 1949 for the mutual supply of certain essential commodities was reached. Special features of the agreement which deserve mention are that India agreed to limit the volume of her export of Indian *grown jute*, which competed with Pakistan's exports to other countries and she also undertook to supply steel to Pakistan in spite of the fact that India herself had to import steel from hard currency countries at prices much above the Indian prices to meet her internal needs. (Annexure 5.) In spite of these agreements however, difficulties continued to beset trade and movement. Thus, when the Calcutta agreement and the Karachi agreement were reviewed at a Conference between delegations of the two Dominions in December 1948 in Delhi, it was found that Indian goods in transit from Calcutta to Assam and Tripura across East Bengal were still being detained under orders of the Provincial Government or their officers. Fresh decisions were taken to make the procedure for transit simple and effective, and also to facilitate trade and movement in general. (Annexure 6.)

(6) While these agreements for exchange of commodities on a short-term basis were being negotiated and implemented, India did not give up making consistent efforts to secure a long-term understanding covering trade and tariffs in general, and raw jute and raw cotton and their products in particular. In April 1949, the Commerce Minister of India had discussions with the Finance Minister of Pakistan, although these discussions were on an informal basis, with a view to exploring possibilities of increasing Inter-Dominion trade by the reduction or removal of fiscal and other barriers. An agreement was reached between them against this background, and India agreed to grant rebates of excise duty on all excisable commodities which were exported

to Pakistan and on which she was till then not granting rebates. In return Pakistan agreed to abolish certain export duties which she had imposed on commodities like bamboos and fish exported to India. It may be emphasised here that while these specific remissions of duty were of immediate advantage and importance, the real major importance of these informal discussions lay in the fact that an agreement was reached that an early conference should be convened for considering proposals for abolition or reduction of import and export duties levied by the two Dominions, simplification of the import-export control regulations, and for a more comprehensive agreement being reached with reference to the production, manufacture and sale of jute and cotton. When, however, the agreements reached in these informal discussions were attempted to be embodied in formal agreements between the two Governments, for reasons best known to themselves, the Pakistan Government found themselves unable to agree to retain a clause relating to the long-term and comprehensive arrangements in regard to production, manufacture and sale of jute and cotton. (Annexure 7.)

(7) In view of the unwillingness of Pakistan to arrive at any long-term understanding or even to meet at a conference to reach such an agreement, negotiations were started in June 1949 for a fresh agreement for the supply of commodities during the twelve months—July 1949 to June 1950. A delegation of the representatives of the Government of India visited Karachi for this purpose in the third week of June 1949 and a Trade Agreement signed on the 24th June 1949. India having suffered a substantial adverse balance of trade with Pakistan in 1948-49 because of Pakistan importing only a fraction of the cotton textiles quota agreed to in the previous years' Agreement. It was emphasised by the Indian Delegation that India could not afford to carry such substantial unfavourable balance in the following year. It was accordingly agreed by both sides that the proposed agreement should be more realistic and implemented in full. (Annexure 8.)

(8) Under the new Agreement, Pakistan agreed to make available to India 4,000,000 bales of raw jute and 450,000 bales of raw cotton. India on her part pressed for as large a provision of cotton textiles for export to Pakistan as possible so that the necessary balance in the trade could be achieved. Pakistan however, agreed to take only 150,000 bales against a much larger provision in the previous year and a very much greater actual consumption in the areas now constituting Pakistan in the prepartition days. India also agreed to supply 80,000 tons of iron and steel and to meet the requirements of Pakistan of railways stores, electrical steel sheets, ferro-silicon and ferro-manganese, in spite of her own dependence on imports even from hard currency

countries for making up her own total domestic requirements. India further agreed to a substantially larger supply of coal than in the previous year, the actual figure being 1,70,000 tons a month to be increased by a further 30,000 tons provided transport arrangements could be satisfactorily made.

(9) Soon after the Agreement, on the 13th July 1949, a meeting was held at New Delhi with the representatives of the Government of Pakistan to explore the possibilities of stepping up exports of coal to Pakistan and as a result India placed a larger number of wagons at their disposal. The figures of actual movement of coal for the months of July 1949 to November 1949 will show how a progressive increase in the movement of coal was thus secured :

July	180,243 tons
August	206,949 tons
September	168,559 tons
October	198,569 tons
November*	222,180 tons

(10) Pakistan on the other hand, far from helping the imports of cotton textiles from India actually took measures to restrict the trade. It had been agreed by Pakistan that deliveries of cloth and yarn against current contracts with the Indian mills against the previous year's quota would be accepted. It may be pointed out here that in the previous year (1948-49), it had been mutually agreed that the supplies of cloth would be on a Government-to-Government basis at controlled prices which were appreciably below those charged to other countries. Not only were the Pakistan Government's orders far below the agreed quota, but even against the quantity purchased, over seven thousand bales of cloth and yarn purchased on behalf of the Government of Pakistan and inspected by Pakistan inspectors as also about three thousand bales of yarn ordered on the Coimbatore Mills against the East Bengal Government demands, which had been railed down to the ports of Cochin and Tuticorin on advices received from the Pakistan Textile Commissioner, were not lifted by Pakistan. (Annexure 10.) The Agreement on Central Excise of May 1949 provided that the two Dominions should enter into negotiations to consider the abolition or reduction of import or export duties on certain items. Far from discussing such reductions, the Government of Pakistan on the 17th August 1949 imposed an import duty of 15 to 18 per cent on cheaper piecegoods from India priced at Rs 1·8·0 or less per square yard which had hitherto been exempt from Customs duty and raised the

* Provisional.

duty on higher priced piecegoods to 30 to 36 per cent *ad valorem*—a hundred per cent increase. Pakistan at the same time reduced almost by half the duties on the import of piecegoods from other foreign countries. The import duty on Indian textiles was further raised to the standard rates of duty in October 1949, while UK continued to receive preferential treatment so that Indian piecegoods now pay a higher duty than those from UK.

(11) Soon after the Karachi Conference, a meeting between the representatives of the two Governments was held at Calcutta on the 18th August 1949 regarding the movement of handloom cloth between the two countries. India agreed to allow freely imports of cotton handloom cloth from Pakistan. Pakistan, however, agreed to licence freely imports of only lungies from India and of other types of handloom cloth only up to 2,000 bales. This agreement was never implemented by Pakistan, though India implemented her portion in full. The import of mill-made piecegoods fared no better. Indian piecegoods imported into Karachi were being frozen immediately on arrival while piecegoods imported from other countries were allowed to be sold freely. This discrimination naturally prevented any substantial trade in textiles. Even such trade as was taking place was prevented by further measures. On September 21, the Open General Licence for mill-made cloth from India was cancelled by Pakistan along with the O.G.L. for the import of certain other items, and on 12th November 1949, India was put on the list of countries from which no imports of cotton textiles would be licensed by Pakistan. Thus, in effect, Pakistan banned the import of cotton textiles from India in spite of the Trade Agreement. Pakistan advanced the argument that this ban was occasioned by exchange ratio difficulties. This, however, is hardly tenable. Pakistan did not ban the import of a number of commodities including coal, jute goods and tobacco, which she continued to buy and remittance difficulties did not obviously stand in the way of their imports. The discriminatory nature of the ban is, therefore, evident from the fact that it is a selective ban. (Annexure 13.)

(12) It is necessary to digress at this stage and to refer to the effect of devaluation on the trade between India and Pakistan. While India maintained the original parity with sterling in terms of which all settlements of foreign exchange were made between India and Pakistan, Pakistan decided to maintain its original parity with the dollar and thus appreciated its currency against the sterling and the Indian rupee. The effect of this measure was to raise the Indian rupee prices of Pakistan raw materials in which India was vitally interested—and which incidentally were being produced in India as well, though not on such a large scale as to make India independent of supplies from

Pakistan. Thus, Pakistan raw jute became immediately far more expensive than Indian jute. It was clear that unless either the price of Pakistan jute went down or the exchange rate was altered, further purchases of this very vital raw material would not be possible. India being the main buyer of Pakistan's raw jute, the normal economic forces inevitably began to push down prices of Pakistan's raw jute and their exchange rate. Transactions between the two rupees which were permissible in the absence of any exchange control between the two countries showed that 100 Pakistan rupees were being exchanged with Indian rupees at anything between parity and 115 Indian rupees and sometimes even below parity. Before however any further buying of raw jute could be started by Indian mills, Pakistan took measures which had the effect of making trade impossible. She fixed minimum selling prices for her raw jute. She made it illegal for any person to exchange Pakistan rupee for Indian rupees or vice versa except at the rate of exchange which Pakistan had notified. It is significant, however, that although she had very large holdings of Indian rupee her State Bank were not prepared to buy and sell Indian rupees at the new rate. Millions of rupees accruing to India from Indian enterprises in Pakistan were being refused repatriation, although there is no exchange control between the two countries. Pakistan took steps to cancel the O.G.L. for the import of various goods from India. She further began insisting upon evidence of remittance having been made from India in respect of commodities coming from Pakistan to India although there was no exchange control between the two Dominions. The net effect of these measures was to prevent all trade between the two countries except for the supply of coal from India to Pakistan for which Pakistan continued to make payments from the State Bank's balances held in India.

(13) Not only was any fresh purchase of raw jute made impossible but out of the 12 lakh bales which had been purchased before devaluation by the Indian mills, 5 lakhs bales which had still to come to India were held up by Pakistan. A large portion of this jute had been passed by the Pakistan customs; the Pakistan export duty had been paid and the jute had actually been loaded—in many instances before devaluation—in barges and flats. Repeated attempts were made by the Indian buyers and their agents to get their jute released. The detention was at first apparently under orders of the East Bengal Government but subsequently a Jute Board was formed without whose approval no raw jute could be exported. The procedure to be complied with for securing the release of jute has nowhere been published by the Jute Board. Representations made to them for the release of jute have been in vain. The Indian Jute Mills Association sent a representative to discuss the matter with the Board but his visit proved equally fruitless.

Telegraphic representations were made by the Government of India first to the Jute Board and then to the Pakistan Government. The only answer given to India was that jute was held up because the parties concerned were not coming forth to get it released. Specific cases where representations had been made were brought to the notice of the Government of Pakistan. In spite of these representations as well as direct approaches made by the parties concerned—both verbally as well as in writing—no raw jute was released. The Government of India offered to settle by arbitration any outstanding claims in relation to jute on both sides. Even then the Pakistan Government did not authorise the release of raw jute. (Annexure 14.)

(14) Meanwhile yet another development came to the notice of the Government of India which made it difficult to resist the conclusion that the hold-up was part of a deliberate policy to make the position of the Indian Jute Mills difficult and to compel them to buy jute at the rates fixed by the Jute Board. The policy of detention was applied not merely to Pakistan jute purchased by the Indian mills but also to Assam jute which was in transit through Pakistan to India. As a result, on 31st December 1949, over 4½ lakh maunds of Indian raw jute in transit was under detention in Pakistan at Goalundo, Barisal and other points for periods varying from one week to two months, and this jute was not released in spite of repeated protests. Pakistan's observance of her obligations in regard to ' transit ' arrangement had always been half-hearted. Thus the State of Tripura had to depend on air-borne supplies of many essential commodities and even raw jute grown in that state had to come to India by air. The movement of Railway stores and equipment to Assam which was meant to complete the direct all-India rail route to that Province was impeded in various ways. In spite of representations, the locomotives and wagons were not released and on 31st December 1949 a large number of them were still held up in East Bengal.

(15) Thus a state was reached when it became clear that apart from obtaining supplies of coal from India, Pakistan had no intention of allowing any other trade to take place between the two countries and even goods from one part of India to another were subjected to all kinds of restrictions. In the circumstances the Government of India felt that they had no option but to discontinue the supply of coal to Pakistan, although in announcing this decision, they made it quite clear that as soon as normal trade was rendered possible, the supplies of coal would be resumed and even the short supply made up. (Annexure 16.)

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65–72 DISRUPTION OF TRADE BETWEEN INDIA AND PAKISTAN

65 EXTRACT FROM AIDE-MÉMOIRE, PAKISTAN, 13 OCTOBER 1947

At the meeting of the Partition Council held on the 5th of August, 1947, the Council considered the report of Expert Committee No. III(i) (Central Revenues) and it was agreed ' that while all assets and liabilities existing prior to the 15th August, 1947, were subject to division between the two Dominions, the question of sharing future revenue arising on or after that date was a matter for free negotiation between the two Dominions or for submission by agreement to the Arbitral Tribunal '. At the same meeting the Council also approved the proposals made in paragraph 13 of the report of Expert Committee No. VII on Economic Relations (Control) regarding the maintenance of the *status quo* in matters affecting trade and movements between the two Dominions up to the 29th of February, 1948, but the Pakistan members reserved the right ' to revise their attitude in view of the stand taken by the Dominion of India regarding customs revenue '.

(2) *Jute.* It is estimated that Pakistan produces approximately 73 per cent. of the total jute crop, but most of the exports both of raw jute and jute manufactures are at present made through Calcutta. In the budget estimates presented last February the total receipts from duties on raw jute and jute manufactures were estimated at Rs 5½ crores. Chittagong's share of these duties is at present estimated to be only Rs 40 lakhs. Thus under the present arrangements India is likely to receive over 90 per cent. of the jute revenue, although only 27 per cent. of the jute is grown in that Dominion. Moreover 62½ per cent of the total revenue from jute has hitherto been paid to the producing Provinces in accordance with the provisions of the Niemeyer Award. If however Pakistan receives less than 10 per cent. of the total revenue the principal producing Province (i.e. East Bengal) will be deprived of this source of revenue. The Pakistan Government recognise that jute manufactures can at present be produced only in West Bengal, and they do not therefore claim the full amount of revenue which would accrue to them if they exported the whole of the East Bengal crop. They consider however that Pakistan should receive, at least 75 per cent of the export duty on 59 lakhs bales.

(3) *Central Excise Duties.* In the budget estimates presented last February the total net revenue from Central Excise duties was estimated at approximately Rs 41 crores. Out of this amount collections in Pakistan are not expected to exceed Rs 3 crores in a full year. This is obviously much less than the amount of duty payable on excisable

commodities consumed in Pakistan, but under the existing arrangements no refund or rebate of excise duty is being granted on goods exported from India to Pakistan. On the other hand cotton and other commodities produced in Pakistan are being exported to India without payment of any duty. The Pakistan Government therefore consider that for the period of $7\frac{1}{2}$ months ending on the 31st of March, 1948, Pakistan should be given a reasonable share of the total central excise revenues, on the basis of the quantity of excisable goods consumed in Pakistan territory.

WPIPT, Annexure, No. 3A, pp. 10-11.

66 INDIAN AIDE-MÉMOIRE, 30 OCTOBER 1947

The Government of India have given full consideration to the *Aide-Mémoire,* dated the 13th October, 1947 presented by the Government of Pakistan.

In the light of the subsequent discussions which took place between the officials of the Government of India and the Government of Pakistan on the subject, the Government of India consider that under the present arrangements, which cover the period from 15th August, 1947 to 31st March, 1948, each of the Dominions is entitled as a Sovereign State to the taxes which it levies and collects within its own territories. There is nothing illogical in it, or in the arrangements which have been made for practical convenience and for the uniformity of taxation and freedom of trade between the two countries. This is purely a short-term working arrangement and it would scarcely be fair to question its equity by isolating any particular sources of revenue, such as Jute Export Duty or Central Excise in regard to which one party may feel that it had any special claims. A matter such as this will have to be considered comprehensively over the whole field of import, export and Central Excise duties in relation to common economic and fiscal policies and the absence of any customs or trade barriers, or in other words in the light of a Customs and Excise Union and all that such a Union implies.

The Government of India would enquire whether the Pakistan Government desire a comprehensive and reasonably long-term settlement between the two Dominions in respect of

(*a*) freedom of trade and commerce between the two Dominions *inter se,* covering in particular the question of trade and customs barriers between the two Dominions;

(*b*) uniformity of policy, legislation and taxation in respect of customs and central excises;

(*c*) the division of customs and central excises of both the Dominions on an equitable basis; and

(*d*) as far as possible, a general agreement on other relevant matters of mutual interest in the economic sphere.

If the answer is in the affirmative, the Government of India suggest that discussions should be initiated at once, in order that in the interests of both the Dominions, final conclusions may be reached in time for the budget for 1948-49.

If a comprehensive agreement is reached on these lines, the Government of India would be quite prepared to give effect to it from the 15th August, 1947 in order to deal with the present claim of the Pakistan Government.

WPIPT, Annexures, No. 3B, pp. 11-12.

67 NOTIFICATION BY PAKISTAN MINISTRY OF COMMERCE, 14 NOVEMBER 1947

Karachi, the 14th November, 1947.

No. 6 (3-1) and F.T./47. In exercise of the power conferred by section 5 of the Indian Tariff Act, 1934 (XXXII of 1934), the Government of Pakistan declares the Dominion of India to be foreign territory for the purposes of the said section and directs that a duty of customs at the rate prescribed by or under the said Act, in respect of any of the following articles when exported from a port in the Dominion of Pakistan shall be leviable on any such article when exported by land from the said Dominion:

Raw Jute

(1) Cuttings,

(2) All other descriptions.

WPIPT, Annexures, No. 3C, pp. 12-13.

68 NOTIFICATION BY PAKISTAN MINISTRY OF FINANCE, 17 OCTOBER 1947

Customs

Karachi, Friday the 17th October, 1947.

No. (1). In exercise of the powers conferred by section 13 of the Sea Customs Act, 1878 (VIII of 1878), the Pakistan Government is pleased to direct that all goods imported from or exported to a port in

India shall be treated, for the purposes of the said Act, as goods imported from or exported to a customs port, as the case may be:

Provided that nothing in this notification shall apply to:

(*a*) goods shipped under section III of the said Act, and

(*b*) goods brought into India from places outside India and Pakistan, and without payment of duty in India brought thence into Pakistan.

WPIPT, Annexures, No. 3C, p. 13.

69 PRESS COMMUNIQUÉ OF GOVERNMENT OF INDIA, 23 NOVEMBER 1947

The Government of India have read with considerable surprise the Press Note issued by the Ministry of Finance of the Government of Pakistan justifying their action in imposing a duty on raw jute exported from East Bengal to India. Under the arrangements put into effect by both the Dominions each is entitled to retain the taxes which it levies and collects in duties and there was to be complete freedom in the movement of goods across the frontiers of the two Dominions, and no import or export duties were to be levied on such goods. This arrangement was to cover the period from August 15th, 1947, to March 31st, 1948. Moreover, each of the Dominions is entitled to retain the taxes which it levies and collects in its own territories. As a purely short-term working arrangement, there is nothing illogical in these arrangements. At the time of the discussions relating to the Partition, the Pakistan members of the Expert Committees were opposed to any long-term arrangements involving any form of customs and central excise union after April 1, 1948, providing, *inter alia,* for an equitable division of such revenues between the two Dominions subject to certain conditions. The arrangements which have been made between August 15, 1947, and March 31, 1948 are therefore purely temporary working arrangements.

About a month ago, the Pakistan Government put forward a claim to a share in the export duty on jute levied and collected by the Government of India at the port of Calcutta on the ground that Pakistan produces nearly 73 per cent. of the raw jute of both the Dominions, and that Pakistan was in consequence entitled in equity to a share of the export duty on jute collected by the Indian Dominion. They further put forward a claim to a share in all the Central Excise duties levied and collected by the Indian Government on the produce on manufactures of the Indian Dominion, on the ground that a considerable proportion of such excisable articles was in fact consumed in Pakistan. Discussions were held between the official representatives

of the two Dominions in the middle of October, 1947. It was explained to the Pakistan officials that claims in respect of particular items of revenue could not be dealt with in isolation and would have to be considered along with the claims which the Government of India may have in respect of other items, and that it would therefore be necessary to undertake a comprehensive examination of the entire question of the customs and excise revenues. Such an examination would have to be on the basis of a reasonably long-term comprehensive settlement designed to cover the whole field of import, export and central excise duties in relation to common economic and fiscal policies and the absence of any customs or trade barriers, or in other words in the light of a customs and excise union and all that such a union implies. In spite of the opposition of the Pakistan member on the Expert Committees to any form of customs and excise union after April 1, 1948, the Government of India made it quite clear that they were prepared to initiate discussions at once for the negotiation of a reasonably long-term agreement which would be equitable to both sides indeed, in the event of a settlement, the Government of India undertook to give effect to it from August 15, 1947 in order to cover equitably the request of the Pakistan Government in respect of a share of the jute export duty and the central excise duties.

The Government of India are therefore surprised that the only reply of the Pakistan Government to the reasonable offer of the Government of India has been a unilateral action by that Government levying immediately a duty on jute exported from Pakistan to India, and a misrepresentation of the Government of India's attitude as unreasonable. The Prime Minister of India has protested to the Prime Minister of Pakistan against this, but no reply has yet been received.

In view of the unilateral action of the Pakistan Government the Government of India are now examining what parallel measures they should take in order to protect the interests of the Indian Dominion. Any action taken would, however, be without prejudice to reconsideration, should there be any hope of arriving at an amicable and reasonably long-term settlement over the entire field of freedom of trade and commerce between the two Dominions and allied matters.

WPIPT, Annexures, No. 3D, pp. 13-14.

70 GOVERNMENT OF INDIA PRESS COMMUNIQUÉ, 23 DECEMBER 1947

Customs Duty on Export of Jute and Jute Products from India

Pakistan declared Foreign Territory

In their communiqué of November 23, the Government of India, while dealing with the imposition of a duty on raw jute by the Pakistan Government, stated that they were examining what measures they should take in order to protect the interests of the Indian Dominion. The matter has received further careful consideration of the Government of India and they have decided to declare forthwith the Dominion of Pakistan to be foreign territory for the purpose of levying customs duty on the export of raw jute and jute manufactures, from India to Pakistan.

To implement this decision the Government of India have issued the necessary notifications under the Indian Tariff Act, the Sea Customs Act and the Land Customs Act with immediate effect.

The Government of India are also taking suitable measures to ensure that sufficient stocks of raw jute are kept available in the Indian Dominion.

The above decisions or any others that the Government of India may be called upon to take to cope with the situation caused by the levy of Customs duties by the imposition of export duty on raw jute by the Pakistan Government are, however, as already stated, without prejudice to reconsideration of the position if an amicable and reasonably long-term settlement is reached over the entire field of freedom of trade and commerce between the two Dominions, levy of Customs and excise duties, their pooling and allied matters.

MINISTRY OF FINANCE (REVENUE DIVISION)

WPIPT, Annexures, No. 3E, pp. 15-16.

71 NOTIFICATION BY INDIAN MINISTRY OF COMMERCE, 23 DECEMBER 1947

No. 134-T(59)/47.—In exercise of the powers conferred by section 5 of the Indian Tariff Act, 1934 (XXXII of 1934), the Central Government is pleased to declare the Dominion of Pakistan to be foreign territory for the purposes of the said section and to direct that on and from the 23rd December, 1947 a duty of Customs at the rate prescribed by or under the said Act or any other law for the time being in force in respect of raw jute and jute manufactures, when exported from a

port in the Dominion of India, shall be leviable on the said articles when exported by land to the Dominion of Pakistan.

WPIPT, Annexures, No. 3E, p. 15.

72 AGREEMENT AT INTER-DOMINION CONFERENCE AT CALCUTTA, 15-18 APRIL 1948

Whereas the Government of the two Dominions agree that mass exodus of minorities is not in the interest of either Dominion and they are determined to take every possible step to discourage such exodus and to create such conditions as would check mass exodus in either direction and would encourage and facilitate, as far as possible, return of evacuees to their ancestral homes the two Dominions agree as follows:

SECTION IV

The report of the Expert Committee appointed by the Inter-Dominion Conference to consider certain economic issues was discussed and the two Dominions agreed to give immediate effect to the recommendations made therein subject to the modifications described in the addendum appended thereto. The report of the Committee is annexed.

MINUTES OF THE OFFICERS COMMITTEE APPOINTED TO THE INTER-DOMINION CONFERENCE

(2) The Committee unanimously agreed that such practical recommendations and proposals as they were to put forward with a view to removing the economic hardships and grievances resulting from the termination of the standstill agreements and the imposition of customs barriers must be as smooth and simple as possible, while ensuring at the same time the genuine and legitimate interests of both the Dominions. One of the Principal factors to be kept in the background of these recommendations was that the additional irritants which gave an impetus to the exodus of minorities should be removed.

(3) The items of the agenda specifically referred to this committee were Nos. (1), (2) and (5) of the main agenda which are stated below:

(i) To discuss situation caused by termination of Standstill Agreement between India and Pakistan and imposition of restriction on movement of goods and to find ways and means of facilitating movement under existing conditions.

(ii) Pending a final Trade Agreement between India and Pakistan to arrive at some arrangement regarding the supply by each Dominion of essential requirements of the other.

(iii) Implementation all levels of Interim Agreement confirmed in PAKREW Telegram No. 169/CUS./47 of March 13th and Indian Ministry of Finance Telegram No. 204(6) (CUS-1)/48, of March 31st regarding free transit from one another through Pakistan territory and vice versa.

A few other items were also added later on and have been dealt with.

In regard to item (1) of the agenda, the Committee recommends as follows:

(i) Both Dominions must strive to reduce to the minimum the restrictions which hamper the free movement of passengers between the two Dominions and for this purpose, the following measures are recommended:

(*a*) The Customs authorities of the two Dominions should together work out a common set of simple baggage rules applicable on both sides to passengers travelling from one Dominion to the other.

(*b*) The application of the baggage rules should be made with due consideration so as to avoid irksome restrictions and unnecessary harassment of passengers.

(*c*) Passengers' baggage should be checked only by duly authorised Customs staff and no one else.

(*d*) Personal searches should as a rule be avoided, and only carried out in cases where there is genuine suspicion of smuggling. In such cases, the search should only be conducted under the personal orders of the seniormost Customs official present and a record of all searches made should be maintained. Liaison Officers should be allowed facilities to ensure a fair application of the rules.

(*e*) The personal search of women passengers, if at all made, should be carried out only by women Officers, as provided for by the Sea Customs Act.

(*f*) Both Dominions should re-examine their Tariff Schedules and their Import and Export Control Notifications to see what relaxations are possible with a view to minimise or render unnecessary any Customs formalities in regard to the personal effects of passengers.

(*g*) Passengers should be shown every consideration and as far as possible suitable arrangements should be made to facilitate the easy

movement of through-passengers without needless examination and harassment.

(*h*) No person other than an authorised Government servant, e.g. a Police Officer duly authorised may hold up any person crossing the frontier on the ground that he is carrying or suspected to be carrying contraband goods or is smuggling. Such a person should be taken or directed to the nearest Customs post by such officer for examination and no examination of his luggage or person should be made by anyone who does not belong to the Customs staff. All such authorised officers should wear distinctive badges.

(*i*) All authorised Customs officers should carry suitable badges or other means of identification.

(*j*) Once a passenger has passed the Customs frontier, no further search or examination of his luggage or person should be made.

(2) In order to facilitate the movement of goods and commodities in general the Committee makes the following recommendations:

(*a*) As far as possible, the two Dominions should set up parallel Customs posts as near to each other as possible so that for each Customs post in one Dominion there is an opposite number.

(*b*) Having regard to economic considerations, both Dominions should try to reduce the number of commodities which when moving from one Dominion to the other, shall be subject to an import or export duty. In fact only specified articles should be liable to duty and the rest should be free. This would obviate the absurd difficulties which have arisen in regard to perishables such as fish, fresh fruit, etc.

(*c*) A similar examination of the Export Trade Control Notification should be made by both Dominions. There is no import control between the two Dominions at the moment.

(*d*) The Pakistan representatives claimed that if the Havana Charter is ratified, each Dominion will become entitled to ' most favoured nation ' treatment in respect of rebates of excise duties and urged that in the interests of Inter-Dominion trade such treatment should be authorised by both Dominions without further delay. The Indian representatives stated that the present practice is not, in fact, uniform and that this is due to certain practical difficulties and other circumstances. The Pakistan representatives expressed their willingness to co-operate in removing any practical difficulties and requested that a final decision on the claim already put forward officially should be reached within a month in order to enable them to settle their import policy. India promised to reach a decision at an early date.

(*e*) Where any cultivator living in a border village of one Dominion has land in a border village in the other Dominion he should be permitted within a reasonable period after the harvest, to take across

the border to his residence reasonable quantities of any controlled commodities produced by him for his domestic consumption with the minimum of restriction and formalities.

(3) The Committee adopted the following recommendations in regard to item (5) of the agenda for the approval of the two Governments:

(1) *Transit*

(*a*) Each Dominion should take effective measures for the smooth implementation of transit facilities to the other Dominion in accordance with the provisions of International Agreements governing such transit.

(*b*) The foreign exchange earning or liability for any transit cargo moving in bond shall belong to the Dominion of origin or destination as the case may be and not to the Dominion of transit.

(*c*) Transit cargo should in general be given the same transport priority as is accorded to similar cargo moving internally.

(*d*) The Custom experts of the two Dominions should get together to evolve a procedure for transit which should be as simple as possible and take into account the peculiar difficulties arising on account of geographical and transport Considerations, e.g., the need of transhipment and the location of transport heads at points different from the Inter-Dominion boundary. The procedure already introduced by the two Dominions, should be reviewed.

(*e*) The production of a certificate from a Customs Officer of the Dominion from which the goods are being sent should ordinarily be taken as conclusive evidence of the origin of such commodities at the point of entry for transit and transit facilities shall not be denied on the ground that there is any suspicion that the goods might have originally come from the other Dominion.

(*f*) In order to ensure the smooth working of the transit arrangements the officers of each Dominion should receive suitable instructions to co-operate with the officers of the other Dominion to avoid disputes and difficulties.

(*g*) Each Dominion should post Liaison Officers at important Customs outposts and important points *en route* selected by agreement in the other Dominion so as to facilitate the removal of any difficulties that might crop up. These Liaison Officers should be persons specially selected for their capacity to smoothen difficulties. These Liaison Officers will also have other functions in connection with the removal of difficulties of travellers and movement of goods and baggage.

(*h*) Where road or river transport is involved by itself or in combination with any other form of transport, arrangements should be made for transit facilities by establishing suitable out-agencies.

(2) *Transport*

(*a*) To ensure that transport bottlenecks and congestion are avoided mutual contacts are necessary at operational levels between the railways of the two Dominions. Operational Committees consisting of representatives of the three railways in the Eastern Region and the two railways in the Western Region should be set up to deal with difficulties relating to rail transport including in particular:

(i) Delay in the turn round of wagons;

(ii) discriminatory treatment in the allotment of wagons or charging of freight;

(iii) matters affecting priorities.

(*b*) It is further recommended that a Railway Operational Committee be established on an Inter-Dominion basis which could settle broad principles of Inter-Dominion rail transport.

(3) *Facilities for Repairs*

The movement of machinery, etc. sent for one Dominion to the other for repairs and return should be dealt with under the arrangements normally provided for under the import and re-export rules. To cover, however, past cases of machinery sent before the establishment of a customs frontier reasonable latitude shall be given for a matter of three months in the application of the rules.

(*a*) In order to ensure the avoidance of undue hardship resulting from the switch-over from the standstill to the new situation, the two Dominions will consider sympathetically applications for the issue of export licences for goods which were imported from overseas specially to meet orders placed by customers in the other Dominion. This is only for a short period of transition and will apply generally to shipments made and paid for before 31st December 1947. Commodities specifically ordered by dealers in one Dominion through the Ports of the other Dominion should be covered by the Standstill Agreement or the transit arrangements as the case may be and should not be denied to the persons who have ordered, paid or will pay for the goods.

(*b*) In view of the recent conclusions at Havana to extend transit procedure to vehicles assembled in bond in the country of transit, India will extend transit facilities for motor vehicles specifically assembled in bond in India for Pakistan subject to the foreign exchange being the liability of Pakistan. In this connection Pakistan requested that until transit arrangements become effective, a number of assembled cars considered fair by India should be allowed for re-export to Pakistan. This was accepted subject to the liability for foreign exchange being examined further.

(4) *Miscellaneous Points*

Item 2 of the Agenda

It was recognised that regular terms of the Trade Agreement could not be negotiated in Calcutta by this Committee. What this Committee was to take note of was the economic background and the pre-partition relationship between what are now two different Dominions and pending the shaping of long-term policies and adjustments, to arrive at some arrangement regarding the supply by each Dominion of the essential requirements of the other. The aggravation of the situation caused by the termination of the standstill agreement and the introduction of Customs Barriers was also to be taken note of. This had created, especially in the Eastern zone, grievous hardships in the day-to-day life of the common man. Parts of one Dominion are dependent on the border areas of the other Dominion for daily necessities, such as fish, fresh fruit, milk, milk products and vegetables and firewood.

The Committee agreed also that matters connected with the formulation of the terms of a possible customs union were outside their function and that they would have to be examined by the officers of both the Dominions on a later occasion.

At this stage of the discussions, India suggested that one way of overcoming the various difficulties would perhaps be to revive the Standstill Agreement for 3 or 6 months at the outside. This interval could then be utilised for arriving at an agreement relating to Customs Union and trade to suit the special requirements of the two Dominions. While recognising that such a procedure might have certain advantages, Pakistan representatives felt that it would not be possible to revive the Standstill Agreement.

After considering the views put forward by the representatives of the several Governments the Committee recommended that the restrictions whether imposed by a Central or Provincial Government on the movement between the two Dominions of commodities such as fresh fruit, vegetables, fresh milk and its products, poultry and eggs, local spices, bamboo and firewood, and any customs duties thereon must be removed.

That the Indian Government agreed to discuss the supply of mustard oil to East Bengal to be decided at a meeting to be arranged within the next 3 weeks. Until then the Pakistan Government shall continue to allow the free movement of fish without any duty.

The Committee considered that it would be in the interests of both the Dominions if an agreement or agreements could be reached in the near future for the mutual supply of commodities essential for each

others economy. Such agreements and their implementation would promote the continuance of the close economic relationship which have existed in the past between the areas now included in the two Dominions. The time for the commencement of discussions on this and other connected matters should be settled between the two Governments at an early date. Meanwhile a list of commodities, the supply of which to Pakistan is considered essential by Pakistan, was considered. In view of short notice and inadequate information available at Calcutta the Pakistan representatives agreed to accept provisional replies covering at least their immediate requirements if final answers could not be given across the table. The list of commodities, and the estimated annual requirements and the agreed conclusions of the Committee are shown in the Annexure to this report.

As regards the commodities the supply of which India would require from Pakistan, India's representatives stated that as detailed discussions were not anticipated, they could not put forward their full requirements under all headings. Discussions will have to take place subsequently. Meanwhile the following agreed conclusions were reached:

(1) Pakistan should supply India's requirements of rock salt and gypsum.

(2) Pakistan should give priority to the requirements of cotton for Indian Textile Industry before exporting elsewhere except when such export is necessary for earning hard currency or for obtaining essential supplies of cotton textiles and yarns which cannot be met by India. Details would have to be settled at the forthcoming discussions for reaching a Trade agreement.

(3) Jute is of course one of the principal commodities required by India from Pakistan. Since there was no immediate difficulty in respect of jute supplies it was agreed that there was no need to bring up the matter at this stage especially as this Committee were dealing primarily with items in respect of which difficulties of supplies were being experienced but the long-term aspect of this question should be considered by the two Governments at an early date.

(4) Among the other commodities which Pakistan could supply to India were food grains, cement and hides and skins. It was agreed that the Government of India will prepare quantitative statements of their requirements and communicate them to the Pakistan Government as soon as possible.

WPIPT, Annexures No. 4, pp. 19-21.

73 26 *May* 1948

INDO-PAKISTAN AGREEMENT ON SUPPLY OF ESSENTIAL COMMODITIES, KARACHI

An agreement between India and Pakistan for the mutual supply of certain essential commodities was signed in Karachi on May 26, 1948, by Mr C. C. Desai, for the Government of India, and Mr Mohd. Ali, for the Government of Pakistan. This agreement has since been approved by both Governments.

The following is the text of the Agreement.

Agreement between India and Pakistan for the Mutual Supply of certain Essential Commodities

The representatives of the Government of India and the Government of Pakistan having considered the requirements of essential commodities which each Dominion needs from the other have, subject to ratification by their respective Governments, agreed as hereunder:

(1) The quantities of each commodity which each Dominion undertakes to make available to the other are stated in Annexures I and II. The Annexures also indicate the demands made by each Dominion in respect of each commodity and special features, if any.

(2) Apart from the commodities listed in the Annexures I and II it was agreed to show the maximum consideration in facilitating the export of goods from the Dominion to the other. It was agreed that imported goods which had been shipped and paid for in either Dominion before the 31st of December 1947 out of the undivided exchange account will be allowed to be re-exported to the other Dominion wherever it is established that the goods were originally intended for consumption in that Dominion.

(3) The period of the agreement will be one year from 1st July 1948 to the 30th June of 1949 except as regards

(*a*) raw cotton and cotton textiles, for which the agreement shall cover the period from 1st September 1948 to 31st August 1949; and

(*b*) food grains for which the agreement will be for the period 1st June 1948 to 31st August 1949.

(4) With such exception as may be mutually agreed upon, supplies will ordinarily be made through commercial channels. Commodities which are not subject to any control either internally or for export present no problems. In the case of commodities which are not subject to internal control but are subject to export control, the supplying Dominion shall issue necessary export licences in such a manner that the export of the agreed quantities will be facilitated. In respect of

commodities which are subject to internal as well as export control, the supplying Dominion shall either supply on a Government to Government basis or make specific allocations in conformity with their internal control as well as issue export licences.

(5) In regard to raw jute, India agrees to restrict her exports of raw jute from the Indian Dominion to 9 lakhs of bales predominantly of the Indian varieties the bulk of which is not suitable for use in Indian Mills and is usually exported.

(6) It is agreed that neither Dominion will re-export to any country any commodity imported from the other Dominion in the form in which it was imported.

(7) Pakistan agreed to supply food grains to India at the same rate as is charged for supplies to its own deficity Provinces, India agrees to supply steel f.o.b. Calcutta at f.o.b. Calcutta prices. The freight will be borne by the buyers. India also agrees that the internal controlled price of coal and paper will continue to be charged for sales to Pakistan also. Supplies of coal to the Government of Pakistan will be paid for out of irrevocable credits to be opened by the Pakistan Government. Other supplies of coal to Pakistan will be made on pre-payment by the purchasers in the usual manner. The prices indicated are exclusive of any export or import duties that may be levied by either Dominion.

(8) It was agreed that subject to seasonal considerations each Dominion should spread its purchases as uniformly and conveniently as possible.

(9) In order to implement the Agreement in a smooth and orderly way, it was agreed that monthly progress reports should be exchanged between the two Dominions, and that meetings between representatives of the two Dominions should be held every other month for this purpose.

(10) During the currency of this agreement items may be added to or taken away from the list of commodities included in the annexures by mutual agreement between the two Dominions.

WPIPT, Annexures No. 5, pp. 27-32.

APPENDIX I (COMMODITIES AGREEMENT 1948-9)

Requirements of Pakistan

Serial No.	Commodity	Pakistan's stated annual requirements	Quantity agreed to by India	Remarks
1	Coal	3,400,000 tons	183,000 tons per month (including as far as possible 5,000 tons of hard coke)	160,000 tons per month are firm. As for the balance of 23,000 tons, India will make every effort to move this quantity subject to adequate transport being available, and will also invite the co-operation of Pakistan in this matter.
2	Cloth and Yarn	4,000,000 bales	400,000 bales	One fourth of this total quantity would be in the form of yarn.
3	Steel pig iron and scrap	313,720 tons	15,000 tons per quarter plus 1,000 tons per quarter of corrugated iron sheets plus 4,000 tons of pig iron per quarter.	
4	Paper and board	20,700 tons	6,000 tons of paper and 1,500 tons of board.	
5	Chemicals and Pharmaceuticals	2,000 tons		Will be examined in Delhi.
	Sulphuric Acid Aluminium Sulphate	2,000 tons		Ditto.
	Hydrochloric acid	270 tons	270 tons	
	Nitric acid	200 tons	200 tons	
	Magnesium Sulphate	800 tons	800 tons	
	Ferrous Sulphate	400 tons		Will be examined in Delhi.

Serial No.	Commodity	Pakistan's stated annual requirements	Quantity agreed to by India	Remarks
6	Copper wire	1,000 tons	Nil	
7	Asbestos cement sheets	5,000,000 sq. ft. (5,000 tons)	2,500 tons	As regards the balance India will explore possibility of supplying mangalore tiles instead.
8	Paints, enamels and varnishes	2,500 tons	2,500 tons	Detailed breakdown not yet furnished. While the overall quantity could be supplied, certain quantities may not be available and substitute would be suggested.
9	Railway Stores	39·3 lakh rupees		Supplies may be available but details will be considered in Delhi.
10	Tyres and tubes	1,300,000 Nos.		It should be possible to supply most of the requirements but detailed breakdown according to tyre size and quality required. Matter will have to be examined.
11	Leather and foot wear :			
	Upper leather	60,00,000 sq. ft.		It should be possible to meet this demand in full provided adequate quantities of hides are available.
	Sole leather	75,00,000 lbs.		
	Lining leather	4,00,000 lbs.		
	Leather shoes	6,00,000 Nos.		
	Canvas for	3,00,000 Shoes		

Serial No.	Commodity	Pakistan's stated annual requirements	Quantity agreed to by India	Remarks
12	Hardwood	5,00,000 c.ft. (10,000 tons)	Nil	India offered to supply instead 10,000 tons of Malabar jungle wood of which samples would be furnished to Pakistan.
13	Jute manufactures	50,000 tons	50,000 tons	
14	Myrobalans	2,000 tons	2,000 tons	
15	Woollen and worsted goods	11,00,000 lbs.	11,00,000 lbs.	
16	Mustard oil	50,000 tons	20,000 tons	
17	Groundnut oil	30,000 tons	5,000 tons	
18	Copra oil	6,000 tons	Nil	
19	Seed potatoes			Export would be allowed of local surpluses in both Dominions.
20	Soap, Toilet	2,000 tons	2,000 tons	
21	Tobacco	7,00,000 lbs.	7,00,000 lbs.	
22	Tea Chest	3,00,000 pieces		The demand was put forward only in Karachi for the first time. Stated to be urgently required for the tea industry in East Bengal. Will be considered in Delhi.

APPENDIX II (COMMODITIES AGREEMENT, 1948-9)

Requirements of India

Serial No.	Commodity	India's stated annual requirements	Quantity agreed to by Pakistan	Remarks
1	Raw Jute	1,000,000 tons or 5,500,000 bales	5,000,000 bales	
2	Raw cotton	900,000 bales	650,000 bales	The proportion of medium and long staples cotton to be decided later.
3	Food grains :			
	(*a*) Rice	100,000 tons	175,000	Pakistan agrees to supply 175,000 tons of food grains (mainly rice) unless there is a serious failure of crop i.e. to say if the rice crop is 4 annas or more below the average of past five years. Pakistan further agrees to do its best to improve upon this quantity.
	(*b*) Wheat	200,000 tons		
4	Gypsum	1,000 tons	Rising to 1,000 tons per day under a programme to be mutually agreed upon.	
5	Rosin	4,000 tons	Nil	
6	Raw hides and skins :			
	(*a*) Cow hides	2,000,000 pcs.	1,000,000 pcs.	
	(*b*) Buff. hides	500,000 pcs.	200,000 pcs.	
	(*c*) Skins	1,500,000 pcs.	1,500,000 pcs.	
7	Rock salt	2,000,000 mds.	2,000,000 mds.	

Serial No.	Commodity	India's stated annual requirements	Quantity agreed to by Pakistan	Remarks
8	Soda Ash	10,000 tons		Factory is at present closed but is expected to get into normal production by end of 1948. It is hoped to meet India's demand in 1949.
9	Potassium Nitrate	5,000 tons	5,000 tons	
10	Cattle	1,050 heads	550 heads	

74 *April* 1949

INDO-PAKISTANI AGREEMENT—REBATES OF CENTRAL EXCISE

The following decisions have been reached as a result of recent discussions between India and Pakistan:

(1) With effect from 1st June 1949 each Dominion will grant full rebate of excise on excisable commodities exported to the other Dominion if such rebates are given on exports of the same commodities to any other country. Further for a period of one year from the same date, the two Governments will give such rebates on all commodities that are at present excisable or may during that period be made subject to excise duty irrespective of whether such rebates are given on exports to other countries or not.

(2) In view of Clause (1) above the Pakistan Government will withdraw their complaint before the Contracting Parties to the General Agreement on Tariffs and Trade regarding rebates of excise duties.

(3) With effect from 1st June, 1949 and subject to India continuing to supply to Pakistan mustard oil free of export duty, Pakistan will withdraw their export duties on bamboo and fish exported to India and provided the necessary administrative arrangements can be made India will reduce the import duty on unmanufactured tobacco from Pakistan to rates corresponding to the rates of excise duty which would be payable on similar Indian Tobacco used for similar purposes this being the position that obtains and will continue to obtain in Pakistan.

(4) An Inter-Dominion Conference will be held on a suitable date before the expiry of the current arrangements to negotiate a

fresh agreement for the supply of commodities. The two Dominions will exchange lists of requirements at least a week before the conference begins.

(5) The two Dominions will also enter into negotiations at a separate conference on a date convenient for both to consider (i) the abolition or reduction of import or export duties on certain items and (ii) the simplification of import and export control regulations. For the purpose of these negotiations each Dominion will communicate to the other Dominion a list of items on which such fiscal relief is desired and also a minimum list of articles on which they consider it necessary to maintain import or export control.

(6) Either Government will give due consideration to any representation that may be made by the other Government should the latter feel that the achievement of the full benefits of this agreement is in any way hampered.

WPIPT, Annexures, No. 7B, pp. 47-8.

75 24 *June* 1949

INDO-PAKISTANI TRADE AGREEMENT

WHEREAS the Government of India and the Government of Pakistan are desirous of continuing arrangements regarding the supply by each country of the requirements of the other they have agreed as follows:

Article 1

The Government of India agree to permit the importation from and exportation to Pakistan and the Government of Pakistan agree to permit the exportation to and importation from India, of the commodities and goods specified in Schedules A and B at least up to the limits for each class of goods mentioned therein during the period of this Agreement on the terms and conditions of this Agreement.

Article 2

With regard to such commodities and goods specified in the said Schedules as are, or may be, subject to export or import licences, the two Governments agree to grant, upon receipt of applications duly made, export or import licences at least up to the quantitative or monetary limits specified in Schedules A and B in respect of such commodities and goods in accordance with the law of the country and regulation and administrative practices of the Government granting the licences.

Article 3

During the currency of this Agreement, the two Governments may, by mutual agreement, alter, extend or supplement the Schedules to this Agreement.

Article 4

Articles 1 and 2 of this Agreement are without prejudice to the right of traders of either country entering into business transactions in respect of goods and commodities not forming part of this agreement subject to, and in conformity with, the laws and regulations of either country for the time being in force.

Article 5

The two Governments agree to render all reasonable assistance in facilitating the export and import of goods and commodities included in Schedules 'A' and 'B' and to consult each other in respect of any matter arising from, or in connection with, the exchange of commodities and goods between the two countries during the currency of and in accordance with this Agreement.

Article 6

Neither party shall re-export to any other country any scheduled commodity obtained by either country from the other in the form in which it was imported. Change of Packing does not constitute change of form for the purpose of this Article.

Article 7

Subject to seasonal considerations and delivery requirements indicated in Schedules 'A' and 'B' each country shall spread its purchases as uniformly and conveniently as possible.

Article 8

The two Governments agree to promote the contacts between the trade interests of the two countries and undertake to give every reasonable facility for the import and export of commodities, and in particular to facilitate the use of the routes and methods of transportation which are most economical and convenient.

Article 9

This Agreement, subject to ratification by the two Governments, shall remain in force for a period of twelve months from the 1st July 1949 to the 30th June 1950, except where otherwise specified in the Schedules.

Article 10

In order to implement the Agreement in a smooth and orderly way the two Governments will exchange monthly progress reports and arrange meetings every other month between representatives of the two countries.

Done and signed in duplicate, in English, either copy being authentic, in Karachi on this twenty-fourth day of June 1949.

TRADE AGREEMENT BETWEEN INDIA AND PAKISTAN

SCHEDULE A

Export from Pakistan to India

Serial No.	Commodity/Goods	Quantity/Value	Remarks
1	Raw cotton	450,000 bales	A minimum of 2·25 lakh bales to be purchased by 28th February 1950 and the balance by 31st August 1950
2	Hides and Skins :		
	Buffalo hides	200,000 pieces	
	Cow hides	1,000,000 pieces	
	Skins, goat	800,000 pieces	Goat skins in equal quantity from East and West Pakistan ; Sheep skins 75,000 from East Pakistan and 625,000 from West Pakistan. Free licensing by Pakistan. Open General Licence by India
	Skins, sheep	700,000 pieces	
3	Raw jute	4,000,000 bales (in terms of standard bales of 400 lbs.)	Free of licence on both sides
4	Rape and Mustard seed	15,000 tons	This is balanced by the additional supply of 5,000 ton mustard oil mentioned in item 10(a) of Schedule 'B'
5	Rock salt	2,000,000 mds.	

SCHEDULE B

Export from India to Pakistan

Serial No.	Commodity/Goods	Quantity/Value	Remarks
1	Asbestos cement sheets	2,500 tons	India will issue export licences immediately. The article is on Open General Licence for import into Pakistan

Serial No.	Commodity/Goods	Quantity/Value	Remarks
2	Canvas	150,000 yards	This item is on the Open General Licence for import into Pakistan
3	Chemicals :		
	(*a*) Sulphuric acid	2,000 tons	On Open General Licence for import into Pakistan and export from India
	(*b*) Aluminium sulphate	2,000 tons	
	(*c*) Hydrochloric acid	270 tons	
	(*d*) Nitric acid	200 tons	
	(*e*) Magnesium sulphate	800 tons	
	(*f*) Ferrous sulphate	400 tons	
4	Coal	2,040,000 tons at the rate of 170,000 tons per month	The figure of 170,000 tons of coal includes 1,000 tons of Hard Coke per month. India will make every effort to supply an extra 30,000 tons per month if transport can be arranged. Maximum possible movement to be by rail
5	Cloth :		
	(*a*) Mill-made	150,000 bales	Import into Pakistan is on Open General Licence. Free licensing by India
	(*b*) Handloom		Exchange of certain varieties between Eastern Pakistan and India is under separate consideration
6	Cotton yarn	100,000 bales	At least 25,000 bales to be 20's and above. Free licensing by India for Pakistan counts below 20's and above
7	Hardwood	10,000 tons	Malabar jungle wood and similar varieties. Free licensing by India for Pakistan counts below 20's. Quotas for counts of 20's and above

Serial No.	Commodity/Goods	Quantity/Value	Remarks
8	Jute Manufactures	50,000 tons	Open General Licence on both sides
9	Myrobalans	2,000 tons	On Open General Licence both for export from India and import into Pakistan
10	Edible Oils :		
	(*a*) Mustard Oil	30,000 tons *plus* 5,000 tons	Open General Licence on both sides. The additional quantity of 5,000 is balanced by the supply of 15,000 tons of mustard and rape seed mentioned in item 4 of Schedule A
	(*b*) Groundnut Oil	15,000 tons	India will issue licences. Imports into Pakistan are on Open General Licence
	(*c*) Copra Oil	6,000 tons	Ditto
	(*d*) Vanaspati	15,000 tons	Ditto
11	Railway stores :		
	(*a*) Underframe fittings	Rs 150,000	Pakistan's additional requirements are :
	(*b*) Fire Bricks	Rs 100,000	Signalling and Interlocking materials Rs 150,000 Underframe fittings Rs 150,000 Fire Bricks Rs 350,000 Electrodes Rs 800,000 Hydraulic fittings Rs 30,000 Split and cotton pins Rs 500,000 Wheel Tyre Axles Rs 500,000 Further consultation will be held with a view to utilising spare capacity in India for meeting these requirements.
12	Paints and Varnishes	2,500 tons	Open General Licence on both sides

Serial No.	Commodity/Goods	Quantity/Value	Remarks
13	Linseed Oil	6,000 tons	India will issue licences. Is on Open General Licence for import into Pakistan
14	Bauxite	2,500 tons	Is on Open General Licence on both sides
15	Electrical Steel Sheets	500 tons	India will issue export licences. Open General licence for imports into Pakistan
16	Sea Salt	2,000,000 mds.	Open General Licence in India and Open General Licence for import in Pakistan by land and river and under licence by sea
17	Steel	64,000 tons	
18	Pig Iron	16,000 tons	Supply will be in quarterly instalments of 4,000 tons beginning from October–December 1949, and ending in July–September, 1950
19	Tobacco (Flue-cured)	2,000,000 lbs.	Open General Licence for export by India and import into Pakistan
20	Ferrosilicon	100 tons	*India will confirm later
21	Ferromanganese	100 tons	Ditto*
22	Pitching Stone and Ballast	7,500,000 c.ft.	
23	Washing soap	5,000 tons	

* Since confirmed.

Note: Cigarettes, Matches and Toilet Soap have been suggested by India. It is noted that they are on Open General Licence for export from India and import into Pakistan.

WPIPT, Annexures, No. 8, pp. 49-53.

76 2 *September* 1949

SUMMARY OF INDIA'S TELEGRAM TO PAKISTAN

Pakistan's telegram of 6th July confirmed that the Government of Pakistan would accept deliveries of cloth and yarn against current contracts with Indian mills. Nearly 6,000 bales of yarn and 1,300 bales of cloth purchased on behalf of the Government of Pakistan which had already been inspected by Pakistan Inspectors had not moved due to the failure of the Pakistan Government to provide shipping. The letter of credit which was opened by the East Bengal Government for the above purchases also expired on the 31st August 1949 and it had not been extended beyond that date.

Additional 2,700 bales of yarn were ordered on the Coimbatore mills against an urgent demand for 10,000 bales from the East Bengal Government. As the Pakistan Government were delaying in arranging shipment, the Indian Textile Commissioner telegraphed to the Pakistan Textile Commissioner that this contract for 2,700 bales of yarn would have to be cancelled. The Pakistan Textile Commissioner replied that shipping arrangements were complete and that the contract should not be cancelled. He also added that if contract was cancelled, he would reserve rights to recover damages. Subsequently, the Pakistan Textile Commissioner intimated that the S.S. 'Firdusa' would be calling at Cochin and Tuticorin on the 14th and 16th August. In view of this, the Indian Textile Commissioner railed the yarn to Cochin and Tuticorin. The sailing intimated by the Textile Commissioner was however cancelled and the Indian Textile Commissioner made several requests for extension of letters of credit on account of the postponement of shipping arrangements but without any satisfactory response.

The Indian Government, therefore, requested that immediate steps should be taken to extend letter of credit covering the above goods and to make the necessary arrangement for shipment.

WPIPT, Annexures, No. 10A, p. 55.

77 10 *November* 1949

PAKISTAN'S REPLY

In view of your inability to accept lowering of margins you may dispose of goods without liability to us.

WPIPT, Annexures, No. 10B, p. 56.

78 14, 21 *December* 1949

TELEGRAMS BETWEEN INDIA AND PAKISTAN

Surprised to learn from your Import Trade Control Public Notice 42(49)1, dated 12th November 1949 that India has been excluded from list of countries for whom licences for import of mill-made cotton fabrics, etc. will be issued by Pakistan. Shall be grateful for early reply as to what procedure Pakistan intends to adopt for import of Indian cloth in terms of Indo-Pakistan Agreement.

It is also understood Pakistan has prohibited import of handloom lungies from India in violation of the Calcutta Agreement of 18th August. Shall be grateful for an early reply on exact position.

From Pakistan to India, dated 14 December 1949

Though we are anxious to have your cloth we have to be practical and since no purpose was served by including India in licensing when no business would have followed owing to your non-recognition of our rate of exchange we had regretfully to exclude you for the time being.

From India to Pakistan, dated 21 December 1949

Unable to agree that what you have stated is any justification for exclusion of India from list of countries from whom cloth imports are to be licensed. By non-recognition of your rate of exchange you presumably refer to the fact of our Reserve Bank not being in a position to buy and sell Pakistan rupees. Your State Bank also does not buy and sell Indian rupees. In spite of this certain supplies as you are aware have been going from India to Pakistan and other supplies are reaching India from Pakistan. Further so far as export of cloth from India to Pakistan is concerned your State Bank has enough balances with the Reserve Bank to finance purchases from India and this has already been stated by Mahomedali in his telegram of 14th December as one of the grounds why he considers that barter of cloth for wheat would be inappropriate. We have no reason to believe that if you had not stopped licensing cloth would not have been moving to Pakistan. In any case you should at least remove restrictions on imports from your side and then see whether cloth does go. Fact that you have singled out certain commodities only and placed import restrictions on them does not support the view that your decision arises from considerations of exchange. We must therefore point out that your action is another flagrant breach of the trade agreement and discrimination against India. We would request you to reconsider the

matter as if you do not see your way remove such obstacles to trade placed contrary to Trade Agreement it will be impossible for us to maintain other supplies under the agreement.

WPIPT, Annexures No. 13D, pp. 66-7.

79 *November-December* 1949

PREVENTION BY PAKISTAN OF MOVEMENT OF GOODS PURCHASED BY INDIA

A *Jute*
B *Other Goods*

A *Jute*

Extract from letter from India to Pakistan, 4 November 1949

The immediate purpose of my writing this letter to you is to bring to your notice the complaint which has been made to us by the Indian Jute Mills Association. The complaint is as follows in the words of the Association themselves:

'Prior to 19th September, when the change in exchange ratios took place, the Mills in India had already contracted to receive, and had paid for, an amount of jute which in quantity still remaining for delivery, is estimated at about 4 lakhs of bales. Until recently, the Pakistan authorities have placed no restrictions or difficulties in the way of mills in this country receiving from sellers the raw jute under existing obligations. A change in that has recently been witnessed however; and at the present time there is a complete cessation in the movement of jute. Not only does that extend to amounts which are lying in Pakistan and still have to be placed on vessels and/or rail, but at the present time there is a refusal to allow vessels loaded with jute to proceed beyond the borders. The jute in these vessels represents purchases made by the mills prior to the 19th September and is the property of the mills in that they have paid for the documents of title, the bills of lading. No jute would be allowed on board the inland water vessels in Pakistan unless and until customs duty had been paid and a valid receipt in respect thereof issued. In that essential regard therefore the requirements of the Pakistan authorities have been satisfied; and adequate evidence can and has been furnished to show that the goods belonged to the mills here and is being despatched in fulfilment and discharge of contractual commitments and obligations. Despite that, however, various pretexts and devices have been sought by the Pakistan authorities to prevent that jute being moved; and

flotillas of steamers, barges, flats, etc. of the inland water transport are unable to move because of this. All contain jute belonging to the mills in India, jute for which the mills have paid. The precise figures in this complete hold-up will be telegraphed to you from Calcutta; but if it can happen in this instance, what the Association fear is that it will extend to the whole of their mills' outstanding purchases, namely 4 lakhs of bales approximately.'

I had mentioned this point to you when you were here and have the impression that you agreed that it would not be correct for Pakistan to hold up any jute that was purchased and paid for pre-devaluation, and was on its way to India. It may be that the position has not been understood correctly by some people at the customs border and this obstruction may have been put in the way of the traffic. I would, therefore, request you to be good enough to have a look at the matter and to do your best to correct the position. If you like, you can send for the Chairman of the Indian Jute Mills Association, who will explain the whole case to you and place all the facts so that justice is done to them. The matter is of immediate importance and I would be grateful if you could send me a telegram indicating what you have been able to do. I am informing Walker that I have written to you in these terms so that in case a call comes from you, he will be ready to come over and explain the position personally.

Letter, 12 November 1949 from Jute Board, Narayanganj, to India

The matter has been receiving my attention from the day of my arrival. Unfortunately position is not as simple as put up to you by the Indian Jute Mills Association. Jute held up comes under the following categories:

(i) For which contracts had been entered into in Pakistan.

(ii) For which contracts had been made in Calcutta.

With regard to (i), we have received a number of representations that although part of quantities contracted for had been delivered in Calcutta, purchasers have refused to make payments in Pakistan as laid down under the terms of contract. Sellers are, therefore, worried about their payments and have asked for consignments to be held back.

With regard to (ii), a large quantity of the jute has been sold to Calcutta mills under contract made in Calcutta by firms that are in Pakistan. In the absence of exchange ratio these firms are concerned about their payments and are, therefore, marking time until the exchange ratio is settled.

There is a third category, i.e., Indian firms who have jute in East Bengal and had already offered a portion of their jute to the inland

water transport companies. So have also received strong representations in the case of this group that they have not cleared their full liabilities in Pakistan and have large outstandings towards their agents and sub-dealers. Although the firms are anxious to clear their outstandings, shortage of funds in Pakistan and the absence of facilities for transfer from India are coming in the way of their doing so.

In order to sort out all these problems we have asked that each party that claims to have purchased jute should represent their case to the Jute Board and that after due investigation and where clear proof is available that all payments have been made the consignments should be allowed to go to India. Would request that the IJMA may be asked to instruct their members to put forward their respective cases as early as possible.

Extract from telegram from Pakistan to India, 1 December 1949

I received a visit from Secretary of IJMA. We have had a long and frank discussion and he has been fully apprised of the situation. His visit has been extremely helpful as this has clarified a number of points on which there has been misunderstanding. The procedure to be adopted has been fully explained to him and he has promised to notify all concerned.

The information given to you on the point that no contracts had been entered into in Pakistan is not correct. We have received representations from a number of parties with whom contracts had been entered into in Pakistan. These parties have given full details of the names of the mills the quantities for which contracts had been entered into and the letter under which the mills have unilaterally cancelled the contracts. In many instances the sellers who had entered into IJMA contracts have held back the despatches. There are consignments lying in Narayanganj both in river flats and in godowns which have been detained by sellers. These are mostly firms registered in Pakistan who due to the uncertainty of the exchange would prefer to wait until some decision is arrived at between the two Governments. My point with regard to certain liabilities of firms has been misunderstood. These are liabilities incurred in the purchase of jute and not any other liability. With best possible intention firms have been unable to clear the outstandings due to a complete cessation of exchange. They have not been able to transfer funds which they would have done in the ordinary course. The firms therefore have large amounts outstanding against them towards their *beoparies* and sellers.

Letter, 5 December 1949 from Indian Jute Mills Association, Calcutta, to Ministry of Commerce, New Delhi

I send you a copy of my full file note on the subject of my visit to Dacca.

The Chairman met the representatives of the jute shippers on Saturday (3rd) as also the representatives of the steamer companies; and he had received by that time your telegram of the 1st December, the contents of which he made known to them for their confidential information.

The task of submitting books, records, papers, etc., to prove that the goods are ours—which is the theme of Faruque's representations to me is not actually impossible. It is such an onerous one, however, involving weeks and months of delay as almost virtually to amount to such. The search has to go back to the 1st July; and since almost the entire trade sold to us, it means examination of almost every seller of jute. Again, too, there is a reluctance on the part of the trade to reveal to the Board—on which there is a fellow competitor—details of their business contacts, relations, methods, etc., as from these can be obtained trade information and data which should be kept strictly private and confidential and not disclosed to any save their auditors and Income Tax officials. Ispahani, as a commerce man, well knows the difficulties in this affecting as it does the dealers and merchants in all their transactions this jute season and in all of their purchases and agencies. It is, therefore, the view taken that the request is simply one of delay of deliberate frustration, and asking the fulfilment of known impossible conditions.

It has been suggested now that the Pakistan Jute Association should take the matter up officially; but the views and opinions of every responsible section of the trade is that nothing that can be done will shift the Board's attitude and that they are determined to keep the jute in the flats pending a settlement of the exchange issue.

It emerged from these discussions with the trade that quite a number of the flats—about 60/65—had been loaded and despatched from loading stations prior to the 19th September; and that even these were held up for which there could be not the slightest justification. I have sent a telegram to you about this matter so that that can be the subject of direct approaches by Government to the Board. The whole matter, it is felt, is now not so much a matter for the trade but for Government; and the Chairman will be writing to you about this matter as soon as possible. In that letter opportunity will also be taken of his commenting on the suggestion made to me by Faruque that the Chairman should visit Dacca in order to meet the Board.

WPIPT, Annexures No. 14, pp. 68-75.

80 *October–December* 1949

DENIAL BY PAKISTAN OF TRANSIT FACILITIES AND HOLDING UP OF RAILWAY ENGINES, WAGONS AND STORES

Ten wagons containing components or girder spans required for Assam Rail Link Projects were booked from Katihar to Fakirgram and Alipur Duars via Parbatipur and Lalmonirhat. Wagons are reported to have been detained at Lalmonirhat since October fifteenth under orders of District Magistrate, Rangpur. It is also reported District Magistrate refused to state reasons for detention. This is gross violation of transit clause of New Delhi Agreement. Request immediate issue of orders to District Magistrate for releasing wagons. Shall be grateful for intimation of action taken.

Extract from telegram dated 1 November 1949 from India to Pakistan

About fifteen engines of Assam Railway have been held up for want of cranes in course of their transit over E. B. Railway between Kanchrapara and Assam Railway. Kindly instruct E. B. Railway to expedite their transit and make them over to adjoining railway concerned.

Telegram dated the 12th December, 1949 from India to Pakistan.

Detention of a total of 168 wagons belonging to Assam Railway containing machinery parts and girders. Invoice particulars have been given to East Bengal Railway but authorities say that these wagons are detained under orders from Police or Ministry of Home Affairs. Grateful for immediate issue of telegraphic orders to East Bengal to release wagons and despatch them to destinations.

Telegram dated the 16th December, 1949 from Pakistan to India.

Matter under consideration. Reply will be sent as soon as possible.

Telegram dated the 22nd December, 1949 from India to Pakistan.

According to further information received 14 additional flats, 7 belonging to East Bengal River Steam Service and 7 to National Steam Navigation Co. involving 93,180 maunds of Assam jute are also held up in East Bengal.

Following instances of hold up on E. B. Railway of transit traffic from West Bengal to Assam have also been reported to us:

(1) About 15 engines of Assam Railway held up at Santahar.
(2) Ten wagons girder spans held up at Lalmonirhat.
(3) One bogie containing 315 Kw. generator for Pandu.
(4) 168 vehicles, machinery parts, girders, etc. All these cases have previously been brought to the notice of Pakistan Government without any result so far.

WPIPT, Annexures No. 15C, pp. 96-7.

81 12–27 *December* 1949

CORRESPONDENCE ON DETENTION OF JUTE BY PAKISTAN

(1) *Extract from telegram from India to Pakistan, dated 12 December 1949*

About five lakh bales of raw jute purchased before devaluation by Indian Mills or on their behalf by their Agents have been held up in East Bengal under orders of your jute board. Much of this jute is loaded in barges and flats which were on their way to India when jute board was created. Jute lying in these flats now for nearly three months is liable to serious deterioration thus becoming useless for consumption by Industry and causing enormous losses to Indian buyers for which the Pakistan Government must be held responsible. All this jute has been paid for before devaluation and large part of it was already on barges before ninteenth September. The jute is thus clearly Indian property and its hold up is irregular and contrary to the Trade Agreement. All our efforts including visit of Secretary, Indian Jute Mills Association to Dacca and personal appeals to persuade Jute Board to release this have been turned down. Having failed to prevail upon the Jute Board to take right and just action in the matter we must now ask you to arrange for the release of this jute immediately. If Pakistan Government feel that either they or their nationals have any claims in respect of this jute we agree that these be settled after release of jute by negotiation. If settlement cannot be reached by negotiation we would be prepared to refer any claims by Pakistan nationals or Pakistan Government along with any claims on our side to arbitration. The offer of arbitration should remove any possible reason for holding up jute on account of any possibility of outstanding claims from your side and we hope you will now order the release of this jute immediately specially because detention of the barges on which this jute is loaded for such a long time apart from its deteriorating and becoming useless is affecting movement of trade not only between Pakistan and India but also from one part of India to another.

Ever since devaluation we find that policy pursued by you has been such as to make the working of the Trade Agreement signed by us on twenty-fourth June, 1949 virtually inoperative. We have already drawn attention to some of these breaches and it would not serve any useful purpose to go into further details here. Unless Pakistan modifies this policy, removes obstructions to trading and movement and takes steps immediately to release the jute that has been held up we shall have to decide without delay whether in view of your action, the Trade Agreement should not be taken to have lapsed and to consider

what action we should take in regard to commodities we are supplying to Pakistan under the Agreement.

(2) *Extract from telegram from Pakistan to India, dated 14 December 1949*

Detention of jute appears to have been misrepresented to you. It is nuisance to us since barge capacity is wasted. We are however helpless since claims to ownership are not being made. Six weeks ago we issued invitation to any parties concerned to prove sales and receipt of money but no claims had been made. Procedure is simple and we suggest that purchasers be sent to Faruque who is most willing to hear and settle their cases. Proposal for arbitration is premature since we have provided a simple and easy procedure for proof of transactions. As all parties interested to secure this jute must be your nationals located in Calcutta you should be able to persuade them to make their claims quickly. If you then have any cause for complaint please let me know at once.

Your reference to our policy since your devaluation is misconceived. The only obstacle to operation of Trade Agreement is your refusal to recognise our rate of exchange which has been accepted by rest of the world. Were this out of way I am sure we could get trade moving in both directions quickly. In our opinion such breaches of Trade Agreement as have occurred have all been on your side and we have had no satisfactory answer to our protests.

(3) *Extract from telegram from India to Pakistan, dated 20 December 1949*

Your suggestion that no claims to ownership are made is surprising when our jute worth crores of rupees is being held up and is deteriorating. The facts are otherwise. To take only a few instances claims have been made by the Agents of the Mcleod Group, Hukum Chand, Andrew Yule, Jardines, Birlas and Surajmull Nagarmull both verbally and in writing. In addition the steamer companies have also given to Jute Board evidence regarding date of loading. Further letter dated 16th November 1949 from M. G. Aggarwal, Managing Director, Eastern Pakistan Jute Manufacturing Co., Ltd., Mymensingh to the Jute Board and letter dated 23rd November 1949 from Acton of Eastern Jute Baling Agents for Mcleod Group asking for advice as to precise action to be taken and form in which proof is to be furnished have not yet been replied. Sinclair Murray produced proof of payments for consignments on lines advised by Jute Board, but now have been informed that proof afforded is insufficient for board's purposes. If the procedure were as simple and easy as you say there should have been no difficulty in the Jute Board ordering the release of the jute in these cases. It seems to us therefore that no such procedure

has either been laid down or announced. Obvious conclusion is that Jute Board is not prepared to release the jute regardless of merits. We would not have taken up matter with you if we were not satisfied that Jute Board was acting unreasonably.

Apart from the endeavours as indicated above made by Agents of our jute mills to comply with requirements of the Jute Board we fail to understand why the jute which has already been loaded on barges after payment of export duty and after being passed by your customs should at all have been detained.

We went out of our way to offer arbitration to settle any claims on either side to facilitate the release of the jute which is claimed by our nationals as having been sold to them already before your Jute Board started functioning and your regulations regarding minimum price of jute came in force. We shall adhere to this offer and request that all our raw jute should be released.

You are not correct in suggesting that obstacle for operation of Trade Agreement is our refusal to recognise your rate of exchange. Presumably you refer to the fact of our Reserve Bank not being in a position to buy and sell Pakistan rupees at rates fixed by you. Your State Bank is also acting similarly. We do not consider that these actions of the respective State Banks should be a hindrance to the movement of commodities between our two countries. In fact, movement, where not deliberately stopped, continues and we are confident that had you not taken measures to stop import of cotton textiles from India and stop export of cotton and jute to India by imposing indirect exchange control, there would have been an uninterrupted flow of trade in these commodities also between the two countries.

Unless you can see your way to release our jute immediately, we have perforce to review the resulting position and consider whether we could continue to honour the Trade Agreement only for those commodities which Pakistan desires to have while trade in other commodities is stopped by import and export restrictions.

(4) *Extract from telegram from India to Pakistan, dated 21 December 1949*

Flats and barges carrying raw jute from one part of India to another through East Bengal are being detained at various points. Attention of your Board of Revenue was drawn to this in telegram dated 1st December to which no final reply has so far been received. The latest information which we have indicates that the detention of vessels has not occurred in isolated instances or owing to any local administrative difficulties. It seems on the contrary that vessels carrying raw jute are being systematically detained at various points and a large number of flats which left for Calcutta on varying dates after the 1st

November are still being held up at one point or another in East Bengal. Thus the flats Hijili, Rambari, Jalkanra are reported to have been detained at Goalundo for 13 days from 18th November to 1st December and are now under detention at Barisal. Other flats still detained at Barisal are Hariana, Azamgarh, Roorki, Bitarani, Taval, Ranganadi, Dekrang, Lebong, Gopalpur and Radhampur. Yet other flats including Ramgunga, Lakhna, Bihmari, Korah and Rangafulla are detained at Khulna. There are also other flats still detained at Goalundo and there have been detentions, at Kala as well.

It is scarcely necessary to point out that interference with transit traffic is not only contrary to existing Inter-Dominion agreements but also against international agreements on the subject. After a lot of preliminary difficulties satisfactory transit arrangements had been agreed upon between India and Pakistan which provided for the smooth and uninterrupted flow of goods in transit across either country with the minimum of formalities. Obviously this arrangement can and must work on a basis of complete reciprocity and would request that immediate orders be issued for the release of these flats.

(5) *Extract from telegram from India to Pakistan, dated 23 December 1949*

No reply received so far to our telegram dated 20th December. In view of continued hold-up of raw jute purchased by our mills as well as detention of raw jute of Indian origin in transit from Pakistan, we find we have no alternative but order temporary suspension of supplies which we were making to Pakistan under our trade agreement. We regret the necessity of having to take this step, and would repeat that we would be prepared to implement Trade Agreement in full and even make up such short supplies of coal as may result during period of suspension after you have released our raw jute in transit as well as Pakistan raw jute purchased by us before devaluation, subject, if necessary, to an arbitration on all outstanding financial claims in that regard.

(6) *Extract from telegram from Pakistan to India, dated 25 December 1949*

As there is clear conflict of information both about Pakistan jute bought by you and about your jute in transit through Pakistan we have called Faruque to Karachi to discuss. At these discussions we propose not only to review the specific instances you mention but also the whole procedure of Jute Board in handling claims. Whenever it then appears that complaints are justified immediate action will follow.

We are at one with you in desire to maintain satisfactory transit arrangements which we have established to our mutual advantage

and benefit. We assure you transit of jute would not be withheld in any circumstances. It is very likely as check of all consignments has tightened up considerably to cope with smuggling by air, rail and water, movement has suffered delays. With your co-operation in prevention of smuggling movement of transit goods could be greatly facilitated.

In view of all this we think you will agree you have been rather hasty in suspending supplies without giving us time to investigate even specific cases you cited.

(7) *Extract from telegram from India to Pakistan, dated 27 December 1949*

On reflection you will agree that far from being hasty in suspending supplies, we have been most considerate in not taking action earlier. The first approach for release of this jute was made as long ago as 4th November. This letter was followed up by a message to Faruque through our Deputy High Commissioner in Dacca on 25th November and later by telegram to Faruque again on 27th November. My last telegram to Faruque was dated 1st December. Similarly our previous protests regarding hold-up of jute in transit from Assam to Calcutta evoked no response.

We fail to appreciate your reference to smuggling in respect of transit jute in bond coming from Assam to Calcutta and consider that any hold-up of jute is indefensible and contrary to international usage and the December 1948 Inter-Dominion Agreement. We hope that as a result of your looking into specific instances and the whole procedure of the Jute Board, it will be possible for you to release both categories of jute as well as other goods held up in transit. We stand by our assurance to revert to normal relations after this has been done.

WPIPT, Annexures No. 16, pp. 105-9.

82 24 *December* 1949

SPEECH : INDIAN COMMERCE MINISTER

With your permission, Sir, I should like to take this opportunity of making a statement explaining in some detail the latest developments in our trade and commercial relations with Pakistan. The House is aware that these have been based on a series of Trade Agreements, the last of which was entered into in June 1949. These Agreements proceeded on a recognition by both countries of the importance of continuing arrangements regarding the supply by each country of the

requirements of the other and to do all that is necessary for the purpose. Thus, under the 1949 agreement, which is valid for the period July 1949 to June 1950, Pakistan agreed to make available to India four million bales of raw jute and 450,000 bales of cotton while India was to make available to Pakistan 150,000 bales of cotton textiles, 80,000 tons of steel and 2 million tons of coal. I have mentioned only the principal commodities. I should add in this connection that India is herself an importer of large quantities of steel from the hard currency countries, nevertheless we agreed to supply steel to Pakistan in order to preserve as far as possible the traditional pattern of trade.

Soon after the 1949 Trade Agreement was signed, it became clear that Pakistan was not serious about implementing it. For instance, far from helping the import of cotton textiles from India into Pakistan, they actually took measures to restrict this trade. It is stated in the Agreement that the import of Indian textiles into Pakistan was governed by Open General Licence. But the Indian textiles were frozen on arrival while textiles from other countries were allowed to be sold freely. Thus there was positive discrimination against Indian textiles —a discrimination which they continued to maintain in spite of representations. Towards the end of September we were suddenly informed that the O.G.L. for the import of several commodities from India including textiles had been suspended temporarily. This was followed by a proposal to cancel the O.G.L. for millmade textiles from all countries including India. Not only were our protests ignored, but Pakistan went a step further. On the 12th November Pakistan published by notification a list of countries from which no import of textiles would be allowed. India was included in this list. The Inter-Dominion Agreement for free movement of certain types of handloom cloth was never implemented by them although we on our part continued to import handloom cloth from East Bengal.

In spite of the difficulties over textiles, India continued to buy jute in the normal way and there were no difficulties to start with. I should explain at this stage that it has always been the custom for Indian buyers to purchase jute through agents whom they finance. As a rule the agents pay for the jute on the spot in Pakistan. In this way as much as 12 lakhs of bales of raw jute had been purchased in Pakistan by the middle of September. Since then, Indian buyers have found it virtually impossible to make fresh purchases of Pakistan jute owing to its high cost. Meanwhile the movement of jute already purchased began to be interfered with. These difficulties became even more acute after the establishment of the Pakistan Jute Board. This body has not only fixed minimum prices but is also exercising certain checks on exports of raw jute. Under their orders as much as 5 lakh bales out

of the 12 lakh bales purchased by India have been held up in Pakistan. All this jute is clearly Indian property, having been paid for long before the Jute Board had been established. A large portion of this jute was been passed by the Pakistan customs; the Pakistan export duty has paid and the jute had actually been loaded in barges and flats. The hold up of this jute is thus inexplicable and clearly indefensible. Repeated attempts were made by the Indian buyers and their agents to get this jute released. Claims were made to the Jute Board both verbally and in writing. The steamer companies produced before the Jute Board evidence regarding dates of loading. All this produced no result except admissions in principle by the Jute Board that the jute which is Indian property would be released. To find out what precisely had to be done to secure the release of this jute, the Indian Jute Mills Association sent a representative to discuss the matter with the Board, but his visit proved equally fruitless. It became clearer every day that the formalities regarding proof of transactions, were only being used as a pretext to detain the jute. Numerous buyers who were naturally anxious to comply with all necessary formalities individually approached the Jute Board and other authorities for clarification and advice about the action expected of them, but none of them was given any clear ideas about the precise formalities to be complied with or the nature of the proof of payments, contracts, etc., which they had to produce to the Jute Board. Others wrote to the Jute Board on these matters, but their letters were left unanswered. All this time the jute had been deteriorating. The Government of India, therefore, brought these facts to the notice of the Pakistan Government and requested them to release the jute immediately, and to facilitate a quick decision even went to the length of offering arbitration to settle outstanding claims on either side. But the reply from Pakistan was that the proposal for arbitration was premature, that the reasons for the detention of jute had been misrepresented to us, that detention of jute was actually a nuisance to Pakistan, and that Indian buyers had failed to take advantage of their simple and easy procedure for making claims. These statements are completely at variance with the facts which I have already stated. The value of the Indian owned jute lying in Pakistan for over three months runs into crores of rupees. When this money is locked up, when the jute be lying exposed and is deteriorating and losing value every day, it cannot be seriously suggested that the owners have failed to make their claims, or that the procedure is easy and simple as represented by Pakistan. The inference is irresistible that the procedure if any, is really designed to hold up all movements of jute.

The detention and obstruction to movement of jute is not confined to Pakistan grown jute bought by Indian nationals. Such obstruction

has of late been extended to Indian jute in transit from Assam through Pakistan to Calcutta. A number of barges and flats loaded with Assam jute are also being held up at various points in Pakistan. To our knowledge there are thirty of them carrying nearly a hundred thousand bales. The detention of Pakistan jute bought by Indian nationals, taken together with the obstruction to the movement of Indian jute in transit through Pakistan can lead only to one conclusion, namely, that Pakistan is deliberately denying jute to Indian jute mills with a view to exercising economic pressure on the industry. There have been many other cases of hold up of transit goods, particularly of railway stores required for the Assam railway link.

To make matters worse, the Pakistan Government have in some cases called upon the Steamer companies to unload the barges in Pakistan, the result of which would be further deterioration of the jute. In any case, detention of these barges is immobilising river transport and causing congestion on the riverways which constitute the main artery of communication between Calcutta and Assam apart from such action resulting in the infliction of hardship and losses on the steamer companies.

The supply of jute by Pakistan to India, and of coal by India to Pakistan are among the cardinal features of the trade agreement. India has throughout consistently fulfilled her obligation of supplying coal. Pakistan on the other hand, far from facilitating the supply of jute is deliberately obstructing such supply to India.

The Trade Agreement, which both countries accepted only a few months ago as the basis of their mutual commercial relations is thus being honoured by Pakistan only to the extent of receiving in full their monthly quota of coal. Some days ago, we pointed out to the Pakistan Government that unless there is reciprocity we shall have to reconsider our attitude to the agreement itself. The Pakistan Government in their reply have argued that the only obstacle in the way of the fulfilment of the agreement is India's failure to recognise their rate of exchange. This is not understandable at all. If Pakistan wishes to maintain a certain rate of exchange with other currencies, it is obviously her business to buy and sell other currencies at that rate. But, even the Pakistan State Bank does not buy or sell Indian Rupees. On the other hand, banks and individuals are prevented from doing so, except at the rate of exchange notified by Pakistan. Apparently no one is able to do business on these terms. In this connection Honourable Members will recall that for some time after devaluation trade continued between the two countries, although on a reduced scale, until the Pakistan Rupee came to be quoted at par with or even below the Indian Rupee. It was then that the Pakistan Government issued orders

prohibiting their Banks to buy or sell Indian Rupees except at the rate of exchange notified by them. Any impediment to trade and commerce on account of exchange difficulties is therefore due to Pakistan's own regulations. Banks in India are free to buy or sell Pakistan Rupees, without restriction.

We had on more than one occasion in the past suggested a Customs Union or other similar arrangements with Pakistan but there has been no response whatever. A formal and duly ratified Agreement which had resulted from my personal discussions with the Pakistan Finance Minister in March last contemplated a conference to be held as soon as possible to find ways and means of relaxing import and export regulations to encourage and expand trade between the two countries. No conference has, however, yet been held. It has been postponed on some ground or other advanced by the Pakistan Government. Meanwhile, we have tried to discharge our obligations under the Trade Agreement. But the operation of the Trade Agreement amounts now only to the export of coal from India. There is no other trade between the two countries. On the other hand an enormous quantity of jute purchased and paid for by our nationals is being deliberately detained. The Government of India decided not to allow this situation to continue indefinitely. A telegram was therefore sent to Pakistan on the 20th of this month in which the offer of arbitration was reiterated and Pakistan requested immediately to release all our raw jute. Till yesterday morning we had no reply....

I hope, Sir, that in the circumstances stated by me the Government will have the fullest support of the House in the action taken by them.

WPIPT, Annexures No. 16, pp. 109-12.

83 18 *January* 1950

PANDIT NEHRU TO PAKISTAN PRIME MINISTER

I am writing to you about the proposed joint declaration by the Governments of India and Pakistan for the avoidance of war.

(2) On the 16th January we received a copy of a statement, which you were to make in the Pakistan Constituent Assembly in reply to a question regarding this proposed joint declaration by the Governments of India and Pakistan for the avoidance of war in the settlement of disputes. In this statement it is said that, in the view of the Government

of Pakistan, the only way to promote peace is to resolve major disputes. Even if these disputes cannot themselves be settled before the declaration is made, at least the procedure for settling them can be laid down by agreement in precise terms in the declaration. Further that your Government urge the Government of India to agree to the concrete and precise suggestions of the Government of Pakistan already made regarding the procedure to be followed in the settlement of disputes.

(3) I was not aware of any concrete and precise suggestions of the Government of Pakistan or its High Commissioner in Delhi in this respect. All that had happened previously was that your High Commissioner had mentioned various matters in dispute and referred to possible methods of settling them. No concrete or precise procedure had been suggested. We had dealt with the points raised by your High Commissioner, whereupon it was agreed that a tentative draft of a declaration might be prepared. This draft was handed to your High Commissioner on the 22nd December 1949. The first reply to it that we received is the copy of your statement, which reached us on the 16th January. We were surprised to find in this a reference to certain concrete and precise suggestions, which we had not thus far received.

(4) I have now seen newspaper reports of the full statement made by you before the Pakistan Constituent Assembly on January 17th. You refer in this to the various matters which are, according to you, in dispute. As you know, the Kashmir issue is before the United Nations and has therefore to be considered separately. As regards Junagadh, I am surprised at your reference to it, as this is not a live issue.

(5) The canal water issue has been the subject of correspondence between the two Governments and both are practically agreed that a joint technical commission should be set up for making a factual investigation. On the basis of the report of the Commission, the two Governments will confer with a view to arriving at a settlement. If it is not found possible to reach a settlement, we are quite prepared to refer the matter to arbitration or some tribunal approved of by both Governments. You will appreciate that the manner of subsequent procedure as well as the forum can hardly be decided satisfactorily before we know what the results of the technical commission are and what the remaining points for decision are.

(6) We are prepared that the evacuee property dispute should be settled by artbitration, if negotiations and mediation fail.

(7) So far as the division of the Reserve Bank's assets is concerned, the major portion of the assets claimed by Pakistan has already been transferred to the State Bank, and in regard to the remaining claims, disagreement has arisen on the question of the mode of payment. The

question thus is one of the manner in which the claims have to be settled. This matter has already been discussed informally between the two Governments, and Pakistan themselves have suggested a conference to discuss it further. There are a number of other issues connected with this matter, all of which would have to be considered in arriving at a settlement.

(8) The question of payment of sterling depends upon the amount that is due and of which type it is, that is whether current or blocked. Both these matters are eminently fit for settlement by negotiation and indeed, as I have mentioned above, a conference is envisaged.

(9) As you know, the Government of India have large claims of a financial nature on the Pakistan Government. These have been pending for a long time without any satisfactory settlement. This again should be dealt with by negotiation and, in the absence of any settlement, by other peaceful methods.

(10) The whole object of the proposed joint declaration was to remove or lessen the unfortunate tension that exists between our two Governments and to produce an atmosphere which is more favourable to the consideration and settlement of particular disputes. If these disputes are satisfactorily settled separately, we would welcome it. But obviously there has been difficulty and delay in doing this. A joint declaration would, no doubt, be helpful in bringing us nearer to a settlement of all outstanding disputes between the two Governments, which the Government of India earnestly desire.

(11) The procedure for settling disputes cannot be uniform in all cases. It is possible that one method may be appropriate for one dispute and another method for another dispute. Apart from negotiation and mediation, the only remaining peaceful methods are arbitration and reference to some international authority or tribunal. That is precise enough.

(12) The proposal to make a joint declaration was made by the Government of India in all earnestness, so that we might take one effective step forward towards the resolution of existing disputes between the two Governments. Not to take this first step, because the other steps are not simultaneously taken, is to avoid taking any steps at all for the present at least. That is not a very helpful way of proceeding in this matter. For us to say that in no event are we going to war for a settlement of disputes is an important and significant contribution to peace between the two countries. The Government of India are prepared to say that, if the Government of Pakistan is also agreeable. Owing to geography and for many other reasons, it is inevitable that many issues arise between the two countries which require settlement. A firm declaration that we will in any event settle them by peaceful

methods will itself be a great service to our two countries and the world, because it will remove fear of war from the minds of our peoples.

(13) Any joint declaration that we might make must necessarily be in general terms to cover all cases that may arise now or hereafter. Apart from this joint declaration, and in pursuance of it, we can at once begin to consider specific matters separately.

I shall be glad to have an early reply from you.

Draft of a joint declaration suggested by the Government of India to the Pakistan High Commissioner in Delhi on 22 December 1949

The Government of India and the Government of Pakistan, being desirous of promoting friendship and goodwill between their peoples who have many common ties, hereby declare that they condemn resort to war for the settlement of any existing or future disputes between them. They further agree that the settlement of such disputes between them shall always be sought through recognised peaceful methods such as negotiation, or by resort to mediation or arbitration by special agency set up by mutual agreement for the purpose, or by agreed reference to some appropriate international body recognised by both of them. It is their earnest hope as well as their firm conviction that the implementation of this declaration in the spirit which lies behind it will serve to maintain good relations between the two countries and advance the cause of world peace.

No War Declaration, 1950, pp. 1-3.

84 17 *January* 1950

STATEMENT: PRIME MINISTER, PAKISTAN

The Government of Pakistan are grateful to the Government of India for the draft of the proposed declaration forwarded by them and greatly regret that through an unfortunate confusion over transmission it only reached them on January 10th.

(2) While they share the sentiments in the Government of India's draft the Government of Pakistan feel that its terms are too vague. In their view, the only way to promote peace is to resolve major disputes; and a joint declaration will carry conviction to no one unless it is supported by evidence of some concrete action. Even if these disputes cannot themselves be settled before the declaration is made, at least the procedure for settling them can be laid down by agreement in precise terms in the declaration, so that both parties enter into firm

commitments which would in course of time definitely lead to the resolution of disputes.

(3) For this reason they would strongly press the Government of India to agree to the concrete and precise suggestions of the Government of Pakistan already made regarding the procedure to be followed in the settlement of disputes or to suggest modifications in them which the Government of Pakistan would be ready to examine.

No War Declaration, 1950, p. 39.

SECTION VI(*a*)

UNO: INDIAN SPEECHES

85 19 *September* 1947

SPEECH: MRS VIJAYALAKSHMI PANDIT

We meet today in a disturbed and unhappy world. Economic dislocations have caused widespread suffering, and there is apprehension that the world might be plunged into still deeper distress. Looming ominiously over the whole situation is the fact that the great Powers, instead of coming closer together, are drifting farther apart. There is tension, suspense and anxiety, and an uneasy awareness that things are perhaps moving towards some new and annihilating disaster for mankind, and that not enough is being done to check this trend and direct our course to a more promising future.

It is against this background that I should like to present India's position. Since we last met, a year ago, a momentous change had taken place in our domestic situation. A comparatively brief phase in our very ancient history—when the fortunes of our people and their political condition were subjected to an alien Power—has been brought to an end.

For India, and indeed for Asia, 15 August 1947 was a fateful day. It saw the triumph of an experiment unique in history, started by that great soul who may well be called the Father of the Indian nation, Mahatma Gandhi.

In the past, I have not hesitated to criticise British policy towards my country. But on this occasion, with equal readiness, I desire to place on record before this great Assembly the warm appreciation of the Indian people for the spirit which moved British statesmen to make a voluntary surrender of authority over India. It cannot be easy for a people to divest itself of an empire, and for the sake of an enduring world peace I would commend this example to those other nations which bear towards their colonies the relationship which existed between the United Kingdom and India until yesterday. In particular, I should like to mention the case of Indonesia, whose cultural ties with India date back many centuries and whose future is of vital importance to the peace and security of Asia. Indonesia has been fighting valiantly to be free and presents a challenge to the United Nations.

I should not, however, be true to myself, nor would I accurately reflect the sentiments of my people, if I were to withhold from this Assembly the sadness that is in our hearts that freedom has come to us

only through division which, in its turn, has led to strife—temporary, we hope—in certain parts of our country.

In what is for us, as for the rest of the world, a time of historic transition, we are beset with a multitude of problems. In many respects they are not dissimilar to the problems that face most countries in the world today; but the circumstances in which we have been called upon to solve them have, inevitably, been conditioned by the policies which prevailed during the period of foreign rule in India.

I mention this lest there should be any misunderstanding as to the magnitude and the special complexity of the tasks to which the newborn Government of free India has so energetically set its hand. Comprehensive schemes of reform, reconstruction and development in every field of our national life are either being worked out or, in some instances, are actually in the process of execution.

The endeavour to raise the standard of living and forge new and free institutions for a people would be no easy matter even in a period of assured peace and general prosperty. It is at least no easier in these troubled times, when hunger, uncertainty and fear stalk through our land as through so many other lands. However, I am glad to have the opportunity today of stating from this rostrum that in spite of the adverse conditions, many of which we have inherited, our Government is forging ahead with the full confidence and support of the people.

I would now like to deal briefly with some problems facing us here. At the present time there is a heated controversy over the unanimity rule in the Security Council. The operation of this rule has the effect, in some cases, of producing a stalemate and inhibiting the implementation of the majority will in the Security Council. Such deadlocks are discouraging and disappointing, and we would therefore advise moderation and restraint in the exercise of what is called the veto. The unrestrained use of this power is to be condemned as much as the abuse of any other power. At the same time, the permanent members of the Council have an obligation to strive to the utmost to widen the area of agreement among its members, both permanent and non-permanent.

In the last analysis, the success of the Security Council and the peace and welfare of the world depend not upon the enforcement of a majority decision taken by the great Powers, but upon the forbearance, tolerance and wisdom with which they seek to achieve and maintain unity among themselves.

It is sometimes said that this is an issue between the great Powers on the one side and the small and medium Powers on the other. While it is convenient to speak of the permanent members of the Council as 'great Powers', the tendency to classify countries as

great and small is not useful. For instance, I would not like to assign India to any of these categories. We are all great in some respects, and no doubt small in others, but we all have an equal right to consideration in this Assembly in accordance with the principles laid down in the Charter.

This brings me to a question of grave importance with which we are confronted in this Assembly. What if the Assembly's recommendations, made only after exhaustive and prolonged consideration and debate, are ignored and treated with disrespect by Member States, especially by those to whom a recommendation is specifically directed? I shall have more to say on this subject later, but it is necessary at this point to call your attention to the fact that the South African Government has taken no action to give effect to the principles underlying the resolution we adopted here last year.

A denial that discrimination has been practised against Indians in South Africa is not, I submit, a serious or convincing reply to the General Assembly. The correspondence recently published between the Prime Ministers of the two dominions reveals India's anxiety to reach a fair and honourable settlement of this issue. It concerns, if I may say so before this Assembly, not only the relations between two dominions. Unresolved, it may spread misrepresentation and conflict over a much wider sphere, because of its basically racial character. I believe that this is not the only case where a Member State has disregarded the clearly expressed will of this Assembly. It will therefore be necessary for us to consider and determine the means that may be open to us to ensure that the Assembly's decisions on such matters of importance are treated with respect.

The Indian delegation also feels concerned about what appears to us to be an excessive eagerness on the part of some Member States to invoke the domestic jurisdiction clause of the Charter (Article 2, paragraph 7) whenever a certain type of question is raised.

We have no desire whatever, nor have we the power, to dispute the sovereignty of a Member State, or to attempt to interfere, through the medium of the United Nations or in any other manner, in their internal affairs. We in India know only too well what such interference can mean, and we would resent and resist it as firmly as any other country. It must be recognized, however, that every international question may be regarded as having a national aspect, and we cannot afford to permit a Member State to evade its obligations and thus reduce the value of the Charter.

I have only touched on some of the more important questions that occur to us when we consider the functioning of the United Nations during the past year. I am not wholly satisfied—indeed, none of us,

I believe, is wholly satisfied—with the work we have accomplished and the results we have achieved. Millions of humble folk in all countries are alarmed and bewildered, unable to comprehend fully those mighty forces which are driving the great Powers into unfriendly groupings, carrying with them by some sort of magnetic pull numbers of other States as well.

We, in India, for our part, are aware of no compulsion to identify ourselves wholly or to associate ourselves systematically, with either or any of the different groups. On the contrary, we consider it of paramount importance that the distance between them should be narrowed down. We believe that our conduct should conduce to that end, and that there are standards and principles and ideals that transcend merely national interests, that transcend the exigencies of the kind of power politics that has proved so calamitous in the past.

Accordingly, we shall offer our support to, or withhold it from, the proposals submitted to us, solely in the light of our judgement of the merits of the case in question. We stand for peace, and will devote our resources and energy towards the abolition of all causes which lead to war. To those nations that work with this aim we shall gladly offer our full co-operation. The Indian delegation feels that what is important today is not to set about revising the Charter, or to divert our energies and devise complicated ingenious amendments. The important thing today is that we should all observe faithfully the spirit and the letter of the Charter, its principles and procedures, not only when it is convenient to us, not only when it helps us to pursue aims and policies which may have no connexion with the Charter, but at all times and in relation to all problems and difficulties.

If we are not prepared to implement the Charter in this spirit, I fear that no modification or revision, no addition or abrogation of a phrase here and an article there, will greatly improve the position. It may well have the opposite effect.

Machinery, new or old, by itself, will not save us if we are not truly and sincerely determined to remove war as a means of settling differences.

It has now become almost a platitude to say that a clash of ideologies underlies the rift that is so noticeable in the world today. We who come from the East, who are intimately familiar with the dire want, the poverty and suffering and starvation that prevail there, may be forgiven for thinking that ideology is less important than practice. We cannot eat an ideology; we cannot brandish an ideology, and feel that we are clothed and housed. Food, clothing, shelter, education, medical services—these are the things we need. We know that we can only obtain them by our joint efforts as a people, and with the help

and co-operation of those who are more fortunately circumstanced than ourselves. The conflict of ideology, or whatever it may be, that is plunging the world into gloom and tension, seems so sadly irrelevant to these great human problems; problems that vitally affect a half, and perhaps more than a half, of the world's population.

Our Organization, the United Nations, has no 'ism' of its own; it embraces all 'isms' and ideologies; it embraces all civilizations of the West and of the East; its principles cannot be said to derive exclusively from either or any of the contending doctrines. That is why, in this most critical time, and notwithstanding the discouraging factors, we continue to place our faith in it.

We are indeed more firmly convinced than ever that the only way to avert a catastrophe, the only road to peace and freedom and well-being for us all, is through our steadfast and wholehearted co-operation, at whatever inconvenience, within the framework of the United Nations and in the spirit of the Charter.

On behalf of my Government, once again I give you the pledge of our fullest co-operation and our determination to do all that lies within our power to see that the establishment of the United Nations shall, in future, mark the beginning of a new and less unhappy chapter in human history.

ORPGA, Second Session, Vol. I, pp. 134-8.

86 25 *September* 1948

SPEECH: MRS VIJAYALAKSHMI PANDIT

Mrs Pandit (India) declared that it was a matter of satisfaction to her delegation that the present session of the General Assembly was being held in Paris. India had received much inspiration from France. India's struggle for freedom, its thought and ideals had been influenced by France. The Indian people had loved France and what it had stood for; they had been grieved during the unhappy period when France's freedom had suffered a temporary eclipse; and they rejoiced that France had again taken its rightful place in the world.

The three years that had passed since the creation of the United Nations had not been easy ones. The peace which had emerged from the travail of a lengthy war was an uneasy peace and apprehensions of another war already threatened mankind. During that period the United Nations had been faced with many grave problems, and it would be a dangerous self-delusion to say that they had been tackled

successfully. But the lack of success had not been due to any lack of courage or enterprise on the part of the United Nations. The mistakes made were mainly due to the fact that Members of the United Nations had not been true to the spirit of the Charter. There had been a disturbing tendency for legal arguments to be regarded as more important than human and moral considerations, which tendency was leading to the undermining of the Charter. That attitude was also responsible for accentuating disharmony between the big Powers. The General Assembly was meeting at a time when differences between the big Powers were most acute.

Serious disagreement had developed over the peace treaty for Germany, the deadlock in Berlin, the control and use of atomic energy, disarmament, and the creation of a world force, to mention but a few examples. Every field of international endeavour was threatened by the ever-widening gulf between the major Powers. So long as the shadow of conflict hung over the councils of the world there could be no progress and no sense of security. The disappearance of that harmony among the Big Five which, while it had lasted, had been the greatest single factor in winning the most deadly war in human history, now endangered the peace of the world. The responsibility of the Big Five was far heavier than it had ever been, and greater than ever before was the need for tolerance, moderation and a spirit of accommodation in all their deliberations.

India had tried to judge all questions before the General Assembly as objectively as possible. For India the spirit of the Charter meant much more than its letter. India had, in the past, avoided alignment with any one bloc—an attitude which had often been misunderstood. Indians were, however, convinced that that stand was correct even if it entailed some temporary disadvantage. It was not based on any weakness, but the result of the conviction that by avoiding being grouped with any bloc of Powers, in however small a fashion, India was helping in the maintenance of peace. It was India's view that, if the world should be divided into two distinct and opposing groups, a future conflict would become inevitable, and within the General Assembly itself the formation of Power blocs would interfere with that undivided allegiance which Member States owed to the Organization. India saw danger in the lesser loyalties which bound those groups together prevailing over the larger loyalty which all Members owed, through the United Nations Charter, to the peoples of the world.

Many momentous questions were to be discussed in the present year. In the view of the Indian delegation one of the most important items was the problem of atomic energy control and disarmament.

Her delegation shared the regret of the General Assembly that many months of effort by the Atomic Energy Commission had proved fruitless, and that the Commission, faced with a deadlock, had suspended its activities. As an under-developed country, India was interested in the use of atomic energy for peaceful and beneficent purposes. It trusted that a fresh approach would be brought to the question of the utilization of atomic energy for such purposes and for the elimination of the weapons of war, and earnestly hoped that the present deliberations would pave the way for the reconciliation of opposing points of view.

No progress had been made with the question of disarmament. It was obvious that the threat of war could not be banished from the world unless the present race for armaments was abandoned. As had been emphasized by the Secretary-General, almost as important as the elimination of atomic weapons was the outlawing of biological and chemical warfare, which was said to have been perfected to such an extent as to threaten the very existence of mankind. The General Assembly must devote serious attention to those matters.

The present session would be called upon to consider colonial and trusteeship problems arising from Chapters XI and XII of the Charter. The views of the Indian delegation on such matters, which had been pressed at the last two sessions of the Assembly, were well known. Those provisions of the Charter it regarded as among the most vital. India regretted the attempt in some quarters to whittle them down and was disturbed at the appearance of the forces of reaction in regard to which the representative of the Philippines had recently given such eloquent expression (139th meeting).

The Indian delegation, believing in the freedom of all peoples, wished to see the early termination of the colonial system, and the speedy attainment of self-government by all peoples inhabiting colonial or Trust Territories. It insisted on the strict observance of Chapters XI and XII, both in spirit and letter. In particular, it urged the colonial Powers to realize that the two hundred million people inhabiting the Non-Self-Governing Territories read into the provisions of the Charter relating to such territories far more than the colonial Powers were inclined to do. Those peoples read the solemn declarations made about the fundamental freedoms of all mankind, and they were asking whether those declarations were meant to apply to them as they did to the Members of the United Nations. Could it be maintained, without a threat to world peace developing, that the General Assembly had no authority to ask the colonial Powers for concrete proofs to demonstrate that they were doing everything possible to hasten the development of self-government among the colonial peoples? India

believed in the establishment of a permanent committee under Chapter XI, which would do for the Non-Self-Governing Territories what the Trusteeship Council was doing for the peoples of the trusteeship areas.

With regard to conditions in South-East Asia, Mrs Pandit said that that region, which had been one of the strongholds of colonialism, was slowly emerging into freedom and was faced with internal travail and the opposition of vested foreign interests which usually accompanied the birth of freedom. These were evident in Indonesia, in Indo-China and in Malaya. India had the deepest sympathy for the people of those countries in their struggle for freedom. It considered that Indonesia had reached a stage of autonomy which entitled it to the recognition of its sovereignty, and hoped that Indonesia would soon be welcomed as a Member of the United Nations. The people of Viet-Nam had been fighting gallantly for their freedom. India hoped that the French Government and people would rise to the full height of their traditional liberalism so that Viet-Nam might attain self-government.

India was glad to welcome its friend and neighbour, Burma, in the United Nations. Its satisfaction was, however, tinged with regret at the tragic events which had taken place in Burma, not the least of which had been the loss of some of Burma's ablest leaders.

One of the greatest problems with which the world was faced at present was the continuing practice of racial discrimination in certain parts of the world. That was one of the gravest dangers to world peace. India would not tolerate distinctions which offended against the dignity of the human person.

Something that had been said from the rostrum on the previous day (141st meeting) about relations between European and non-European races being poisoned compelled her to make an observation on the allegation that the Assembly had been misused on certain occasions. When a Member State came to the rostrum of the General Assembly and spoke of the basic principles of the Charter being violated, one was entitled to ask whether a policy of racial segregation, pursued without the least regard for every one of those basic principles, of restrictive laws and measures affecting the political and economic rights of certain races, was in keeping with the allegiance Members professed to the Charter. The General Assembly would be guilty of shirking one of its most onerous responsibilities if it did not question the propriety of Member States penalizing certain sections of their people on racial grounds. The Indian delegation was uncompromisingly opposed to racial discrimination in whatever form and wherever it existed, and asked the Assembly to devote its serious attention to rooting out the canker of racialism from the world.

When Mrs Pandit had last addressed the General Assembly on a similar occasion a year ago (85th meeting), India had just attained its freedom. She had ventured to express its hopes; but even more than its hopes, she had stressed the dangers confronting India and its newly won freedom. During those twelve months India had passed through a period of storm and turmoil which had more than confirmed its worst apprehensions. Violence had raised its head in many parts of India and Pakistan and, early that year, India had made the supreme sacrifice of Mahatma Gandhi, under whose guidance and inspiration its freedom had been won. She stood before the Assembly in all humility and admitted that India had been unworthy of its great leader.

The new Government of free India had had to face numerous and formidable problems. It had made many mistakes during the current year, even some serious mistakes, but the mistakes had been more or less inevitable in the exceptional circumstances in which India had found its freedom. But of one mistake it had not been guilty. India was not an aggressor nation, and had no aggressive intentions towards anyone, outside or inside its borders. India's faith in the democratic way of life was deep and enduring and therefore it could never pursue an aggressive policy. Mrs Pandit flung back that charge in the face of those who had had the audacity to make it.

In spite of those difficulties and mistakes, India, under its present leaders, had made great and striking progress in many directions, and the direct consequence would be the raising of the standards of life for the common man. In education, public health and agriculture, in irrigation and hydro-electric projects, in the building of roads of all kinds, from nation highways to village tracks, in the improvement of the conditions of labour, both industrial and agricultural—indeed, in all that concerned the daily lives of the three hundred million people of India—there had been achievements of which Indians could legitimately be proud.

Twice within the course of the current year, India had appeared before the Security Council. On the first occasion, it had been on its own initiative, in the hope that the Security Council would investigate the causes of its dispute with Pakistan about Kashmir. More recently, India had appeared before the Security Council in response to the complaint made against it by the Nizam of Hyderabad.

Mrs Pandit felt that the Assembly would expect her to say a word or two on the matters which were in the minds of most people when they thought of India at present—Kashmir and Hyderabad.

On Kashmir she did not need to say much. The United Nations had appointed a commission of mediation (S/654), which had been in

India since the previous July. In spite of certain misgivings, India had co-operated fully with the Commission and had endeavoured to make its labours fruitful. The Commission would soon prepare its interim report and present it to the United Nations. Meanwhile, it was best for all concerned to say nothing, except to express the hope that the report might pave the way to the speedy restoration of peace.

On Hyderabad Mrs Pandit had to speak more fully. Since her arrival in France, nothing had roused her indignation so much as the constant and persistent misrepresentation and misunderstanding of the action which India had felt obliged to take in Hyderabad a few days previously. Of the legal aspect of the matter she would say nothing; she was at present concerned only with the moral issue.

People often asked how it was that, while professing Gandhi's doctrine of non-violence, India should yet have thought fit to resort to the use of force in Hyderabad. To those who knew the facts, the surprise was not that India had intervened but that India had not intervened much earlier. As long ago as 24 January 1948, a minister of the Hyderabad Government, in tendering his resignation to the Prime Minister, had said:

'It pains me to be a member of a Government which allows looting, arson and murder unconcernedly; and that of my own brethren. The Bibinagar outrage, a report of which has been brought to me by a responsible person deputed by me especially for the purpose, has shocked me beyond all expression. I am certain about this: either we suppress this gangsterism ruthlessly, or we abdicate.'

The Prime Minister, vainly attempting to persuade him to reconsider his resignation, had written:

'I agree that there have been several unhappy incidents during the past few months, owing to various reasons.'

Another minister of the Hyderabad Government, who had resigned on 23 July 1948 had spoken of a complete reign of terror in certain districts, of men murdered, women dishonoured, houses burned.

In the face of this mounting evil, fomented by a clique of self-seekers, the choice before India had not been between violence and non-violence, but between the adoption of firm measures by the State against the evil-doer and the continuance of murder and arson and looting on a large scale directed against innocent men, women and children. After a series of warnings and appeals, India had chosen the former course and had intervened. It was significant that leading Muslims in all parts of India had welcomed the action taken by India in Hyderabad. That all resistance had collapsed within five days had been mainly due to the fact that the people of Hyderabad,

irrespective of caste and creed, were behind India's action and had heartily welcomed the restoration of order.

She was well aware that phrases like ' law and order ' and ' the will of the people ' had often been used in the past, and were perhaps still being used by certain countries today, to cloak sinister designs. That had helped some people to spread libellous stories of India's coercion of a so-called weak and helpless State. She gave the assurance that India had no sinister designs and nothing to cloak. In the last twelve months India had realized, as few other countries had, the dangers of mass disorder and fratricidal strife, and its anxiety to root them out from a region situated in the very heart of its territory required no explanation. If they could be rooted out with the same speed from Palestine, Burma, Malaya and elsewhere, the world would be a happier and more secure place to live in.

Mrs Pandit quoted, stating that comment was superfluous, from a published letter written in April 1948 by the then Governor-General of India, Lord Mountbatten, to His Exalted Highness the Nizam of Hyderabad:

' You will have noticed that during the course of the last few months, the ruler of nearly every State in this sub-continent which is in relationship with the Dominion of India has introduced, or has declared his intention of introducing in the near future, truly responsible and representative government. I say ' nearly every State ', for there is one exception: Hyderabad. It is impossible for any fair-minded person in the outside world to review the present Government of Hyderabad but as one representing and indeed dominated by a party which commands support of only part of the minority community in the State; nor, to the best of my knowledge, is it responsible to the Legislature.

' I do not personally believe that friendly relations between India and Hyderabad, which we are agreed are the necessary prelude to a satisfactory long-term settlement, can come so long as the state of affairs to which I have referred above exists. I am not saying this as Governor-General of India. I am saying it as an impartial observer and as a well-wisher of Hyderabad.'

Unfortunately, the appeal had fallen on deaf ears. But that already belonged to the dead past of history; she would not dwell on it.

The Prime Minister of India had made India's intentions clear in a recent broadcast: as soon as the immediate task of restoring normal conditions was completed, steps would be taken for the election of a constituent assembly which would determine the constitutional structure of Hyderabad. The election would doubtless be held under the same conditions as similar elections elsewhere in India, on the basis

of adult suffrage and with all the usual safeguards against intimidation and corrupt practices of all kinds. It would be just as public as any general election in the United Kingdom or the United States of America. India had nothing to hide. Its only desire was that the rule of law and the will of the people should prevail.

India had faith in democracy. Its allegiance to the principles of the Charter of the United Nations was not mere lip service. In a few weeks, India would be framing its new Constitution, embodying all the ideals of its new freedom. The main provisions had already been settled. It had taken from France the inspiring ideas of liberty, equality and fraternity—which, indeed, most countries had. It had taken from the United States of America the idea of a bill of rights enforceable by the courts. It had taken from the United Kingdom the idea of an independent judiciary, the bulwark of British freedom. It had taken from the Union of Soviet Socialist Republics many provisions for the benefit of the common and forgotten man. Remembering that India was to be a secular State, it had provided every possible safeguard for the protection of minorities. Copying a step taken by the United States of America in 1946, it had provided for the periodic appointment of commissions to investigate the conditions of any underprivileged classes of the population. Anticipating one of the recommendations of the Civil Rights Committee appointed in the United States of America, it had provided for the appointment, both for the Union of India and for each of the States, of special officers to see that the rights guaranteed by the Constitution were not violated in the day-to-day administration of the country. Adult suffrage for men and women was to be the basis of all elections.

In that and other ways, India had tried to do all it could to reaffirm its faith 'in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women . . .' and 'to promote social progress and better standards of life in larger freedom.'

Those were the words of the Charter, and India had shown, in the shaping of its Constitution—that to it they were no empty phrases but a living inspiration. Nothing would deflect India from the resolute pursuit of those great ideals, neither adverse circumstances nor obloquy nor misunderstanding, because those ideals were in full accord with the noblest traditions of Indian culture.

ORPGA, Third Session, Part First, pp. 110-18.

87 21 *September* 1949

SPEECH : SIR B. N. RAU

Sir Benegal Rau (India) congratulated the President on his election and pointed out that it was a matter of special gratification to all Asian delegations, since it was the first time their continent had been so honoured.

Since the opening of the third session of the Assembly, a number of events of outstanding international importance had occurred, which necessarily affected, directly or indirectly, all the countries of the world : the North Atlantic Treaty, the Council of Europe, the happenings in the Far East, and others. He would confine himself to those of special concern to India. In January 1949, representatives of nearly twenty Asian Governments had gathered in Delhi to consider the Indonesian situation. The occasion was momentous and the resolutions passed at the Conference had materially influenced the subsequent course of events ; but more important than the occasion or the resolutions was the fact that such a conference was held. It was the first time Asian Governments had come together for a political purpose ; if the cultural Asian Conference of March 1947 had been a symbol of Asia's awakening to a new life, the political Conference of January 1949 might be said to mark the coming of age of Asia and the beginning of a process of active co-operation among the countries in that region of the world. They did not contemplate an exclusive Asian bloc ; but as the process of co-operation developed among those countries, they would discover paramount common interests and the conflicts that unhappily divided some of them would assuredly dissolve. India, with its many religions and cultures and its long and chequered history, had an important part to play. It was an ancient country with roots going down thousands of years in time ; it had sounded the depths and shoals of fortune ; it had had periods of greatness and periods of decline and had learned not to be unduly elated by the one or unduly depressed by the other. India had realised that power and glory did not last for ever and there was no abiding satisfaction, whether for States or for individuals, except in the service of high ideals and great causes. But even to render that service, it must exist and defend itself against all disintegrating forces, whether from within or without ; that too India was firmly resolved to do.

The other event of special concern to India was the decision taken the previous April that when India became a Republic under its new Constitution—as it would in a few months' time—it would continue to remain a member of the Commonwealth of Nations.

The moment was not opportune to discuss the reasons for that decision, but he would reply to a question that was often put, namely, how that decision would affect India's attitude towards the various problems which came up for consideration in the Assembly. It would not affect it at all; India would continue to judge each question on its merits, as it had always done in the past. The Commonwealth justly prided itself on that tolerance which permitted freedom of judgement and of expression of opinion and there was, therefore, no reason for fearing that that freedom would be lacking in the Assembly. Unless such freedom existed no country could make its full contribution as a Member of the United Nations. A country might make mistakes but, even if it stood alone, it would be reassuring to the world to realize its integrity and its freedom to act as it thought right.

The United Nations Commission for India and Pakistan had announced its intention to report upon Kashmir once again to the Security Council and it would therefore be inappropriate to discuss the subject at that time. The Indian delegation would, however, make one general observation. When such a vast country as India, which had developed as a single political and economic entity over a long period, was suddenly split into two, a large number of complex questions were bound to arise requiring both time and patience for their solution. Problems which had previously been of a domestic character were suddenly projected into the international sphere.

As far as Kashmir was concerned, India was not opposed in principle to arbitration. Indeed, arbitration was one of the methods of peaceful settlement enjoined by the Charter. But unless the arbitration was upon agreed issues, clearly defined beforehand, and upon well recognized principles, it might merely lead to further complications. Whether the Kashmir problem or any other problem was concerned, India was as anxious as any other loyal Member of the United Nations for a peaceful and stable solution.

One of the most important subjects which would come up for discussion during the fourth session was that of the disposal of the former Italian colonies. Under the peace treaty with Italy, the final disposal of those territories was to be determined jointly by the Governments of four Powers, France, the United Kingdom, the United States and the USSR, within one year, ' in the light of the wishes and welfare of the inhabitants and the interests of peace and security, taking into consideration the views of other interested Governments '. If the four Powers were unable to agree upon the disposal of any of those territories within the period mentioned, the matter was to be referred to the General Assembly of the United Nations for a recommendation, and the four Powers undertook to accept the recommendation

and to take appropriate measures to give effect to it. Since the four Powers had not been able to agree, the matter had come before the General Assembly at the previous session. As the General Assembly had then failed to reach any decisive conclusion, the matter would come up again during the fourth session.

Sir Benegal Rau repeated that the disposal of those territories was to have been made by the Four Powers in the light of the wishes and welfare of the inhabitants and certain other considerations. It followed, therefore, that the General Assembly would have to be guided by the same factors in making its own recommendations on the subject. In other words, the wishes and welfare of the inhabitants of the territories were to be the paramount consideration.

It should be borne in mind that in that matter the Assembly was acting, for the first time, as a world parliament invested with the power of giving final decisions, which those concerned were bound to carry out. In exercising that power, its members should therefore be most careful to see that they dealt with the problem strictly on its merits and that no extraneous considerations deflected their judgment. They must convince the peoples of the world that they were worthy of the confidence placed in them, so that other problems which defied solution outside the Assembly might be turned over to them with the same confidence. Approaching the matter from that point of view, the first question was what the wishes of the inhabitants of those territories were and what their welfare demanded. It might be that some of the territories desired and were fit for immediate independence, and that others would have to be placed under the Trusteeship System or be dealt with in some other way. With reference to the first category, though they might be fit for independence, the organs of self-government were not yet in being; they would have to be created by some process. The main problem was how to create them and how long the process would take. India had had some experience in those matters; in the light of that experience it appeared that the most satisfactory way of creating the necessary organs of self-government was to set up a constituent assembly to draw up a constitution for those territories.

The General Assembly might well appoint a commission of experts to examine that question on the spot and, if possible, to set up a constituent assembly, much as the British Cabinet had sent out a mission to India for a similar purpose in 1946. The commission might get to work at once, and once a constituent assembly had been set up, the task of drawing up a constitution might be left to that body. The constitution so framed should be subject to the approval of the General Assembly of the United Nations. How long the process would take

would depend on the constituent assembly itself and on the nature of the questions which arose for its decision. It was important that the constitution should reflect the genuine will of the people. As soon as the constitution was ready, steps should be taken to transfer power from the existing régimes to the authorities under the new constitution. Meanwhile the existing régimes might continue, but they would have no part in the working of the constituent assembly.

With regard to the territories to be placed under the International Trusteeship System, it should be remembered that one of the basic objectives of that system was to promote the advancement of the inhabitants of the Trust Territories and their progressive development towards self-government or independence. Perhaps the best way of securing that object would be to ask the same commission to draw up a constitution for the Trust Territories. The constitution should, of course, be appropriate to the existing stage of development of those Territories, but it should contain an article providing for a periodic review of the administration by the United Nations through its appropriate organs and also reserving power to the United Nations to amend the constitution so as to ensure the realization of full self-government within a period of ten years. The constitution as prepared by the commission should be subject to the approval of the General Assembly, and the Trusteeship Agreement should contain a provision requiring the Administering Authority to administer the Territory in accordance with the provisions of the constitution prescribed for it. If that were done, the question as to who should be the Administering Authority would become relatively unimportant, because it would be bound by a constitution approved and controlled by the United Nations.

Those, broadly speaking, were the lines along which the minds of the Indian delegation were moving; when their ideas had fully crystallized they would embody them in a draft resolution to be submitted at the appropriate time.

With regards to Indonesia, the Indian delegation had noted that discussions were proceeding at the Round Table Conference at The Hague. At the previous session of the General Assembly, India and Australia had jointly sponsored a draft resolution on the problem, suggesting a postponement of the debate to the fourth session, for the reason that statements made in the course of the debate on the one side or the other might introduce embarrassing complications for the participants at the Round Table Conference. It was to be hoped that the negotiations would be concluded satisfactorily before the end of the current session and that the necessity for discussing the question during the session would therefore not arise.

On 14 May 1949 the General Assembly had adopted resolution 265 (III) inviting the Governments of India, Pakistan, and the Union of South Africa to enter into discussions regarding the treatment of Indians in the Union at a round-table conference, taking into consideration the purposes and principles of the Charter and the Universal Declaration of Human Rights. Preliminary discussions were taking place. India had lost no time in acting upon the resolution, but the response so far had been disappointing. Although the outlook at the moment was not bright, Sir Benegal Rau hoped that his delegation would not be compelled to bring up the matter before the Assembly again during the current session.

The Indian delegation had always taken a keen and active interest in the all-round development of Non-Self-Governing Territories as provided for in Article 73 of the Charter. It considered the Special Committee on Information transmitted under Article 73 of the Charter to be a most useful and, indeed, an indispensable institution. The establishment of such a Committee constituted an assurance to the millions of people living in those Territories that the General Assembly was conscious of its obligations towards races and regions not directly represented in the United Nations. It was satisfactory that the services of the specialized agencies were being made increasingly available to the Non-Self-Governing Territories, because nowhere else were economic, social, educational and cultural problems in greater need of expert handling. For the specialized agencies, therefore, the Non-Self-Governing Territories, as part of the under-developed regions of the world, offered a unique opportunity for investigation and assistance. But they could labour in their respective fields only to the extent that the Administering Authorities invited their co-operation.

During the preceding twelve months there had been a good deal of evidence that Administering Authorities were building up machinery for international collaboration among themselves for the more efficient handling of certain economic problems. The Indian delegation would remind the General Assembly of the two types of international collaboration envisaged in sub-paragraph of Article 73: one, outside the United Nations among the Powers themselves, the other with the specialized agencies. The first type did not rule out the second; in fact, it stressed the importance of the second. The specialized agencies, as organs of the United Nations, would bring to bear on the problems entrusted to them the outlook of the introductory paragraph of Article 73, namely, ' the principle that the interests of the inhabitants of these Territories are paramount '. The future of the Special Committee which focussed the attention of the United Nations on the problems of the Non-Self-Governing Territories in the spirit of Article 73,

would be determined at a later stage by the Assembly. The Indian delegation was convinced that a Committee so useful in its achievements and so promising for the future could not be brought to a premature end without creating serious misgivings in the minds of the dependent races of mankind.

With regard to the question of South West Africa, Sir Benegal Rau recalled that on 26 November 1948 the General Assembly had adopted resolution 227 (III), recommending that the Mandated Territory of South West Africa should be placed under international trusteeship and urging the Government of the Union of South Africa to propose a Trusteeship Agreement for the Territory. Later in the same resolution, the Trusteeship Council was authorized to examine such information on the administration of South West Africa as the Government of the Union of South Africa might continue to supply.

Ignoring both the terms of those recommendations and the strongly-expressed sentiments of a number of delegations which took part in the debates, the Union Government had completed the process of what it called the closer political association of South West Africa with itself; and it had informed the Trusteeship Council that it would no longer supply information on the administration of South West Africa. The question would come up in due course before the current session of the Assembly. For the time being Sir Benegal Rau would only say that the Indian delegation viewed with grave concern the incorporation of the Mandated Territory of South West Africa into the Union, without any authority, moral or legal, for such a step. Rank political injustice, fanned by racial passion expressing itself in a policy of complete segregation, was utterly repugnant to every principle embodied in the Charter and could not but undermine the foundations of peace and security.

The deadlock in the Security Council on the application for membership in the United Nations of fourteen countries was a matter of deep disappointment. The consequences of refusing admission to peace-loving and sovereign States on grounds which had nothing to do with the merits of their applications would be disastrous alike for the prestige and the authority of the Organization. If such a policy should be pursued for any length of time, the United Nations would degenerate into a close corporation, and forfeit humanity's faith in its capacity to save succeeding generations from the scourge of war. It was a matter of general principle valid for all the countries of the world that no irrelevant considerations should bar the admission of a State which satisfied the provisions of the Charter. India particularly deplored the exclusion of Ceylon and Nepal, both neighbours, with long-standing ties in every sphere, and also that of Ireland.

In conclusion, Sir Benegal Rau referred to the draft declaration on the rights and duties of States, submitted by the International Law Commission as the first fruits of its activities. It was a short and unpretentious document, but it had two provisions of cardinal importance. The first was to be found in the preamble, which contained a tacit recognition of the Charter of the United Nations as part of contemporary international law. The second occurred in the concluding article of the declaration, which laid down the principle ' that the sovereignty of each State is subject to the supremacy of international law '. Reading the two together, it followed that the Charter was to be looked upon as a kind of fundamental law for every State. That that proposition should have received the authority of such a body as the International Law Commission was a development of immense significance, and it was to be hoped that the General Assembly would endorse the declaration.

ORPGA, Fourth Session, pp. 9-12.

SECTION VI(*b*)

UNO: KASHMIR

88 1 *January* 1948

GOVERNMENT OF INDIA TO SECURITY COUNCIL

(1) Under Article 35 of the Charter of the United Nations, any member may bring any situation, whose continuance is likely to endanger the maintenance of international peace and security, to the attention of the Security Council. Such a situation now exists between India and Pakistan owing to the aid which invaders, consisting of nationals of Pakistan and of tribesmen from the territory immediately adjoining Pakistan on the north-West, are drawing from Pakistan for operations against Jammu and Kashmir, a State which has acceded to the Dominion of India and is part of India. The circumstances of the accession, the activities of the invaders which led the Government of India to take military action against them, and the assistance which the attackers have received and are still receiving from Pakistan are explained later in this memorandum. The Government of India request the Security Council to call upon Pakistan to put an end immediately to giving of such assistance which is an act of aggression against India. If Pakistan does not do so, the Government of India may be compelled in self-defence, to enter Pakistan territory, in order to take military action against the invaders. The matter is therefore one of extreme urgency and calls for immediate action by the Security Council for avoiding a breach of international peace.

(2) From the middle of September, 1947, the Government of India had received reports of infiltration of armed raiders into the western parts of the Jammu Province of the Jammu and Kashmir State; Jammu adjoins West Punjab which is a part of the Dominion of Pakistan. These raiders had done a great deal of damage in that area and taken possession of part of the territory of the State. On the 24th of October, the Government of India heard of a major raid from the Frontier Province of the Dominion of Pakistan into the Valley of Kashmir. Some 2,000 or more fully armed and equipped men came in motor transport, crossed over to the territory of the State of Jammu and Kashmir, sacked the town of Muzaffarabad, killing many people, and proceeded along the Jhelum Valley Road towards Srinagar, the summer capital of the Jammu and Kashmir State. Intermediate towns and villages were sacked and burnt, and many people killed. These raiders were stopped by Kashmir State troops near Uri, a town

some 50 miles from Srinagar, for some time, but the invaders got round them and burnt the power-house at Mahura, which supplies electricity to the whole of Kashmir.

(3) The position, on the morning of the 26th of October, was that these raiders had been held by Kashmir State troops and part of the civil population who had been armed, at a town called Baramula. Beyond Baramula there was no major obstruction up to Srinagar. There was immediate danger of these raiders reaching Srinagar, destroying and sacking the capital and massacring large numbers of people, both Hindus and Muslims. The State troops were spread out all over the State and most of them were deployed along the western border of Jammu Province. They had been split up into small isolated groups and were incapable of offering effective resistance to the raiders. Most of the State officials had left the threatened area and civil administration had ceased to function. All that stood between Srinagar and the fate which had overtaken places on the route followed by the raiders was the determination of the inhabitants of Srinagar, of all communities, practically without arms, to defend themselves. At this time, Srinagar had also a large population of Hindu and Sikh refugees who had fled there from West Punjab, owing to communal disturbances in that area. There was little doubt that the refugees would be massacred if the raiders reached Srinagar.

(4) Immediately after the raids into Jammu and Kashmir State commenced, approaches were informally made to the Government of India for the acceptance of the accession of the State to the Indian Dominion. (It might be explained, in parenthesis, that Jammu and Kashmir form a State whose Ruler, prior to the transfer of power by Britain to the Dominions of India and Pakistan, had been in treaty relations with the British Crown which controlled its foreign relations and was responsible for its defence. The treaty relations ceased with the transfer of power on August 15th last, and Jammu and Kashmir, like other States, acquired the right to accede to either Dominion.)

(5) Events moved with great rapidity and the threat to the Valley of Kashmir became grave. On the 26th of October, the Ruler of the State, His Highness Maharaja Sir Hari Singh, appealed urgently to the Government of India for military help. He also requested that the Jammu and Kashmir State should be allowed to accede to the Indian Dominion. An appeal for help was also simultaneously received by the Government of India from the largest popular organization in Kashmir, the National Conference, headed by Sheikh Abdullah. The Conference further strongly supported the request for the State's accession to the Indian Dominion. The Government of India were, thus, approached not only officially by the State authorities, but also

on behalf of the people of Kashmir, both for military aid and for the accession of the State of India.

(6) The grave threat to the life and property of innocent people in the Kashmir Valley and the security of the State of Jammu and Kashmir that had developed as a result of the invasion of the Valley demanded immediate decisions by the Government of India on both requests. It was imperative, on account of the emergency, that the responsibility for the defence of the Jammu and Kashmir State should be taken over by a government capable of discharging it. But, in order to avoid any possible suggestion that India had taken advantage of the State's immediate peril for her own political advantage, the Dominion Government made it clear that, once the soil of the State had been cleared of the invader and normal conditions restored, its people would be free to decide their future by the recognized democratic method of a plebiscite or referendum which, in order to ensure complete impartiality, might be held under international auspices.

(7) The Government of India felt it their duty to respond to the appeal for armed resistance because

(i) they could not allow a neighbouring and friendly State to be compelled by force to determine either its internal affairs or its external relations.

(ii) the accession of Jammu and Kashmir State to the Dominion of India made India legally responsible for the defence of the State.

(8) The intervention of the Government of India resulted in saving Srinagar. The raiders, were driven back from Baramula to Uri and are held there by Indian troops. Nearly 19,000 raiders face the Dominion Forces in this area. Since the operations in the Valley of Kashmir started, pressure by the raiders against the western and south-western border of the Jammu and Kashmir State has been intensified. Exact figures are not available. It is understood, however, that nearly 15,000 raiders are operating against this part of the State. State troops are beseiged in certain areas. Incursions by the raiders into the State territory involving murder, arson, loot and the abduction of women continues. The booty is meant to further the recruitment of tribesmen to the ranks of the raiders. In addition to those actively participating in the raids, a large number of tribesmen and others, estimated at 100,000, have been collected in different places in the districts of West Punjab bordering the Jammu and Kashmir State and many of them are receiving military training under Pakistan nationals, including officers of the Pakistan Army. They are looked after in Pakistan territory, fed, clothed, armed and otherwise equipped, and transported to the territory of the Jammu and Kashmir State with the help, direct and indirect, of Pakistan officials, both military and civil.

(9) As already stated, raiders who entered the Kashmir Valley in October came mainly from the tribal areas to the north-west of Pakistan, and, in order to reach Kashmir, passed through Pakistan territory. The raids along the south-west border of the State, which had preceded the invasion of the Valley proper, had actually been conducted from Pakistan territory and Pakistan nationals had taken part in them. This process of transit across Pakistan territory and the utilization of that territory as a base of operations against Jammu and Kashmir State continue. Recently, military operations against the western and south-western borders of the State have been intensified and the attackers consist of the nationals of Pakistan as well as tribesmen. These invaders are armed with modern weapons, including mortars and medium machine-guns, wear the battledress of regular soldiers and, in recent engagements, have fought in regular battle-formation and are using the tactics of modern warfare. Man-pack wireless sets are in regular use and even Mark V mines have been employed. For their transport the invaders have all along used motor vehicles. They are undoubtedly being trained and, to some extent, led by regular officers of the Pakistan Army. Their rations and other supplies are obtained from Pakistan territory.

(10) These facts point indisputably to the conclusions

(*a*) that the invaders are allowed transit across Pakistan territory;

(*b*) that they are allowed to use Pakistan territory as a base of operations;

(*c*) that they include Pakistan nationals;

(*d*) that they draw much of their military equipment, transport and supplies (including petrol) from Pakistan; and

(*e*) that Pakistan officers are training, guiding and otherwise actively helping them.

There is no source other than Pakistan from which they could get such quantities of modern military equipment, training and guidance. More than once, the Government of India had asked the Pakistan Government to deny to the invaders facilities which constitute an act of aggression and hostility against India, but without any response. The last occasion on which this request was made was on the 22nd December, when the Prime Minister of India handed over personally to the Prime Minister of Pakistan a letter in which various forms of aid given by Pakistan to the invaders were briefly recounted and the Government of Pakistan were asked to put an end to such aid promptly and without reserve. No reply to this letter has yet been received, in spite of a telegraphic reminder sent on the 26th.

(11) It should be clear from the foregoing recital that the Government of Pakistan are unwilling to stop the assistance in material and

men which the invaders are receiving from their territory and from their nationals including Pakistan Government personnel, both military and civil. This attitude is not only unneutral but constitutes active aggression against India, of which the State of Jammu and Kashmir forms a part.

(12) The Government of India have exerted persuasion and exercised patience to bring about a change in the attitude of Pakistan. But they have failed, and are, in consequence, confronted with a situation in which their defence of the Jammu and Kashmir State is hampered and their measures to drive the invaders from the territory of the State are gravely impeded by the support which the raiders derive from Pakistan. The invaders are still on the soil of Jammu and Kashmir, and the inhabitants of the State are exposed to all the atrocities of which a barbarous foe is capable. The presence, in large numbers, of the invaders in those portions of Pakistan territory which adjoin parts of Indian territory other than the Jammu and Kashmir State is a menace to the rest of India. The Government of India have no option, therefore, but to take more effective military action in order to rid Jammu and Kashmir State of the invader. Indefinite continuance of the present operations prolongs the agony of the people of Jammu and Kashmir, is a drain on India's resources and a constant threat to the maintenance of peace between India and Pakistan.

(13) In order that the objective of expelling the invader from Indian territory and preventing him from launching fresh attacks should be quickly achieved, Indian troops would have to enter Pakistan territory; only thus could the invaders be denied the use of bases and cut off from their sources of supplies and reinforcements, in Pakistan. Since the aid which the invaders are receiving from Pakistan is an act of aggression against India, the Government of India are entitled, in international law, to send their armed forces across Pakistan territory for dealing effectively with the invaders. However, as such action might involve armed conflict with Pakistan, the Government of India, ever anxious to proceed according to the spirit of the Charter of the United Nations, desire to report the situation to the Security Council in accordance with the provisions of Article 35 of the Charter. They, therefore, feel justified in requesting the Council to ask the Government of Pakistan.

(i) to prevent Pakistan Government personnel, military and civil, participating in or assisting the invasion of Jammu and Kashmir State;

(ii) to call upon other Pakistan nationals to desist from taking any part in the fighting in Jammu and Kashmir State;

(iii) to deny to the invaders

(*a*) access to and use of its territory for operations against Kashmir;
(*b*) military and other supplies;
(*c*) all other kinds of aid that might tend to prolong the present struggle.

(14) The Government of India would stress the special urgency of the Security Council taking immediate action on their request. They desire to add that the military operations in the invaded area have, in the past few days, been developing so rapidly that they must, in self-defence, reserve to themselves the freedom to take, at any time when it may become necessary, such military action as, they may consider, the situation requires.

(15) The Government of India deeply regret that a serious crisis should have been reached in their relations with Pakistan. Not only is Pakistan a neighbour but, in spite of the recent separation, India and Pakistan have many common ties and common interests. India desires nothing more earnestly than to live with her neighbour State on terms of close and lasting friendship. Peace is to the interest of both States; indeed to the interests of the world. The Government of India's approach to the Security Council is inspired by the sincere hope that, through the prompt action of the Council, peace may be preserved.

[*Editorial Note*:—A White Paper presenting factual information, backed by relevant documents, on the Jammu and Kashmir case was issued by the Government of India in February, 1948. In the White Paper it is re-emphasised that India's objective in launching operations in Kashmir is 'to ensure that the vote of the people will not be subject to coercion by tribesmen and others from across the border who have no right to be in Kashmir.]

UNCIP, Report, S/1100, Annex. 28.

89 15 *January* 1948

FOREIGN AFFAIRS MINISTER, PAKISTAN,
TO SECRETARY-GENERAL, UNITED NATIONS

I have the honour to forward the following documents:

Document I being Pakistan's reply to the complaint preferred by India against Pakistan under Article 35 of the Charter of the United Nations.

Document II a statement of disputes which have arisen between India and Pakistan and which are likely to endanger the maintenance of international peace and order. Pakistan being a member of the United

Nations has the honour to bring these to the attention of the Security Council under Article 35 of the Charter of the United Nations.

Document III which contains a statement of the particulars of Pakistan's case with reference to both the matters dealt with in Documents I and II.

(2) It is requested that these documents may be placed before the Security Council and that the Security Council may be requested to deal with the complaint referred to in Document II at the earliest possible date. It is further requested that all action required by the rules in connection with these Documents may kindly be taken as early as possible.

Government of Pakistan

Document I

Pakistan's Reply to India's Complaint

(1) The Government of India have under Article 35 of the Charter of the United Nations, brought to the notice of the Security Council the existence of a situation between India and Pakistan in which the maintenance of international peace and security is likely to be endangered. The situation in their view is due ' to the aid which the invaders consisting of nationals of Pakistan and of tribesmen from the territory immediately adjoining Pakistan on the North-West are drawing from Pakistan for operations against Jammu and Kashmir State which acceded to the Dominion of India and is a part of India.' They have requested the Security Council ' to call upon Pakistan to put an end immediately to the giving of such assistance which is an act of aggression against India '. They have also threatened that if Pakistan does not do so, the Government of India may ' enter Pakistan territory in order to take military action against the invaders '.

(2) The specific charges which the India Government has brought against Pakistan are:

(*a*) that the invaders are allowed transit across Pakistan territory;

(*b*) that they are allowed to use Pakistan territory as a base of operations;

(*c*) that they include Pakistan nationals;

(*d*) that they draw much of their military equipment, transport and supplies (including petrol) from Pakistan; and

(*e*) that Pakistan officers are training, guiding and otherwise helping them.

(3) While the particulars of Pakistan's case are set out in Document III, the Pakistan Government emphatically deny that they are giving aid and assistance to the so-called invaders or have committed any act

of aggression against India. On the contrary and solely with the object of maintaining friendly relations between the two Dominions the Pakistan Government have continued to do all in their power to discourage the tribal movement by all means short of war. This has caused bitter resentment throughout the country, but despite a very serious risk of large scale internal disturbances the Pakistan Government have not deviated from this policy. In circumstances which will be clear from the recital of events set out in Document III, it may be that a certain number of independent tribesmen and persons from Pakistan are helping the Azad Kashmir Government in their struggle for liberty as volunteers, but it is wrong to say that Pakistan territory is being used as a base of military operations. It is also incorrect that the Pakistan Government are supplying military equipment, transport and supplies to the 'invaders' or that Pakistan officers are training, guiding and otherwise helping them.

Government of Pakistan

Document II

Pakistan's Complaint against India

(1) For some time past a situation has existed between the Dominion of India and the Dominion of Pakistan which has given rise to disputes that are likely to endanger the maintenance of international peace and security. Under Article 35 of the Charter of the United Nations, the Government of Pakistan hereby bring to the attention of the Security Council the existence of these disputes and request the Security Council to adopt appropriate measures for the settlement of these disputes and the restoration of friendly relations between the two countries.

(2) While the particulars of the background and circumstances out of which these disputes have arisen are set out in Document III, a brief statement of these disputes is:

(*a*) In anticipation of the award of the Boundary Commission set up under the Indian Independence Act, 1947, to effect a demarcation of boundaries between East and West Punjab and East and West Bengal, an extensive campaign of 'genocide' directed against the Muslim population of East Punjab, Delhi, Ajmer, and the States of Kapurthala, Faridkot, Jind, Nabha, Patiala, Bharatpur, Alwar and Gwalior, etc. was undertaken by the non-Muslim Rulers, people, officials, police and armed forces of the States concerned and the Union of India beginning in the month of June 1947 which is still in progress. In the course of the execution of this well-planned campaign large numbers of Muslims—running into hundreds of thousands—have

been ruthlessly massacred, vastly larger numbers maimed, wounded and injured and over five million men, women and children have been driven from their homes into neighbouring areas of Western Pakistan. Brutal and unmentionable crimes have been committed against women and children. Property worth thousands of millions of rupees has been destroyed, looted and forcibly taken possession of. Larger numbers of Muslims have, by extreme violence and the threat of violence, been compelled to make declarations renouncing their faith and adopting the Sikh or Hindu faith. Vast numbers of Muslim shrines and places of worship have been desecrated, destroyed or converted to degrading uses. For instance in the State of Alwar no single Muslim place of worship has been left standing. Among other results of this campaign, the most serious has been to drive into Western Pakistan territory over five million Muslims in an extreme condition of destitution, a very large proportion of whom are faced with death owing to privation, disease and the rigorous climate of Western Pakistan during the winter. Apart from the appalling volume of human misery and suffering involved, the economy of Western Pakistan has been very prejudicially affected by the incursion of these vast numbers of refugees. These events have established that the religion, culture and language of the 35 million Muslims within the Union of India, and indeed their very existence is in danger, as not only have the Government of India failed to provide adequate protection to the Muslims in areas which have been referred to above, but the police and the armed forces of the Union of India and the rulers of the States concerned, have actively assisted in the massacre and other atrocities committed upon the Muslim population.

(*b*) In September 1947, the States of Junagadh and Manavadar acceded to, as they were entitled to do under the agreed scheme of partition and the Indian Independence Act, 1947, and thus became part of Pakistan and entitled to the benefits of the standstill agreement between Pakistan and India. As soon as the accession was announced India started a war of nerves against these two States and certain other smaller States in Kathiawar, whose intention to accede to Pakistan was well known. A so-called ' provisional ' Government of Junagadh was set up in Bombay with the connivance of the Government of India and the active aid of its officials and later transferred its headquarters to Rajkot in Kathiawar where it proceeded to occupy forcibly property belonging to the Junagadh State and ejected Junagadh officials therefrom. The forces of the Indian Union, along with the forces of certain Hindu States in Kathiawar in accession with the Indian Union invested the State of Junagadh in all directions on the landward side and rendered it practically impossible for the State

authorities and for the Muslim population of the State to hold any communication with the outside world through normal channels. The running of Junagadh railways and the postal and telegraph services of the State *vis-à-vis* the rest of the country were virtually put an end to. By the adoption of various devices a state of panic was created inside the State, the object of which was to bring the administration to a standstill. Eventually the forces of the Indian Union marched into the State under the excuse of an alleged invitation from the Dewan (Prime Minister) of the State. With the entry of these forces into the State was inaugurated an orgy of massacre and loot directed against the Muslim population of the State. A reign of terror was thus set up which still continues.

This action on the part of the Government of India amounted to a direct attack upon and aggression against Pakistan which Pakistan was entitled to repel by force. Pakistan, however, refrained from taking military action in the hope that the situation could be satisfactorily resolved by conciliatory means. This hope has, in spite of a continued series of protests and representations by Pakistan proved vain. If the situation is not now firmly handled and satisfactorily resolved there would be no course left open to Pakistan but to take appropriate military action to clear these States of India's armed forces and to restore the States to their lawful rulers.

(*c*) The State of Jammu and Kashmir, which on the south and west is contiguous to Western Pakistan and has a Muslim population of nearly 80 per cent and a Hindu ruler, entered into a standstill agreement with Pakistan in the latter half of August 1947. The territory of the State was purchased by the great grandfather of the present Ruler from the East India Company in 1846 for 7·5 million rupees and ever since the Muslim population of this State has been oppressed and exploited by its Hindu Dogra Rulers. On several occasions the Muslim population has risen in rebellion against its oppressors, but these risings have always been mercilessly suppressed. The Maharajah was thus aware that any attempt by him to accede to the Union of India would not be tolerated by his people and would provoke violent reactions and uprisings throughout the State which he would be unable to control with the help of his own forces. Apparently he entered into the standstill agreement with Pakistan to secure his communications, all of which ran through Pakistan, and also a continuation of his supplies which could only be moved through Pakistan. The State obtained a narrow outlet into East Punjab and thus into the Union of India as the result of the most unfair and unjust Boundary Award of Sir Cyril Radcliffe. The Maharajah's own desire, as subsequent events have proved beyond a doubt, was to accede to the Union of India, but he

dared not take that step for fear of the well-known attitude of the overwhelming majority of his people and the consequences to which such a step might expose him. The device adopted by him was to allay the feelings of his Muslim subjects by means of the standstill agreement and then to bring about a state of affairs which would furnish him with an excuse to call in the military aid of the Union of India and thus transfer to the Government of India the responsibility of dealing with his people. In order to carry this plan into effect massacres of the Muslim population of the State by armed bands of Sikhs and Hindus and by the forces of the Maharajah were started in the latter half of September and provoked risings of the Muslim population in different parts of the State. The tragic events and the happenings in East Punjab and the Sikh and Hindu States in and around that Province had convinced the Muslim population of Kashmir and Jammu State that the accession of the State to the Indian Union would be tantamount to the signing of their death warrant. When the massacres started the Muslim population of the State realized that the fate that had overtaken their co-religionists in Kapurthala, Faridkot, Nabha, Jind, Patiala, Bharatpur and Alwar, etc., was about to overtake them also. A wave of terror thus ran throughout the State and the neighbouring districts of West Punjab and the North West Frontier Province. In their desperate situation the Muslim population of the State decided to make a final bid for liberty and indeed for their very existence, in which they had the full sympathy of their relations and fellow Muslims in the neighbouring districts of Pakistan. Several thousands of the Muslim people of the State, particularly in the area of Poonch, had served in support of the cause of the United Nations during the Second World War, and they decided to sell their lives dearly in the struggle with which they were now faced. The Maharajah made this the excuse to ' accede ' to the Union of India and the Government of India thereupon landed its troops in the State without consultation with or even any notice to the Government of Pakistan with whom the State had concluded a standstill agreement and to the territories of which it was contiguous throughout practically the whole of its southern and western border. The Pakistan Government made several efforts to bring about an amicable settlement of the situation but everyone of these was rejected by the Maharajah and the Government of India. In the meantime the Muslim population of the State are being subjected to an intensified campaign of persecution and oppression in areas which are in the occupation of the Indian forces.

The Muslim population of the State have set up an Azad (Free) Kashmir Government, the forces of which are carrying on their fight for liberty. It is possible that these forces have been joined by a number

of independent tribesmen from the tribal areas beyond the North West Frontier Province and persons from Pakistan including Muslim refugees from East Punjab who are nationals of the Indian Union.

The allegation made by the Indian Government that the Pakistan Government is affording aid and assistance to the Azad Kashmir forces, or that these forces have bases in Pakistan territory, or that these forces are being trained by Pakistan officers, or are being supplied with arms or material by the Pakistan Government are utterly unfounded.

On the contrary, armed bands from the State have repeatedly carried out incursions and raids into Pakistan territory and the air force of the Indian Union has on several occasions bombed Pakistan areas causing loss of life and damage to property. Protests made by the Pakistan Government to India have passed unheeded. Attacks by units of the Indian Air Force over Pakistan territory have been described as due to errors of judgement. These attacks still continue.

It has been announced by the Government of India that it is their intention after restoring ' order ' in the State to carry out a plebiscite to ascertain the wishes of the people in the matter of the accession of the State to India or to Pakistan. Anybody having the most superficial knowledge of the conditions that have prevailed in the State during the last 100 years would not hesitate to affirm that a plebiscite held while the Sikh and Hindu armed bands and the forces of the Union of India are in occupation of the State and are carrying on their activities there, would be no more than a farce. A free plebiscite can be held only when all those who have during the last few months entered the State territory from outside, whether members of the armed forces or privates have been cleared out of the State, and peaceful conditions have been restored under a responsible, representative and impartial administration. Even then care must be taken that all those that have been forced or compelled to leave the State since the middle of August 1947 are restored to their homes as it is apprehended that in the Jammu Province and elsewhere whole areas have been cleared of their Muslim population.

(*d*) Ever since the announcement of the decision to carry out a partition of the sub-continent of India into Pakistan and India, those responsible for giving effect to the decision on behalf of India have adopted an attitude of obstruction and hostility towards Pakistan, one of the objects being to paralyse Pakistan at the very start by depriving it of its rightful share of financial and other assets. Even in cases in which agreement was reached the implementation thereof was either delayed or sabotaged altogether. This has been illustrated conspicuously by India's failure to implement the clauses of the

settlement arrived at between Pakistan and India early in December 1947 and announced on 9 December, comprising the division of military stores, cash balances and other matters. Particulars of some of the instances in which obligations are set out in paragraphs 26 to 29 of Document III.

(*e*) In its complaint preferred to the Security Council under Act 35 of the Charter of the United Nations India now threatens Pakistan with direct attack.

(3) To sum up, Pakistan's complaint against India is:

(i) that India has never wholeheartedly accepted the partition scheme and has, since June 1947, been making persistent attempts to undo it;

(ii) that a pre-planned and extensive campaign of 'genocide' has been carried out, and is still in progress against Muslims in certain areas which now form part of the Indian Union, notably East Punjab, Delhi, Ajmer, and the States of Kapurthala, Faridkot, Jind, Nabha, Patiala, Bharatpur, Alwar and Gwalior, etc., which are in accession with India, by the non-Muslim Rulers, people, officials, police and armed forces of the States concerned and of the Union of India;

(iii) that the security, freedom, well-being, religion, culture and language of the Muslims of India are in serious danger;

(iv) that Junagadh, Manavadar and some other States in Kathiawar, which have lawfully acceded to Pakistan and form part of Pakistan territory have been forcibly and unlawfully occupied by the armed forces of the Indian Union and extensive damage has been caused to the life and property of the Muslim inhabitants of these States, by the armed forces, officials and non-Muslim nationals of the Indian Union;

(v) that India obtained the accession of the State of Jammu and Kashmir by fraud and violence and that large scale massacre and looting and atrocities on the Muslims of Jammu and Kashmir State have been perpetrated by the armed forces of the Maharajah of Jammu and Kashmir and the Indian Union and by the non-Muslim subjects of the Maharajah and of the Indian Union;

(vi) that numerous attacks on Pakistan territory have been made by the Royal Indian Air Force, by armed bands from the Indian Union and the State of Jammu and Kashmir;

(vii) that India has blocked the implementation of agreements relating to or arising out of partition between India and Pakistan including the withholding of Pakistan's share of cash balances and military stores;

(viii) that under pressure from the Government of India, direct or indirect, the Reserve Bank of India is refusing to honour to the full

its obligations as Banker and Currency Authority of Pakistan, and that such pressure is designed to destroy the monetary and currency fabric of Pakistan;

(ix) that India now threatens Pakistan with direct military attack; and

(x) that the object of the various acts of aggression by India against Pakistan is the destruction of the State of Pakistan.

(4) The Pakistan Government request the Security Council:

(i) to call upon the Government of India.

(*a*) to desist from acts of aggression against Pakistan;

(*b*) to implement without delay all agreements between India and Pakistan including the financial settlement arrived at between India and Pakistan and announced on 9 December 1947, with regard to the division of the cash balances and military stores of the pre-partition Government of India and other matters;

(*c*) to desist from influencing or putting pressure directly or indirectly on the Reserve Bank of India in regard to the discharge of its functions and duties towards Pakistan;

(ii) to appoint a Commission or Commissions.

(*a*) to investigate the charges of mass destruction of Muslims in the areas now included in the Indian Union, to compile a list of the Rulers, officials, and other persons guilty of 'genocide' and other crimes against humanity and abetment thereof, and to suggest steps for bringing these persons to trial before an international tribunal;

(*b*) to devise and implement plans for the restoration to their homes, lands and properties of Muslim residents of the Indian Union who have been driven out of or have been compelled to leave, the Indian Union and seek refuge in Pakistan, to assist in the relief and rehabilitation of such refugees; to secure the payment to them by the Indian Union of due compensation for the damage and injuries suffered by them and to take effective steps for the future security, freedom and well-being of Muslims in India and for the protection of their religion, culture and language;

(*c*) to arrange for the evacuation from Junagadh, Manavadar and other States of Kathiawar which have acceded to Pakistan of the military forces and civil administration of the Indian Union and to restore these States to their lawful Rulers;

(*d*) to assist the restoration to their homes, lands and properties of residents of the States referred to in (*c*) who have fled from, or have been driven out of such States, and for payment of compensation by the Indian Union for loss or damage caused by the unlawful actions and activities of the military forces, civil officials and nationals of the Indian Union in these States;

(*e*) to arrange for the cessation of fighting in the State of Jammu and Kashmir; the withdrawal of all outsiders whether belonging to Pakistan or the Indian Union including members of the armed forces of the Indian Union; the restoration and rehabilitation of all Muslim residents of the Jammu and Kashmir State as on 15 August 1947, who have been compelled to leave the State as a result of the tragic events since that date, and the payment to them by the Indian Union of due compensation for the damage and injuries suffered by them; to take steps for the establishment of an impartial and independent administration in the State of Jammu and Kashmir, fully representative of the people of that State; and thereafter to hold a plebiscite to ascertain the free and unfettered will of the people of the Jammu and Kashmir State as to whether the State shall accede to Pakistan or to India; and,

(*f*) to assist in and supervise the implementation of all agreements arrived at between India and Pakistan in pursuance of the decision to partition the sub-continent of India and to resolve any differences in connection therewith.

(5) In conclusion the Pakistan Government wish to assure the Security Council and the Government of India of their earnest desire to live on terms of friendship with India and to place the relations between the two countries on the most cordial, co-operative and friendly basis. This happy state of affairs so earnestly desired by Pakistan can only be achieved through a just and satisfactory settlement of the differences that at present unfortunately divide the two countries. Any attempt to settle any of these questions in isolation from the rest is bound to end in frustration and might further complicate a situation already delicate and full of explosive possibilities. Friendly and cordial relations can only be restored by the elimination of all differences that are at present generating friction and causing exacerbation. The disputes to which the attention of the Security Council has been drawn in this document are all interrelated and are specific manifestations of the spirit that is poisoning the relationship between the two countries. The restoration of this relationship to a healthy and munificent state depends entirely upon a just and fair settlement of every one of these disputes being simultaneously achieved. Pakistan hopes and trusts that this will be secured as speedily as possible through the Security Council.

Document III

Particulars of Pakistan's Case

(1) The Pakistan Government are glad that the Government of India have chosen to make a reference to the Security Council. In

fact they have for some time been of the view that this is the only feasible method of peacefully settling the differences between the two countries. They have already unsuccessfully tried over a period of many months to seek a solution of the disputes between the two Dominions by the methods described in Article 33 of the Charter.

(2) India has chosen to confine the reference to the Security Council to one single aspect of the Kashmir question which ignores the basic and fundamental issues affecting the State of Jammu and Kashmir. But even the Kashmir episode in all its aspects is but one link in the chain of events which has been unfolding itself ever since it became obvious that there was no solution of the Hindu-Muslim problem except the partition of India. A reference to the Security Council must therefore cover much larger ground and embrace all the fundamental differences between the two Dominions.

(3) The story begins as early as the middle of 1946 following the demonstration of Muslim solidarity throughout the country after the last Provincial elections. It then became clear that the achievement of Pakistan was the unalterable goal of the Muslims. The inevitability of the partition of the country which now became evident gave rise to a wave of deep resentment among the Hindu and Sikh population of the sub-continent. As a direct result of this severe communal rioting occurred in several towns and provinces of India such as Calcutta, Noakhali, Bihar, Bombay, Garhmukteshwar, Rawalpindi, Lahore and Amritsar. Such communal strife had not been unknown previously, but what was astonishing was the unprecedented scale of killings that took place in Bihar and Garhmukteshwar proving beyond doubt the existence of a well-settled plan of extermination of the Muslims. It was during these disturbances that the Rashtriya Sewak Sangh came to be known as the author of some of the most brutal massacres. The orgy of blood, however, died down in due course, but, as later events proved only temporarily.

(4) The political activity which took place in the early part of 1947 produced a lull, but soon after the partition plan was announced on 3 June 1947, clear indications began to be received that the country was going to be plunged into a blood bath by the fanatical Sikhs and the militant Hindu groups headed by the Rashtriya Sewak Sangh who had made no secret of their opposition to the partition scheme, in spite of its being acceded by the representatives of all the three major communities.

(5) The preparations which the Sikhs were making for creating large scale disturbances were known to the authorities, and in fact the Sikh leaders made no secret of them. So overwhelming was the evidence that the Viceroy was compelled to warn the Maharajah of Patiala,

Master Tara Singh and the other Sikh leaders, that strong action would be taken against them. At a meeting which the Viceroy had in the beginning of July 1947 with Congress and Muslim League leaders and members of the Interim Government it was decided to arrest immediately prominent Sikh leaders including Master Tara Singh and Udham Singh Nagoke. These arrests were however postponed on one ground or another and the Sikh plan was allowed to be put into operation with a carefully prepared attack on a special train carrying Pakistan Government employees and their families from Delhi to Karachi on 9 August 1947.

(6) As the plan unfolded itself it became clear that the Sikhs encouraged and actively assisted by the Hindus and determined to liquidate by violent and bloody means the entire Muslim population of East Punjab. The object of the plan was to kill or drive out Muslims in order to settle in their place the Sikh population which was being pulled out of East Punjab under a planned scheme. The *modus operandi* was to disarm the Muslim population and then to leave it at the mercy of armed bands who were actively assisted by the Army and police. There is abundant evidence that this plan had the full support and active assistance not only of the officers of the East Punjab Government but also of the Sikh States such as Patiala, Kapurthala, and Faridkot. Months before the partition of the country in August 1947, Alwar and Bharatpur had set the example in liquidating their entire Muslim population by massacres, forced conversions on a mass scale and by driving out the rest. Patiala, Faridkot, Jind, Kapurthala, in fact, all the Hindu and Sikh States in the East Punjab followed this example with added atrocities and fresh horrors. Malerkotla, a small neighbouring State in the East Punjab, which has a majority of non-Muslims in the population and a Muslim Ruler provides a refreshing contrast since there has been no disturbance of any kind in that State and the non-Muslim population has been perfectly safe. On the other hand, Kapurthala which like Kashmir had a majority of Muslims in the population with a non-Muslim Ruler has today hardly any Muslims left. Similarly large tracts of Muslim majority areas which under the Boundary Award had been most unjustly included in East Punjab were cleared of Muslims by massacres, forced conversions and expulsions. The whole country was ravaged by fire and sword, vast numbers were butchered and countless women were abducted. Indeed, decency forbids mention of some crimes committed against women. Millions were forcibly and ruthlessly driven out of their home. The process went on sector by sector and culminated in the tragedy that was enacted in Delhi, the capital of India. According to the Government of India themselves there was a breakdown of

administration in the capital for a number of days. The destruction and desecration of mosques, tombs and holy places and forcible conversions on a mass scale were special features of these happenings. In Alwar for example every mosque has been destroyed.

(7) While this vast scheme of 'genocide' was being put into execution in East Punjab and neighbouring areas the Pakistan Government made repeated efforts to persuade the Union of India to arrest its course. A number of conferences were held between the two Dominions almost invariably at the instance of the Pakistan Government but while lip-service was paid to the necessity of restoring order no serious effort was made by the Indian Government to implement their promises. In fact it became clear that they were determined to leave no Muslims in East Punjab. The Pakistan Government appealed to the Governments of the British Commonwealth to arrange a conference to find ways and means of removing this serious threat to the peace and security of the sub-continent but the Indian Government opposed this proposal on the ground of outside interference. The Pakistan Government also proposed that United Nations observers should immediately visit the disturbed areas but this too was opposed by India.

(8) This plan of liquidation of the Muslim population is still proceeding despite the pious professions of the Government of India. The latest example of this is provided by the happenings in the holy city of Ajmer, about which the Government of Pakistan had warned the India Government some weeks ahead. In this connection the Government of Pakistan find it difficult to believe that the Government of India are innocent of complicity in this vast scheme of 'genocide' started by the Sikhs and Hindus and encouraged and supported by persons in authority as a means of destroying the newly created State of Pakistan. This is amply supported by the speeches and declarations of Hindu and Sikh leaders. The Muslims of India are being subjected to calculated insults and humiliations and pressure is being brought on them by prominent Hindu leaders including Premiers of Provinces to renounce their language and culture. All sorts of tests of loyalty are being demanded from them. The one on which particular emphasis is laid is that they should denounce Pakistan and try to undo the partition and express their readiness to fight Pakistan on the side of India in the event of war between the two Dominions, which last is an indication of the future intentions of the Government of India. It is a matter of deep regret that even today responsible members of the Government of India, including the Prime Minister, openly declare their intention or hope of bringing Pakistan back into the Indian Union, well knowing that this can be done only

through conquest by arms. The Pakistan Government have pointed out many times to the India Government that speeches and statements of this nature are calculated to excite and provoke the Muslims and thus impair friendly relations between the two countries; but these representations have had no effect. Such an attitude can only mean that the Hindu and Sikh leaders while giving their agreement to the partition plan did so without any intention of permitting its implementation and, further, that India is determined to undo the settlement by all means at its disposal. In other words, Pakistan's very existence is the chief *casus belli* as far as India is concerned.

(9) The events which took place following the announcement of the accession of Junagadh and Manavadar States to Pakistan lend further support to the contention of the Pakistan Government that the Government of India intend by all possible means at their disposal to destroy Pakistan.

(10) In accordance with the agreed scheme of partition and the Indian Independence Act, 1947, Indian States were under no compulsion to accede to either of the two Dominions. Notwithstanding this clear provision the Government of India by a combination of threats and cajolery forced a number of States into acceding to the Indian Union. The Rulers of Junagadh and Manavadar were similarly threatened but they stood firm and acceded to Pakistan. This was the signal for India to launch with full force its attack, using every possible weapon in order to force the States, against their will, to change their affiliations. Protests were made to the Pakistan Government, pointing out that a State which had a Hindu majority population could not accede to Pakistan, as the country had been divided on a communal basis. Another reason given was that Junagadh, though accessible from Western Pakistan by a short sea passage, was not physically contiguous to Pakistan and that its accession to Pakistan was calculated to cause disruption in the integrity of India. Simultaneously with these protests, the Government of India put large bodies of Indian troops on the border of Junagadh and encouraged the neighbouring Hindu States, which had acceded to India, to do likewise. In clear violation of the standstill agreement the Junagadh State was subjected to an economic blockade involving stoppage of all vital supplies, including food, cloth and coal into the State territory. Lines of communication including railway and telegraph were operated in such a manner that it became virtually impossible for the State or the Muslim population of Junagadh to communicate with the outside world by the usual means. A strong press campaign calculated to destroy the morale of the State administration and to create panic among the population was launched both inside and outside the State.

(11) Another line of attack was adopted by setting up a ' provisional government ' with headquarters first at Bombay and later at Rajkot, which claimed the right to liberate the non-Muslim population of Junagadh State. The so-called ' Azad Fouj ' of the provisional government was created and armed by the men and officers of the Indian Dominion. The ' provisional government ' not only proceeded to seize by force State property in Rajkot but by violent means created conditions in which it became impossible for the State administration to function. At this point the Government of India sent their troops and occupied the State under the plea of an alleged ' invitation ' by the Dewan. Since then an orgy of murder, arson, rape and loot has been let loose against the Muslims in the State by the military forces of India in exactly the same manner as in northern India and Muslims have had to flee from the State. It should be added that as long as the State was under the administration of the Nawab, there was no molestation of any section of the population whatever. According to newspaper reports Mr Samaldas Gandhi, the head of the so-called provisional Government, has openly thanked the Deputy Prime Minister of India for the assistance received. All this was done in utter disregard of the international code of conduct and ordinary neighbourly decency. In the interest of peace between the two Dominions Pakistan refrained from sending a single soldier to Junagadh. Occupation by force of Junagadh which is Pakistan territory is a clear act of aggression against Pakistan. Pakistan is entitled to send its forces into Junagadh to clear out the invading forces of India by military action and in the event of the present position continuing would be under the necessity of taking such action in discharge of its obligation to the Ruler and the people of Junagadh, as under the terms of the Instrument of Accession executed between Junagadh and Pakistan ' Defence ' is an obligation of Pakistan.

(12) In the case of Manabadar not even the flimsiest show of justification was considered necessary and the State was taken under military occupation without any explanation being offered. A similar fate befell the Talukadari State of Sardargarh, Bantva, Sultanabad and Mangrel. The unfortunate Rulers of some of these States have been kept in detention and have been subjected to considerable pressure to wean them from their affiliation to Pakistan.

(13) Kashmir provides the culminating illustration of the hostility of the India Government to Muslims and Pakistan and their determination to satisfy their imperialistic ambition of rule over the entire sub-continent by fascist tactics and use of naked force.

(14) The State of Jammu and Kashmir was purchased by the great grandfather of the present Hindu Dogra Maharajah from the

East India Company in 1846 for the paltry sum of 7.5 million rupees. Nearly 80 per cent of the population of the State is Muslim but the administration, civil and military, is almost entirely in the hands of non-Muslims. The administration has been notoriously oppressive and retrograde and the Muslim population has been kept in a state of abject poverty and misery.

(15) On the 15th August 1947 Jammu and Kashmir State like other States was free to accede or not to accede to either Dominion. It entered into a standstill agreement with Pakistan under which *inter alia* the administration of post and telegraph services was entrusted to Pakistan. Since all the natural outlets of the State fall into Pakistan all outside supplies reached the State through Pakistan.

(16) In view of the communal composition of the population of the State and the continuous oppression and degradation to which they had throughout the period of Dogra rule been subjected, against which they had risen a number of times, it was perfectly obvious to the Maharajah that any attempt made by him to accede to the Union of India and thus to perpetuate the slavery of the overwhelming Muslim population of his State to Hindu rule would immediately provoke a widespread and violent uprising which he would be utterly unable to withstand with the help of his own forces. He, therefore, chose to enter into a standstill agreement with Pakistan which served for the time being to allay the uneasiness of the Muslim population of the State and led them to hope that the standstill agreement would eventually ripen into full accession. This was, however, only a device on the part of the Maharajah to gain enough time within which to create conditions which would furnish him with a plausible excuse to call in the forces of the Indian Union so that after trampling down all popular opposition with their help he might be able to accomplish his desire of acceding to the Union of India, thus putting upon the latter the responsibility to deal with his rebellious people.

(17) During September 1947 disturbing news of repression and massacres of the Muslims of the State by the Sikh armed bands and Rashtriya Sewak Sangh assisted by the Hindu Dogra police and army of the State started reaching Pakistan through Muslim refugees who sought asylum in Pakistan. Soon the number of refugees swelled and it became obvious that the happenings of the East Punjab and the States like Patiala and Kapurthala were being re-enacted in Jammu and Kashmir. At the same time the number of raids by armed bands from the State territory into Pakistan increased. The Pakistan Government repeatedly tried to discuss these questions with the Kashmir Government as well as the complaints of the Kashmir Government regarding supplies which owing to the breakdown of communications

in the Punjab were not reaching the State in full. The Pakistan Government sent a representative of their Ministry of Foreign Affairs to Srinagar to discuss these matters with the State, but Mr Mahajan who had taken over charge as Prime Minister of the State on 15 October, refused to hold discussions with him and he had to return. On the very day that Mr Mahajan took over charge he addressed a telegram to the Prime Minister of Pakistan threatening that unless Pakistan agreed to an impartial enquiry into the matters in dispute between the two states he would be compelled to ask for outside assistance. The Prime Minister of Pakistan at once accepted the proposal for an impartial enquiry and asked the Prime Minister of Kashmir to nominate a representative for this purpose. The Government of Kashmir made no further reference to this matter. On 18 October, the Prime Minister of Kashmir in a communication to the Governor-General of Pakistan repeated his charges against Pakistan and concluded it by saying that he wished to make it plain that the attitude of the Government of Pakistan could be tolerated no longer and that he would be justified in asking for outside assistance. On 20 October, the Governor-General replied calling attention to the repeated attempts of Pakistan to maintain friendly relations with Kashmir and invited the Prime Minister of Kashmir to come to Karachi and talk things over with him. The Governor-General also pointed out that the threat to call outside help amounted almost to an ultimatum and showed that the real aim of the Kashmir Government's policy was to seek an excuse to accede to the Indian Union. In the opinion of the Government of Pakistan the course of these negotiations clearly shows that the Kashmir Government had never any intention of maintaining friendly relations with Pakistan and that, at any rate, as early as 15 October, they had made up their minds to call in outside assistance in concert with the Government of India.

(18) Meanwhile, the repression of Muslims in the State was increasing in intensity. Repression was followed by resistance particularly in the area of Poonch, which includes in its population 65,000 ex-soldiers who fought for the United Nations during the last world war. The resistance in its turn was sought to be put down with severer oppression until the Dogra savagery supported by the brutality of Sikhs and Rashtriya Sewak Sangh created a reign of terror in the State. In sheer desperation the Muslim population of the State broke out into open revolt in several areas and declared their independence of the Maharajah. Many of them were ruthlessly cut down and acts of indescribable horror were perpetrated by the Dogra forces of the Maharajah assisted by the Sikhs and the Rashtriya Sewak Sangh. This state of affairs naturally aroused strong feelings of sympathy

throughout Pakistan where the presence of millions of Muslim refugees from East Punjab (nationals of the Indian Union) and Indian States, was an ever constant reminder of the fate which was about to overtake the Muslims of Kashmir. Consequently, some of these refugees and other Muslims from contiguous areas who had numerous ties of relationship with the persecuted Muslims of the State, went across to assist their kinsmen in the struggle for freedom and indeed for existence itself. It is to be noted that the first outside incursion into the State occurred more than a week after the Prime Minister of Kashmir had threatened to call in outside assistance. It is clear that the sole responsibility for these events must rest on the Maharaja's Government who ordered the oppression of the Muslims as a matter of State policy on the model of what had happened in East Punjab and States like Patiala, Bharatpur, Alwar, etc. In conspiracy with the Indian Government, they seized upon this incursion as the occasion for putting into effect the pre-planned scheme for the accession of Kashmir as a *coup d'état* and for the occupation of Kashmir by the Indian troops simultaneously with the acceptance of the accession by India. The Pakistan Government have not accepted and cannot accept the accession of Jammu and Kashmir State to India. In their view the accession is based on violence and fraud. It was fraudulent in as much as it was achieved by deliberately creating a set of circumstances with the object of finding an excuse to state the ' accession '. It was based on violence because it furthered the plan of the Kashmir Government to liquidate the Muslim population of the State. The accession was against the well-known wishes of an overwhelming majority of the population and could not be justified on any grounds whether moral, constitutional, geographical, economic, cultural or religious.

(19) For some time past the India Government have been engaged in misleading the world as to the true wishes of the people of Kashmir by playing up the National Conference and its leader Sheikh Abdulla. Sheikh Abdulla had been sentenced by the Maharaja's Government in 1946 to a long term of imprisonment on a charge of treason. He was released early in October 1947 as part of the plan to accede to India. On the other hand, the true leaders of the Muslims of the State whose only representative organization is the Muslim Conference are kept in jail on technical grounds. Their real offence is that being the true representatives of the majority of Muslims of the State they favour the accession to the State of Pakistan.

(20) If the Government of India had extended to the Pakistan Government the courtesy of consulting them before embarking on their enterprise and suddenly landing troops in Kashmir, or even notifying Pakistan of their proposed action thus providing an opportunity for

discussion and consultation, it might have been possible to avert the tragedy of Kashmir. The events following the forcible occupation of the State by the Indian troops more than confirmed the worst fears of the Muslims. Massacres, atrocities and crimes against women, were now committed on a scale surpassing anything which the Maharaja's forces had previously perpetrated. Jammu Province which had a majority of Muslims has today very few Muslims left in areas in the occupation of the Indian forces. The condition created by the military intervention of the Government of India served to swell the torrent of popular resentment in Pakistan to an uncontrollable degree.

(21) In view of this background it is not surprising if independent tribesmen and persons from Pakistan, in particular the Muslim refugees (who, it must be remembered, are nationals of the Indian Union) from East Punjab are taking part in the struggle for the liberation of Kashmir as part of the forces of the Azad Kashmir Government. In regard to the modern military equipment which is alleged to be in the possession of the Azad Kashmir Forces, to the best of the information of the Pakistan Government, these forces are poorly equipped and such few modern weapons as they possess have either been captured from the Dogras and Indian troops or have been in their possession since the days of the British. The Pakistan Government emphatically repudiate the charge that they have supplied military equipment, transport and supplies to the 'invaders' or that Pakistan officers are training, guiding and otherwise helping them.

(22) The military resistance of Azad Kashmir has no doubt come as an unpleasant surprise to the Indian Government who appear to have underestimated the valour and patriotism of a people stirred to their depths by the horrors perpetrated upon them and their co-religionists in certain parts of the Indian Union. The character of the terrain, the climate, the familiarity of the Azad Kashmir Forces (the bulk of whom are drawn from the State) with the country in which they are operating, their military traditions and the military skill acquired by them during their fight on the side of the United Nations have all combined to nullify to a large extent the vastly superior equipment of the Indian forces.

(23) This recital of the events in Kashmir would be incomplete without a statement of the many efforts made by the Pakistan Government to reach a peaceful settlement of this question. Immediately after the intervention of the Government of India in Kashmir on 27 October the Governor General of Pakistan arranged a conference to be attended by the two Governors General, the two Prime Ministers of the Dominions and the Maharaja and Prime Minister of Kashmir. This conference fell through owing to the indisposition of Pandit Jawaharlal

Nehru, the Prime Minister of India. A second meeting was arranged for 1 November but again at the last minute Pandit Nehru could not come and only the Governor General of India came. During the discussion with the Governor General of India, the Governor General of Pakistan put forward the following proposals:

(i) to put an immediate stop to fighting, the two Governors General should be authorised and vested with full powers by both Dominion Governments to issue a proclamation forthwith giving forty-eight hours' notice to the two opposing forces to cease fire. Governor General of Pakistan explained that he had no control over the forces of the Azad Kashmir Government or the independent tribesmen engaged in the fighting but that he would warn them in that if they did not obey the order to cease fire immediately the force of both Dominions would make war on them.

(ii) Both the forces of the India Dominion and the outside 'invaders' to withdraw simultaneously and with the utmost expedition from Jammu and Kashmir State territory.

(iii) With the sanction of the two Dominion Governments the two Governors General to be given full powers to restore peace, undertake the administration of Jammu and Kashmir State and arrange for a free plebiscite without delay under their joint control and supervision.

(24) No reply was received to these proposals for many days. On 2 November, however, the Prime Minister of India made it clear in a broadcast that the India Government intended to force a decision by military action and to continue their occupation and the puppet administration set up by them. The plebiscite which he has announced would be held after the complete subjugation of the State of the Indian armed forces is bound to be no more than a farce and must result in the permanent occupation of the State by India which is the aim of the India Government. All subsequent discussions between the two Dominions have proved fruitless owing to the insistence of India on keeping their troops in the State and their refusal to agree to an impartial administration as the pre-requisite of a free and unfettered plebiscite. The Pakistan Government suggested as early as 17 November that the whole matter including the retention of troops, the character of the interim administration and the holding of the plebiscite should be entrusted to the United Nations but India Government refused to accept this proposal.

(25) While Pakistan is doing its best to maintain peaceful relations with India, there have been many attacks on Pakistan territory by armed bands from Jammu and Kashmir State Territory supported by the forces of the Maharaja and those of the Indian Union. The Pakistan Government have sent repeated representations to the India

Government on the subject but without any effect. The Royal Indian Air Force has also made numerous attacks on Pakistan territory causing considerable damage to life and property. The protests of the Pakistan Government have only elicited the assertion by the Government of India that these are minor incidents due to errors of judgment by Indian airmen. The attacks have, however, continued to be persisted in.

(26) India's treatment of Pakistan in respect of administrative, economic and financial matters indicates the same attitude of hostility towards Pakistan. The process of partition itself was punctuated by all manner of obstructions aimed at depriving Pakistan of its rightful share of financial and other assets, and even in cases in which agreement was reached the implementation was delayed or sabotaged. A large number of instances can be quoted in support of this statement but it will suffice to mention the following:

(i) division of military stores;

(ii) division of cash balances;

(iii) Interference with the Reserve Bank so as to destroy the monetary and currency fabric of Pakistan.

(27) To supervise the division of armed forces and military stores a Joint Defence Council was set up consisting of Lord Mountbatten, Governor General of India, as Chairman, representatives of the two successor authorities—India and Pakistan—and Field-Marshal Auchinleck, the Supreme Commander, as impartial authority to implement the decisions of the Joint Defence Council. It was estimated that the Supreme Commander would be able to complete his task by 31 March 1948. Within a very short time of the setting up of the Supreme Command, India created so hostile an atmosphere in Delhi that the Supreme Commander found it impossible to discharge his responsibilities and was forced to recommend the abolition of his headquarters long before he had completed his task. In spite of the protest of Pakistan, the Government of India succeeded in doing away with this impartial organization which could have ensured equitable distribution of the stores and proper reorganization of the armed forces. The India Government pledged their word at the time that Pakistan would get its due share of military stores. These assurances were supported by Lord Mountbatten who at a meeting of the Joint Defence Council held on 8 November stated that he believed that in view of the unanimous endorsement given by the Indian Cabinet to the pledge that India would deliver to Pakistan the latter's full share of stores, Pakistan's principal objection had been met. This pledge like other similar pledges of the India Government has not been honoured and the slight trickle of military stores to Pakistan shows signs of stopping altogether.

(28) The story of the division of cash balances is even more illustrative of the attitude of the Government of India. The cash balances of the undivided Government of India on 14 August 1947 were four-thousand million rupees. Pakistan representatives demanded that out of these one-thousand million rupees should be handed over to Pakistan as its share. Since the matter could not be settled it was decided to refer the case to the Arbitral Tribunal. In the beginning of December 1947, however, all outstanding cases which had been referred to the Arbitral Tribunal were settled by agreement between the two Dominions and Pakistan's share of the cash balances was fixed at 750 million rupees. This financial settlement was reached on its own merits and was in no way linked with the Kashmir question or any other issues. Nevertheless India has since refused to hand over the amount until the Kashmir question is settled. India's action is made possible only by the fact that the Reserve Bank of India, which holds the cash balances, is controlled and dominated by the India Government and is not functioning as it should, as a trustee of both the Dominions.

(29) According to the arrangements agreed to at the time of Partition, the Reserve Bank of India was to act as Banker and Currency Authority both for the Indian Union and Pakistan. As it was realised that it would take some time for Pakistan to establish its own currency and Banking Authority and to substitute its own currency for the common currency of the pre-partition India which is in use all over the sub-continent, it was agreed that Pakistan's own currency should commence ' coming into use from 1 April 1948, but that a separate currency authority should be set up by Pakistan by 1 October 1948.' On the suggestion of the Reserve Bank made before the partition, it was agreed that:

(*a*) so long as there were notes available in the Banking Department, Pakistan should be freely allowed ways and means advances on payment of interest at one-half per cent and the only limitation on these ways and means advances would be the availability of notes in the Banking Department; and

(*b*) that when ways and means advances were needed by Pakistan to meet its requirements which could not be otherwise met out of its cash balances or ways and means advances, Pakistan should be able to have its currency expanded against its own *ad hocs*. The limit for such *ad hocs* was fixed at 30 million rupees. It was agreed as a part of financial settlement between India and Pakistan announced on 9 December 1947, that India would not object to the removal of this top limit if the Reserve Bank did not raise any objection. Such *ad hocs* were to be retired against the Pakistan share of the assets of the Reserve Bank in its issue Department.

Under pressure from the Government of India, direct or indirect, the Reserve Bank is now refusing to honour to the full its obligations. This pressure is continuing and is designed to destroy the monetary and currency fabric of Pakistan, thus endangering the safety of the State.

(30) Not content with these various acts of hostility and aggression against Pakistan, the Government of India now threaten Pakistan with a direct military attack.

UNCIP, Report, S/110, Annex 6.

90 15 *January* 1948

SPEECH: SHRI N. GOPALASWAMY AYYANGAR (EXTRACT)

. . . It is with a heavy sense of responsibility that India invokes your good offices in finding a solution. The report under Article 35 of the Charter has been made to this Council after a great deal of hesitation and with the deepest regret. I wish it had been possible to settle between ourselves, with perfect friendliness and in a generous spirit of give and take, our differences in relation to this problem, in the same way as we have done, and are doing, in the case of many other problems. The failure has not been due to lack of effort on our part. Towards the end of the third week of November, an all-out effort was launched by Pandit Jawaharlal Nehru, in which the Prime Minister of Pakistan co-operated up to a point, for effecting an over-all amicable settlement between the two countries in respect of all outstanding major points of controversy. Agreement was reached, with willing and free consent, in respect even of some of the most intricate matters which had till then baffled solution. On the Kashmir issue alone, however, though good progress was made and a settlement was almost in sight at one stage, the negotiations finally broke down as a result of the attitude adopted by the Pakistan Government in declining to do what, under any view of right international conduct, it is its obligation to do. No one with knowledge of the course of these negotiations could fail to have been impressed by the transparent good faith, the sincerity and the honesty of our endeavour to reach a settlement; and that settlement would have been reached but for the intransigence and the lack of adequate confidence and courage, in dealing with their own people, which the Government of Pakistan have unfortunately exhibited in this connection.

The situation in the Jammu and Kashmir State is grave today. It is growing graver every day, thanks to the difficult nature of the

country where the sanguinary fight is in progress and to the wintry weather conditions. Even so, the situation need be no matter of concern to us, if we proceed to handle it in an exclusively military way and to deal with the invaders and raiders in the way they deserve to be dealt with and in the manner in which under other circumstances we would not have hesitated to deal with them. Such handling, in the present case, might, however, involve risks of an armed conflict with our neighbour, and, with due regard to the principles we have subscribed to as a member of the United Nations, we would like to exhaust every possible resource for avoiding war, particularly war with people of a neighbouring state with whom centuries of common living, culture and tradition incline us, in spite of ephemeral recent happenings, to continue and develop the ties that bind us together. We have come, therefore, to invoke your assistance in persuading the Pakistan Government, where we so far have failed, and in thus helping to save the lives and honour of thousands in the Jammu and Kashmir State. Freed from the scourge of invasion, and with normal life restored, this land of beauty and its hard-working and self-awakened people will thus be enabled to carve out for themselves, by a free choice of their own, the economic and political destiny that awaits them.

It is, if I may say so, of the highest importance that action for the stoppage of the fighting in the State, which is now going on between the armed forces of India and the forces and people of the State on the one side, and the raiders and invaders from the tribal areas and the West Punjab and North West Frontier Provinces of Pakistan together with some insurgents in the State on the other, should be taken with special expedition, not only for the purpose of saving life, property and honour but also for the purpose of avoiding the risk of a war between India and Pakistan, which the compelling necessities of military action might any day precipitate and make inevitable. I would very strongly urge, therefore, on behalf of my Government, that not merely urgency but immediacy should characterise the action that should, as a result of your consideration be recommended in the present situation.

Lying at the northwestern extremity of India, the Jammu and Kashmir State has to its north Chinese Turkestan, to its northeast Tibet, and to its northwest the Union of Soviet Socialist Republics. On its southern side, its borders march with those of the Dominions of India and Pakistan. The area of the State is approximately 82,000 square miles and its population is just over four million.

Essentially mountainous in its geography, the State consists of successive ranges of snowclad mountains and beautiful valleys in between them. For administrative purposes, the State could be divided

into four distinct regions: Jammu proper with the largest proportion in any area of the State of Hindus, mostly Dogra Rajputs; to the east and north in the areas of Baltistan and Ladakh originally parts of Tibet but conquered and annexed to the State by the Greatgrandfather of the present Maharajah over a century ago; the Kashmir Valley is the third distinct division of the State, and Gilgit, with its strategic position across the river Indus is at the northernmost extremity.

The population of Kashmir Valley is over 90 per cent Muslim and that of Gilgit is wholly Muslim. In Jammu, the proportion of Hindus is substantially higher, but taking the State as a whole the Muslims are in a majority of about 78 per cent. From Srinagar, the principal city in the Valley of Kashmir, one road leads to Pakistan branching off at Domel via Musaffarabad and Abottabad but proceeding straight through Kohala and Murree to Rawalpindi. The other road connects it with Jammu. The usual line of communication from Jammu to India before partition was through Sialkot, now in Pakistan; but, after the partition of India, through connection with the Indian Dominion is from Jammu to Pathankot, over a fair-weather road which has had to stand the heavy strain of military and other traffic during the last two and a half months, and is therefore not in a good condition. This is, however, being rapidly improved and realigned.

For just over a hundred years, the State has been ruled by the present dynasty. It seems unnecessary to trace the history of the State in any detail. The important date for our present purposes may be taken as 15 August 1947, when the United Kingdom transferred power in India. Prior to that date Jammu and Kashmir, like any other state of comparable size, was an independent state in treaty relations with the Crown of England. It had, however, no international existence. Being a frontier State, its border was under the direct administration of the British. Its economy was dependent for all essentials like cloth, fuel and food on India or Pakistan. The administration is monarchical, the hereditary ruler being assisted by a legislature with an elected majority; two of the ministers were drawn from the legislature and worked with three others appointed by the Maharajah, to form a Cabinet over which the Prime Minister presided. There has been a movement in the State for the establishment and liberalization of popular democratic institutions during the last sixteen or seventeen years. The two main parties contending for recognition and power were the National Conference led by my colleague, Sheikh Abdullah, who is a sturdy champion of a national secular state, and the Muslim Conference Party, which in regard to ideology is in the State a replica of the Muslim League in non-State India.

On 15 August, when the Indian Independence Act came into force, Jammu and Kashmir, like other states, became free to decide whether she would accede to the one or the other of the two Dominions, or remain independent. It was, however, expected that the State would, as a matter of course, enter into relationship with one or the other of the Dominions, having regard to her geography and history, her economic interests and the wishes of her population. Kashmir started negotiating simultaneously with India and Pakistan, since she was contiguous to, and had close economic ties with, both of them.

India was, of course, vitally interested in the decision that the State might take in regard to accession. Kashmir, because of her geographical position, with her frontiers marching with countries like the Soviet Union and China, is of vital importance to the security and international contacts of India. Economically also, Kashmir is intimately associated with India. The caravan trade routes from Central Asia to India pass through Kashmir State. Nevertheless, we have at no time put the slightest pressure on the State to accede to the Indian Dominion because we realized that Kashmir was in a very difficult position. While a standstill agreement with India was being negotiated, we learned that pressure was being applied on Kashmir by the Pakistan authorities with a view to coercing her into acceding to Pakistan. At first we did not pay any serious attention to the reports that we received. At that time all the energies of the Government of India were strained to the utmost in achieving the task of effecting a gigantic transfer of population on a vast scale. But the reports about the application of coercive pressure began to come with increasing frequency. In or about the month of September the position became really serious.

The events which actually followed cannot be explained away as a fortuitous combination of circumstances. A closer examination would reveal to any impartial body of men that there was a definite method, a calculated plan which was being followed. It is not my desire to overburden this statement with details. I shall, however, briefly refer to the main events. It was not easy for Kashmir to obtain the essential supplies from India on account of the difficulty of communications. The Pakistan Government started with a breach of its standstill agreement with the State. Quotas of petrol—384,000 gallons—wheat, salt, kerosene oil and cloth allotted to the State under the All India Basic Plan for which payment had been made by the Kashmir Government, and which were lying in Pakistan territory at the towns of Rawalpindi, Lalamusa, Sarai Alamgir and Sialkot, were withheld and prevented from being imported into the State. The consequent distress of the

people of the State was great. It became impossible to carry on normal trade and the entire transport of men and goods to and from the State came to a standstill for want of petrol. That the State of Jammu and Kashmir was subjected to the economic blockade has been testified to by foreign correspondents. I will cite only two examples. On 13 October 1947, Norman Cliffe, correspondent of the London *News Chronicle*, reported from Kashmir: 'Pakistan has cut off from Kashmir supplies of petrol, sugar, salt and kerosene oil, although a standstill agreement between them has been signed.' The London *Times* carried the following dispatch from its correspondent in India: 'The refusal of Pakistan to supply petrol, salt, sugar and kerosene oil to Kashmir has nearly cut off the State from India.' The Government of Pakistan itself pleaded that it could not send these essential supplies, and in defence of its inability to do so, it put forward the excuse that the means of transport were lacking. A sufficiency of transport was, however, always available for carrying invaders to Kashmir on 22 October 1947, and later.

The economic blockade of Kashmir was an essential part of the plan to coerce Kashmir into acceding to the Dominion of Pakistan. The press in Pakistan openly carried on this propaganda accompanied by threats and warnings. On 5 September 1947, *The Zamindar*—that is the name of a journal—in an editorial captioned 'Surround Kashmir', suggested that in view of the reluctance of the ruler of Kashmir to accede to Pakistan, all the gates which connect Kashmir with India should be closed. The article concluded: 'Let us beleaguer Kashmir; let us do it so effectively that it may not be able to get out of our hands and seek refuge beyond the borders of our Dominion. Kashmir and Jammu are parts of Pakistan. Their going out of Muslim domination will badly shatter the prestige of Mussalmans.'

India came into the picture of the present developments of Kashmir only on the eve of signing the instrument of accession. Since then we have come to know of the pressure which had been exercised by Pakistan for obtaining the accession of the State. Side by side with economic strangulation of Kashmir by stoppage of supplies, raids and armed activity began to take place from West Punjab on the territory of Jammu and Kashmir State. On 3 September a gang of four hundred Pakistan nationals armed with spears and pistols attacked the village of Dohali, twelve miles southeast of Ranbirsingh Pura, looted and set fire to the village.

According to the diary maintained by Brigadier Sir H. L. Scott, Chief of the Military Staff, Jammu and Kashmir State, on the 6th of September 1947, (there was) a marked increase in the activity of

Pakistan troops on the main roads. A patrol visited Alibeg, twelve miles west of Bimbhar, Major-General O. D. T. Lovett, commanding 7th Infantry Division (was) informed. On 13 September 1947, Pakistan army patrol visited Alibeg and Jatli, 14 miles west of Bimbhar, both in the State territory.

Five days after 6 September, 180 refugees of the Kashmir State returning from Rawalpindi to Kohala were murdered *en route*. On or about 18 September the railway service between Sialkot and Jammu was suspended by the Pakistan authorities and a request made on 19 September for a supply of petrol elicited no reply. The hardship which must have been occasioned by this unwarranted act of interference can be easily assessed if one realizes that the Jammu-Sialkot railway is the only railway connecting the State with the outside world. On the same day armed gangs ferried into Palandri. Ten days later a band of 500 armed men from Pakistan with service rifles, automatics and spears attacked a state patrol near Chak Harka six miles south of Samba. On 30 September. forty Pakistanis accompanied by two police constables entered the State territory in uniforms, five miles southwest of Akhnoor and killed a state soldier. On the same day one hundred armed Pathans entered Dhirkota Thana, eight miles southeast of Kohala, on the Kashmir territory. Much damage was inflicted on the local population by these continuous raids.

Matters had thus come to such a pass that the Government of Kashmir had to send a telegram of protest to the Governor-General of Pakistan....

The Governor-General of Pakistan, in his reply dated 20 October 1947, made no effort to answer the specific accusations. Instead, he chose to treat the communication from the Government of Kashmir as an ultimatum containing an alleged threat to seek outside assistance. However, by the time the reply of the Governor-General of Pakistan reached the Government of Kashmir, the large-scale invasion of the State from the side of the North West Frontier Province had actually commenced.

On 22 October 1947, about two thousand tribesmen, some in about one hundred lorries supplied to them by Pakistan's North West Frontier Province and others on foot, fully armed with modern weapons and under the command of a Pakistan national, entered the town of Mazaffarabad at dawn. They sacked the town, killing, looting and raiding as they went along. The 'Gurdwara' (a place of religious worship for the Sikhs) was burned, the Government treasury looted, and state records destroyed. The local troops were taken by surprise, outnumbered and defeated.

The invaders continued their progress along the Jhelum Valley Road towards Srinagar. The triumphant march temporarily was

stemmed at Uri, a town fifty miles from Srinagar, by the demolition of a bridge and the gallant resistance of about one hundred and fifty men under the command of Brigadier Rajendra Singh of the Kashmir Army, who was killed fighting a memorable last-ditch battle. The raiders managed to construct a diversion which was about a mile along and which must have required considerable engineering skill, as it was completed in fifty-two hours. They then continued their advance and, before reaching Baramula, they burned the power house at Mahura which supplied electricity to the whole of Kashmir.

The position was now critical. The state troops were spread all over the territory of Kashmir. They had been split into small isolated groups, incapable of offering resistance to raiders who were overwhelming in numbers. All that stood between Baramula and Srinagar was a plain road, with hardly any troops to impede the raiders' advance. But the inhabitants of Srinagar, consisting of Hindu, Sikh and Muslims, under their leader Sheikh Abdulla, rose up as one man to defend Srinagar.

The raiders stopped at Baramula on 27 October and sacked the town. In their thirteen-day occupation of Baramula they denuded it of all its grain, cloth and money and left behind them a trail of loot, arson, rape, abduction and murder. . . .

These were the barbarous men whom Pakistan had boasted as the champions of liberty, who were supposedly fighting for the ' liberation ' of Kashmir, who had gone all the way from a distant land as the ' Saviours of Kashmir '.

From Baramula, where the raiders received reinforcement in thousands, they spread in armed batches toward Sopore, Bandipore, sparing no one from loot or violence. Srinagar, the capital of the State, and the whole of Kashmir valley were in peril.

In this situation the Maharaja of Kashmir approached the Government of India for military aid and addressed a letter from Jammu, dated 26 October, 1947, to the Governor-General, Lord Mountbatten. . .

The two letters give the story of the offer and acceptance of the accession. I would invite the attention of the members of the Security Council to the high principled statesmanship characteristic of the Government of India under its present leadership. In accepting the accession they refused to take advantage of the immediate peril in which the State found itself and informed the Ruler that the accession should finally be settled by plebiscite as soon as peace had been restored. They have subsequently made it quite clear that they are agreeable to the plebiscite being conducted if necessary under international auspices. The acceptance of the accession was urged upon the Government of India by the leader of the most influential popular organization in Kashmir. It was clear to my Government—as indeed it was

clear to everybody else—that peace in Kashmir could never be restored or maintained without the support of the people. Sheikh Abdulla, leader of the National Conference in Kashmir, pressed for accession as earnestly as the Ruler of Kashmir himself, and his organization promised its complete co-operation. On the question of accession, the Government of India has always enunciated the policy that in all cases of dispute the people of the State concerned should make the decision.

The Government of India had in fact no plan to send any military assistance to Kashmir before 25 October 1947. The British chiefs of staff of the three services of the Indian armed forces have certified:

(1) On 24 October the first intimation of the tribesmen's capture of Muzzafarabad reached the Commander-in-Chief in India.

(2) No plans of sending troops to Kashmir had either been considered or made by the Indian Army until then.

(3) On 25 October directions from the Government of India were received for the first time to prepare plans for sending troops to Kashmir by air and road if necessary.

(4) On 27 October, with Kashmir's instrument of accession signed, Indian troops were sent to Kashmir by air.

Had India had any plans ready to send troops to Kashmir before this date it would have hardly waited until the invaders had overrun half the Valley.

There is ample proof available to establish that the invaders of Kashmir are not only being allowed transit across the Pakistan territory but also draw much of their equipment, arms, transport, supplies and petrol from Pakistan.

For three months thousands of tribesmen have crossed Pakistan territory and have continued to pour into Kashmir. And yet Pakistan has acquiesced in this mass and continuous trespass on its own territory by people who were openly on their way to violate the integrity of a neighbouring state and challenge constituted authority therein.

Sydney Smith of the London *Daily Express* wrote on 10 November 1947 that he saw bus-loads of howling Pathans crossing the Kashmir border from Pakistan at Domel in 45 lorries. One Lal Mir, taken prisoner by us on 12 December 1947, said that on first recruitment he was taken to a camp at Wazirabad in a truck where he saw some 10,000 tribesmen in all. All of them were issued with arms, ammunition, transport, food and clothes in that camp. Those who were unacquainted with arms were trained accordingly. Lal Mir, after being fully equipped for the front was then taken by a truck to 'another big city like Wazirabad' which he reached at night and where he debussed. After crossing a bridge at midnight he went across the border into the State

and participated in an attack on five villages and killed and looted Hindus in the area.

A British officer of the Pakistan army writing home to the United Kingdom on 25 November 1947 from Abbottabad, said that lorry-loads of food from local civil supplies and about 1,000 gallons of gasoline were being sent to tribesmen in Kashmir from Abbottabad daily. Our District Liaison Officer at Jhelum reported on 25 November 1947 that a large number of men of the First Punjab Regiment, dressed in civilian clothes, were carrying arms and ammunition every evening in trucks and sometimes tanks and armoured cars over the Jammu and Kashmir border. He saw 5,000 tribesmen under training 14 miles beyond Kahuta.

Our representative at Peshawar reported in November that about 20,000 tribesmen had moved from the North West Frontier Province to Kashmir accompanied by men of the Pakistan army ' on leave ', frontier constabulary and additional police in plain clothes, and that petrol, ammunition, arms, and transport were invariably supplied to them. Transport for this purpose was requisitioned by order of the North West Frontier Province Government.

A report from our Chief Liaison Officer stated that all raiders' casualties are being admitted into the Pakistan military hospitals.

One of the raiders on being interrogated as a prisoner admitted that there was a large training camp at Sialkot where raiders are trained for a period of 8 weeks, prior to proceeding to Karianwala in order to receive arms, equipment, ammunition, and uniforms before going into action.

There is proof also to show that the raiders have in use ·303 rifles, Bren and Sten guns, 2 and 3 inch mortars, 3·7 howitzers, anti-tank rifles, Mark V mines and manpack W/T sets. I have photographs of some of these items which we captured from the raiders indicating that such large numbers could only have come from Pakistan military depots.

In the opening phases invaders were not in uniform; now they appear wearing battle dress, steel helmets, army greatcoats and boots. Captured vehicles have Pakistan number plates on them. Large quantities of petrol, a rationed article, without using which it is not possible for any bodies of such men to reach Kashmir, could only have come from Pakistan. We have evidence to show that large numbers of buses and lorries carrying tribesmen towards Kashmir had their petrol tanks filled to the brim at Pakistan pumps without coupons or payment. Raiders' vehicles are repaired in Pakistan workshops.

Three-inch mortars have been so extensively used against us that it indicates far larger numbers than the few we have lost in action.

We have also encountered fire from an anti-tank rifle in the Naushera area. Two Humber and GMC type armoured cars were seen in the Akhnoor sector and four anti-tank mines located in the same area. Their technical examination showed that the mines had originated in the Kirkee Arsenal of India in 1943.

In his statement, prisoner Iqbal, son of Sakhi Mohd. of Takbal Village, said that since the creation of Pakistan there was extensive propaganda by the Muslim League leaders that every Muslim should join the ' Lashkar ' which was to invade Kashmir. According to him, the Prime Minister of the North West Frontier Province was the chief organiser of the rebel force being assembled at Peshawar. He said he was sorry they had to kill their own Muslim brothers in Kashmir and that they had been cheated by their Prime Minister.

We have ample evidence to prove that the raiders include a large number of Pakistan nationals. There is reason to suspect that ' General Tariq, C.-in-C. of the raiders ' who has been described by a foreign press correspondent as a tall Sandhurst-trained officer, is a regular officer of the Pakistan Army. Michals, U.P.A. correspondent, in a despatch dated 11 November 1947, said he met three ' rebel ' officers in Palandri. One of them admitted he was an officer of the Pakistan Army ' on leave to fight in Kashmir '.

I have in my possession some discharge certificates, pay books and driving licences of raiders, who were captured or killed, showing that they were nationals of Pakistan. Documents recovered from the dead bodies of two raiders in uniform showed them as men of the 16th Punjab Regiment of the Pakistan Army. Other identifications have disclosed the enemy to include the Pakistan National Guards.

Pakistan officers are training, guiding or otherwise actively helping the raiders and are being allowed to use Pakistan territory as a base for operations. The main bases are at Shakargarh, Sialkot, Wazirabad, Gujrat, Lalamusa, Jhelum, Rawalpindi, and Abbottabad. All these towns are along the length of the border between Jammu and Kashmir State and Pakistan. Our Chief Liaison Officer in West Punjab reported in November 1947 that there is a reception camp at Rawal, near Rawalpindi for tribesmen *en route* to Poonch through Kabuta. Also, there is a training camp at Nar near Kabuta where training in small arms and elementary tactics is given. . . .

Alan Moorehead of the London *Observer* wrote in his despatch to London dated 2 November 1947 that recruiting for Kashmir was going on everywhere, not only in the tribal territories, but also inside Pakistan itself.

The methods employed by raiders and the way they are handled, including their system of defences, indicate that they are being trained

and led by professional soldiers. In fact, they use the same words of command as are prevalent in the Pakistan forces.

The press and the state-controlled radio in Pakistan have extolled Pathans all along for their ' successes ' in Kashmir. They frequently refer to India as ' the enemy '. They have repeatedly said that Pathans have proved to the world by their victories in Kashmir that they alone can effectively protect the State of Pakistan.

The Prime Minister of Pakistan has emphatically repudiated the charges of aiding and assisting the invaders in Kashmir, and has stated that they have in fact tried to stem their movement ' by all means short of war '. Yet, according to him, it would not be surprising if ' some Pakistan Nationals ' were taking part in the struggle for the liberation of Kashmir along with the raiders.

Pakistan officials have stated that arms, Brens and mortars being used against us are those brought over when Muslims of Kashmir forces deserted to the invaders, or those captured from our forces. The number of desertions has been comparatively so small that this allegation is in essence false.

The Prime Minister of Pakistan has described the raiders in Kashmir as ' poorly equipped ' and has said that such modern weapons as they possess have been captured from the Kashmir State troops or were in their possession since the days of the British. He has, however, confessed that Pakistan military personnel on leave in their homes ' might have rendered assistance to their kith and kin in defence of their hearths and homes.'

It seems extraordinary conduct for an army to allow its officers and men to ' go on leave ' and omit to take disciplinary action against them for participating, during their leave, in fighting against a neighbouring and a friendly country. As a matter of fact, these men on leave could not have been defending their own hearths and homes when they joined in convoys and formations proceeding from the North West Frontier Province towards places in Jammu and Kashmir State, sacking, burning and looting towns and villages on their way.

The members of these convoys, far from defending their own hearths and homes and protecting their kith and kin, were really out to destroy the hearths and homes of the peoples in the villages and towns they sacked.

I shall not refer to other evidence of a similar character which is available to me. What I have said already is sufficient to indicate that a large movement of Pathans has been taking place through Pakistan into Kashmir; that several military bases exist in Pakistan where the raiders are trained and equipped and from which they

finally proceed to Kashmir; that arms, equipment and clothing have been freely available to these raiders in Pakistan.

It is not possible for me here to convey to the members of the Security Council in all its varied aspect the atmosphere of hostility and enmity which the press in Pakistan stirred up against India. In such circumstances, it was not an easy matter to persevere in our efforts for negotiation. And yet we did persevere. During the months of November and December, several conferences were held between the Governments of the two Dominions in order to arrive at a satisfactory solution to the problem. There were moments when we thought that we had almost come to a satisfactory settlement, but we did not. And the reason for this was that at no time was the Government of Pakistan willing, openly and categorically to disassociate itself from the invaders. In the meantime, the military situation assumed added gravity. The raiders became better organized and better equipped. They intensified their pressure several fold. In one of the engagements at Jhangar, our troops were attacked by six thousand men, armed with automatic weapons including medium machine guns and mortars. We could no longer tolerate this situation without endangering our own peace and safety, and so on 22 December 1947, our Prime Minister handed over a formal letter to the Prime Minister of Pakistan in which he made a final attempt to persuade him to take measures for denying all assistance to the raiders. We received no reply for a week. We then brought the matter to the notice of the Security Council.

The numerous communications exchanged between and the statements made by the Prime Ministers of India and Pakistan merely show that, whereas we have been making earnest endeavours to seek the co-operation of Pakistan in effecting the withdrawal of the raiders, the Government of Pakistan has not been willing to do anything to stop the raiders from making use of its territory for warlike operations against Kashmir.

Illustrative of this attitude of unhelpfulness are some of the communications which the Prime Minister of Pakistan sent in reply to the telegrams addressed to him by the Prime Minister of India. Thus, on 28 October 1947, our Prime Minister sent a telegram to the Prime Minister of Pakistan in the following terms (and I wish to draw the attention of the Council to the fact that this was on the day immediately following our sending of troops to Kashmir):

'I want to invite your Government's co-operation in stopping these raiders entering Kashmir territory from Pakistan. These raids have already resulted in large-scale death and destruction, and, if they are not stopped immediately, will lead to ruin of Kashmir. The consequent success of such irresponsible raiders anywhere will be

far-reaching all over India. Therefore, in the interest of both Pakistan and India, such raids must be stopped. As raiders come across Pakistan territory, it should be possible to stop them there.'

The Prime Minister of Pakistan sent his reply to this telegram on 30 October. Permit me Mr President, to quote it in full. After acknowledging the receipt of Pandit Nehru's telegram, the Prime Minister of Pakistan went on to state as follows:

'The position is that Sikh attacks on Muslims in East Punjab in August greatly inflamed feeling throughout Pakistan and it was only with greatest difficulty that Pathan tribes were prevented from entering West Punjab to take revenge on Hindus and Sikhs. In Poonch Muslims were attacked and those in Jammu massacred by mobs led by Kashmir State Forces, and when it was evident that there was to be a repetition in Kashmir of that in East Punjab, it became impossible wholly to prevent tribes from entering that State without using troops who would have created a situation on the frontier that might well have got out of control.

'Your recent action of sending troops to Kashmir on pretext of accession has made things infinitely worse. The whole of the frontier is stirring and feeling of resentment among tribes is intense. The responsibility for what is happening is entirely yours. There was no trouble in Poonch or Jammu till State troops started killing Muslims. All along Kashmir Government has been in close touch with you. At the same time they ignored or refused our offers of friendly discussion. On 2 October, I suggested that both Pakistan and Kashmir should appoint representatives to discuss supplies to Kashmir and mutual allegations of border raids. The Prime Minister of Kashmir replied that he was too busy. When in spite of this we sent Shah, Joint Secretary, Ministry of Foreign Affairs and States to Kashmir, the Prime Minister refused to discuss with him. On 15 October, Prime Minister of Kashmir threatened that unless we agreed to an impartial enquiry into what was happening he would ask for assistance to withstand aggression on his borders. We immediately agreed to an impartial enquiry. Since then no more has been heard from Kashmir of this proposal.

'The Pathan raid on Kashmir did not start till 22 October. It is quite clear therefore that Kashmir's plan of asking for Indian troops—and it could hardly have been unilateral—was formed quite independently of this raid, and all evidence and action taken shows it was pre-arranged. It would seem rather to have been made after failure of their troops to suppress people of Poonch and in anticipation of reaction which they expected to their massacre of Moslems in Jammu.

'I, in my turn, appeal to you to stop the Jammu killings, which still continue. Yesterday West Punjab was again invaded by a well-armed mob, who, after a fight with villagers, retreated, leaving two Gurkha soldiers in uniform dead behind them. As long as this sort of thing continues, passions are bound to become further inflamed.'

The attitude of mind disclosed in the reply given by the Prime Minister of Pakistan was regrettable. It does not attempt even to disown these raiders or condemn their activities; indeed, it almost attempts to extenuate and find excuses for them. . . .

I come now to the subject matter of the reference made to the Security Council. In doing so, it is necessary to emphasize that there is no dispute about territory. The territory is that of Kashmir, and it is this territory which has been invaded, its towns and villages sacked, its people massacred, and women abducted. Secondly, the subject matter of reference is limited to the dispute in Kashmir and its purpose is to request the Security Council to use its undoubted influence and power to persuade the Government of Pakistan to (1) prevent Pakistan Government personnel, military and civil, participating in or assisting the invasion of Jammu and Kashmir State; (2) call upon other Pakistan nationals to desist from taking any part in the fighting in Jammu and Kashmir State; (3) to deny to the invaders: (i) access to and use of its territory for operations against Kashmir; (ii) military and other supplies, and (iii) all other kinds of aid that might tend to prolong the present struggle.

We have referred to the Security Council a simple and straightforward issue. There is at this very moment a small war going on in Kashmir. Every day that passes brings in its wake added sorrow and suffering to the people of Kashmir. Furthermore, every day that the war is prolonged the danger of the extension of the area of conflict grows. Who can derive satisfaction from such a state of affairs? Is it not really a matter of extreme urgency that the raiders be withdrawn and fighting should cease? Is not the withdrawal of these raiders and the averting of a threatened breach of the peace the sole issue demanding priority and urgent consideration? Are we making any unreasonable demands when we ask our neighbouring State of Pakistan to discharge its neighbourly duties? We only desire to see peace restored in Kashmir and to ensure that the people of Kashmir are left free to decide in an orderly and peaceful manner the future of their state. We have no further interest, and we have agreed that a plebiscite in Kashmir might take place under international auspices after peace and order have been established. Everything that we have done has been in discharge of our legal, constitutional, and moral responsibilities and obligations. . . .

What is the present position as regards the political problem in that State ? By committing himself before the world to the framing of a constitution providing for responsible government and calling Sheikh Muhammed Abdulla to shoulder the responsibility for administration during the interim period, the Maharaja has set already in train the chain of events which will convert him in the next few months from an absolute ruler into the constitutional head of an executive responsible to a democratically elected legislature.

The question of the future status of Kashmir *vis-à-vis* her neighbours and the world at large, and a further question, namely, whether she should withdraw from her accession to India, and either accede to Pakistan or remain independent, with a right to claim admission as a member of the United Nations—all this we have recognized to be a matter for unfettered decision by the people of Kashmir, after normal life is restored to them.

There is, therefore, no excuse for outsiders, whether of the tribal areas or of Pakistan proper, to continue fighting against the people and Government of the State, unless it be religious fanaticism based upon hatred and revenge. To allow continuous opportunity for the play of this unholy passion for a ' holy war ' is to succumb to a barbaric doctrine. It therefore means prolongation of that entirely unnecessary suffering to which the people of Kashmir have been subjected for no rational comprehensible reason.

The Indian army today is the one unshakable factor which now stands between the miscreants, marauders and murderers from outside, on the one hand, and chaos and anarchy, on the other. The withdrawal and expulsion of the raiders and the invaders from the soil of Kashmir and the immediate stoppage of the fight are thus the first and the only tasks to which we have to address ourselves.

To my friends from Pakistan, I would, therefore, address this question :

You have welcomed this reference to the Security Council. Are we jointly so bankrupt of faith in the need for peace, in human decency and dignity that we cannot, even at this late stage, agree upon your taking the action which it is so obviously your duty to take and your calling us to co-operate with you in implementing it, should you consider our assistance necessary ?

The most disquieting news from India today is the fast upon which Mahatma Gandhi has entered. It is for an indefinite period and, unless the warring religious and communal fanatics in India will give up feelings of hatred, revenge, violence and retaliation and give evidence of a real change of heart, the biggest man of the age, the greatest apostle of non-violence, peace and goodwill in the world today might

deprive us of the guidance with which his immaculate life of sacrifices has sustained us all these years. . . . I wish we could notify him as soon as possible of a settlement between the two Dominions. . . .

Security Council Official Records, Third Year, Nos. 1-15, pp. 10-30.

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SPEECH: SIR MOHAMMED ZAFRULLAH KHAN (EXTRACTS)

The reference that the representative of India has placed before the Security Council is confined to the matter of Kashmir. The reference that Pakistan has made embraces all the principal issues and questions pending between the two countries that are likely, if not resolved, to lead to a disturbance of the peace. . . .

It is obvious, however, that in order to restore friendly relations between India and Pakistan and to remove all danger to the maintenance of international peace and security, all major disputes between the two countries that constitute such danger must be resolved at an early date. It would be, if I may be permitted to say so, a waste of precious effort if, while the Security Council is occupied in straightening out the tangle in Kashmir, the two dominions begin to fight over one of the other grave matters that are in controversy between them, set out in document II, which has been submitted to the Security Council and is now in the hands of the members. I trust, therefore, that the Security Council will, along with the consideration of the Kashmir question, take up the consideration of these other disputes also.

Indeed, as will presently appear and be appreciated as the tale unfolds itself, it is impossible properly to appraise the different issues involved in the Kashmir question without direct reference to some of those other matters. . . .

As a part of the constitutional settlement, it was laid down that the provinces of Punjab in the Northwest and Bengal in the Northeast would be further divided so as to take away from each such contiguous areas in which the non-Muslims were in a majority, so that the western part of Bengal was separated from Bengal and added to the Dominion of India, and the eastern part of Punjab was separated from Punjab and added to the Dominion of India, Pakistan continuing to comprise West Punjab on the western side and East Bengal on the eastern side.

The partition of Punjab was insisted upon not by the Muslims, naturally, and not even by the Hindus as such, but by the Sikhs. The

bulk of the Sikhs are based upon the central districts of the Punjab Province. It was pointed out to them by Lord Mountbatten when this demand was made that a division of the Punjab would break up their community into two almost equal parts and, therefore, would be very prejudicial to their interests from every point of view. But they insisted and their demand was supported by the Congress, and the demand was ultimately accepted.

The actual division of these two provinces was entrusted to Boundary commissions, but in effect to the Chairman of the Boundary Commission, Sir Cyril Radcliffe. He pronounced the award on 18 August 1947. All the parties professed to be dissatisfied with the award. There are certain features of the award which are open to serious objection, but this is not the occasion or the place to raise that question.

But even before the award was pronounced, it began to be apparent why the Sikhs had insisted on asking for partition of the Punjab. It was an incomprehensible demand to all of us. The Sikhs were the third community numerically in the Punjab. Muslims were in the majority; the Hindus came next and then came the Sikhs. That the smallest of the three communities in a province should ask for division of the province into two parts, when it was inescapable that any kind of division that took place would divide that community also into two parts, was not easily understandable. Hints were dropped during the partition proceedings as to what the Sikh plan was, and apparently the Viceroy himself, Lord Mountbatten, was aware of what the Sikh plan was. Subsequent confidential reports from the Government of the Punjab to the Central Government, which have since been circulated, though they have not been published—they are confidential reports, but they have become available—indicate that the Sikh plan, as it subsequently unfolded itself in actual practice, was already known to Lord Mountbatten.

I shall go back a little now to make another résumé of events, which will bring the matter up to the tragedy which has embittered relations between the two dominions and is the main cause of their differences.

During the last half of 1946 communal riots and massacres occurred at various places such as Ambala, Bombay, Calcutta, Bihar, Garhmukhteswar, Noakhali, etc. Neither side has been free from blame with respect to these matters but Calcutta—and, much more, Bihar and Garhmukhteswar—disclosed well-laid and ruthlessly executed plans of extermination of Muslims in those particular areas. At Garhmukhteswar, which is a place on the banks of the Sacred River Ganges, the occasion was a Hindu sacred festival—and the waters of the Ganges, held holy and sacred by Hinduism both in and beyond India, were,

on this occasion, deliberately defiled and polluted as a result of the ruthless barbarities of Hindu votaries upon the persons of the Muslims who were there in order to assist at the celebration of these festivities, and whose countless corpses of men, women and children, were thrown into the waters of the Ganges.

These occurrences carried successive waves of horror throughout the sub-continent of India. Human life ought to be sacred and human misery must evoke sympathy, irrespective of who is the victim and who is the aggressor. Neither side was free from blame. But these are facts.

Fortunately, up to then, the Punjab had been entirely free from communal strife during the course of the years. The first sign of strife that appeared was an announcement made by Master Tara Singh, a leader of the Sikh community, on 28 February 1947, from the steps of the Legislative Assembly in Lahore. He unsheathed his Kirpan—in other words, his sword—waved it about and announced that the sword would now decide between the Sikhs and the Muslims. He said that the Sikhs were ready, that they had organized themselves for the struggle, and there was no question as to why they should confine themselves to East Punjab, but that they were determined to drive the Muslims across the Ganges.

This was followed by equally fiery and provocative speeches delivered by Gyani Kartar Singh and other Sikh leaders that evening and in the course of the following two or three days in Lahore. . . .

There were also minor disorders in Lahore and Amritsar. Lahore was the capital of the whole of the Punjab, and is now the capital of West Punjab. It is about thirty-two miles from Amritsar which is a sacred city. The situation continued to be uneasy and explosive. That is one facet of the picture.

In regard to British India, what about the Indian States in the constitutional settlement? According to the constitutional settlement, later embodied in the Indian Independence Act, it was open to an Indian state to accede to Pakistan, to accede to the Dominion of India, or as the States claimed at any rate at that time, though it was vigorously contended to the contrary by the Dominion of India, they could remain independent. In actual fact many of the states which wanted to remain out were subsequently dragooned into accession with the Dominion of India.

I was very agreeably surprised by the declaration contained in the statement which was read by the representative of India yesterday which asserted that it would be open to Kashmir to accede to India, to accede to Pakistan, or to be independent and become a member of the United Nations. I wish the same choice had been offered to the other Indian States also.

The transfer of power actually took place on 15 August 1947. That was the due date as laid down in the Indian Independence Act. The two dominions were set up on that date. The boundary award was actually pronounced on 18 August 1947. Before the award was pronounced, the Sikh plan, which was based upon a partition, had begun to unfold itself, and the tragedy had started on its course. In East Punjab are the following Sikh States: Kapurthala, Faridkot, Nabha, Jind and Patiala. Around Delhi there are the Hindu States of Bharatpur, Alwar and Gwalior. All these States are in accession with the Union of India. Out of these, Kapurthala had a majority of Muslims in its population. In all the other states that I have mentioned, there was a considerable number of Muslims, but the Muslims were in the minority.

In June 1947, a campaign for the extermination of the Muslims was started in the states of Faridkot and Alwar. This campaign spread later to Gwalior also. Men, women, and children were massacred in cold blood by state troops. This was not a question of a communal flare-up. The armies of the rulers massacred men, women and children in order to rid these states of the Muslim population. Houses belonging to the Muslims were destroyed; their crops burned. Those Muslims who escaped with their lives were driven out of the states to become homeless wanderers and to die by the hundreds along the roads and in the fields. That was the beginning.

Mosques were desecrated and demolished. In the state of Alwar today, not a single mosque remains. This was at least logical barbarism. If no Muslims have been left, why then should a mosque be spared?

On 9 August, the organized campaign of genocide, directed against the Muslim population of East Punjab, began under the auspices and leadership of His Highness, the Maharaja of Patiala. This soon carried fire and sword throughout the Sikh states of Punjab and the districts of East Punjab. Gruesome tragedies and horrors were enacted. . . .

The Muslim population in these states—in all these states, in Alwar, Bharatpur, Patiala, Nabha, Jind, Faridkot, Kapurthala and Gwalior—has been entirely wiped out by this time, either by massacre or by forcible expulsion. As I have already said, Kapurthala had a majority of Muslims in its population—some 235,000. Today, there is not a single Muslim left in Kapurthala. Oh, no, I am mistaken; it has been pointed out to me that two were left. Two—not two thousand, not two hundred—but two out of 235,000.

The responsibility of the Government of India for these occurrences in the states—I am coming to the East Punjab presently—although indirect, cannot be denied. The weapons with which the killers were armed were of military pattern. Yesterday, when making his

submission, the representative of India said that, inasmuch as the people who were fighting in Kashmir were found to be equipped with weapons of military pattern, the conclusion was inescapable that those weapons had been supplied by the Pakistan Government. I shall deal with that question later in the course of my submission. However, I wish to say now that the weapons with which the killers were armed in the states which I have mentioned were of military pattern—even when the killers were not escaped troops, as was very often the case. Would it be a legitimate inference, as argued yesterday on behalf of India, that these weapons had been supplied by the Government of India? . . .

Let us now turn to the East Punjab. That is what was, before 15 August, the British part of these territories. The population of East Punjab, together with the population of these states that I have mentioned, included six million Muslims. There are today, at the outside, a few thousand left—in refugee camps, in terror of their lives—out of six million.

I have before me two accounts of those events. The tragedy is of dimensions so vast that it would take not one afternoon, but several afternoons, to discuss the details. However, the account which I am about to read will give some idea. It is an account that appeared in *The Times* of London, in its issue of 25 August, from its special correspondent in the Punjab. In this despatch, he described the situation thus:

' A thousand more times more horrible than anything we saw during the war ' is the universal comment of experienced officers, British and Indian, on the present slaughter in the East Punjab. The Sikhs are on the warpath. They are clearing the Eastern Punjab of the Muslims, butchering hundreds daily, forcing thousands to flee westward, burning Muslim villages and homesteads, in their frenzy burning their own, too. This violence has been organized from the highest levels of Sikh leadership and it is being done systematically, sector by sector. Some large towns, like Amritsar and Jullundur are now quieter because there are no Muslims left.'

The Muslim League estimates that 200,000 refugees already have reached Pakistan. The volume is certainly greater than the present shadow administration can deal with, and epidemics are feared.

There were 200,000 at that date; since then the number has swelled to over 5,000,000. This was in the East Punjab. Let me draw the attention of the Security Council members to the situation in Delhi. I was in Delhi for a few hours on the morning of 4 September. A friend with whom I had spent the night, a doctor, popular among all communities, who had served all impartially, asked my advice as to whether, in view of the prevailing communal tension and the large number of

Sikhs who had come in as refugees from West Punjab into Delhi, and who were brandishing their arms, it would be wise of him to leave Delhi. I said to him, ' My dear fellow it would be foolish. No government worth the name would allow its capital to be desecrated by the kind of thing that has happened in East Punjab. You must remain where you are.' The next day he had to flee for his life into a refugee camp.

This is what happened in Delhi, the capital of the Moghul Emperors, the nursery and home of Muslim culture in India, the capital of British India before power was transferred, the capital today of Free India and the seat of India's Government.

The tragic drama of mass-killing and looting in Delhi lasted for practically the whole of September 1947. It was an integral part of a deep-laid conspiracy for the extermination of Muslims, and the drama was mainly enacted by the Rashtriya Swayam Sewak Sangh,—a terrorist organization of the Hindu Mahasabha, large Sikh gangs who were armed with modern weapons, liberally supplied by certain Sikh states, the local police and military forces who had been purged of all Muslim members and into whose ranks workers of the Rashtriya Swayam Sewak Sangh had widely disseminated their hate propaganda against the Muslims, and partly by a number of Congress leaders in India who, in their speeches and writings, made no secret of their sympathy for the Hindu and Sikh terrorist organizations and their antipathy toward the Muslims. . . .

That the great majority of the attacks on Muslim lives and property were made or led by Sikhs is undeniable. That these Sikhs were completely ruthless and guilty of some particularly brutal killings could be verified even last week by a visit to Paharganj and Qarolbagh (in Delhi). That the assailants were armed with modern automatic weapons, bombs and even mortars, eye-witnesses to whom I spoke can testify. Indeed, they made no attempt to conceal them. That the attacks were synchronized seemed clear to those on the spot.

What may not be so well known is that for days and even weeks before the outbreak, Sikhs in jeeps, on motor-cycles, on cycles and on foot were making reconnaissances of outlying Muslim localities and of Muslim quarters in Old and New Delhi. These reconnaissances were discreetly conducted, but not so discreetly that several British officers did not observe them and speculate about their purpose. It was revealed only too clearly when the time came. . . .

From whence did the inspiration and the arms come? I do not pretend to know. But certain rulers of Sikh states in whose territories attacks on trains have been made while the State police looked on and even aided the attackers, should restrain members of their families

from talking as freely as they have been doing in Delhi if they wish to escape suspicion. They should also make it clear that they are not responsible for the offers made to Sikh soldiers to desert from the Army bringing their arms with them, on the assurance that their arrears of pay and their pensions will be guaranteed.

The short-term object, as I have said, was to make it impossible for a Muslim to remain and earn his living in Delhi. It would be a bold Muslim who would seek to do so, so long as the Sikhs are allowed to retain their arms, while the Muslims are disarmed and so long as Sardar Patel nullifies his appeal for peace in the city by saying that he will know how to settle accounts later. ' We can also settle accounts with those who have to answer for this great tragedy at a more suitable occasion and in an appropriate manner,' said Sardar Patel, India's Home Minister in a broadcast on September 12.

The only hope is that the Government of India will realize that, if they do not hold down the Sikhs with a strong hand, they may well see their capital as much under gangster rule as was Chicago in the days of Al Capone. And gangsters are no respecters of persons. If they do, Muslims in Delhi may enjoy an uneasy security, on sufferance.

Sardar Patel and others would also be well-advised to make a study of the Sikhs' long-term ambitions and to turn up the speech made by Master Tara Singh immediately after the fall of the Coalition Ministry in the Punjab. In that speech Master Tara Singh threatened that the Sikhs would reconquer the Punjab with the sword. There is more than one possible aspirant to the succession of Ranjit Singh, a disruptive factor on which the political leaders of India perhaps rely. But, whoever may emerge, it is unlikely that he will turn his eyes exclusively to the West Punjab.

To use the Sikhs to embarrass the Government of Pakistan, in the hope that it may be prevented from functioning from the start, is a policy which has certain obvious attractions to certain minds. But the man who holds even a friendly wolf by the ears can never feel entirely as ease. . . .

These are some of the incidents and accounts of neutral observers, showing what happened in the capital itself. Five million refugees, in all stages of destitution, have been drawn out of these areas, and are now dragging out their miserable existence in West Pakistan. It is necessary to remember that, because Kashmir is on the other side of West Pakistan from Delhi, and it is in these areas from which these five million refugees have poured into West Pakistan. Some of the details are harrowing and soul-searing. Decency would forbid their mention; therefore I leave them out.

It is only fair to add that when these horrors started in East Punjab and the Muslim refugees from East Punjab carried into West Punjab the evidence of these horrors on their bodies and on their tongues, and the details of their suffering to their West Punjab brethren, in many places in West Punjab the Muslims rose against the non-Muslims. Massacres took place, looting took place, stabbings took place ; burnings took place. . . .

We now turn to the state of Kashmir itself. This state was purchased by the great grandfather of the present Ruler of Kashmir from the British East India Company in 1845 for 7,500,000 rupees. Roughly, this is less than $7,500,000. The region is famous for its beauty. The people of this State are similarly famous. Their high artistic talents are well-known. What is not fully known is the depths of misery to which they have been reduced by a century of unmitigated tyranny and oppression under the Dogra rule until it is difficult to say which is the greater tragedy to a Kashmiri : his life or his death. Death often provides release from the unbroken chain of suffering, misery and privation which begins in the cradle and ends only in the grave.

This description is not an exaggerated picture. It could be verified by Sheikh Abdullah here who knows about the poverty, the misery, and the degradation to which his people have been reduced during the last one hundred years.

We now come to the events of the last year. The Constitutional settlement arrived at between the British and the Indians, on the one hand, and between different sections of the Indians, on the other, presented the Maharajah with a difficult choice. Geography, economics and the wishes and sentiments of an overwhelming majority of his people pointed in one direction—that is to say, accession to Pakistan —and indications have not been wanting that he was at one time inclined to proceed in that direction.

In any case, he had entered into a standstill agreement with Pakistan. It is necessary to explain what a ' standstill agreement ' is. India, being one political entity before the division on 15 August 1947, had a common system of defence, of railways, post offices, telegraphs, telephones, and a host of other matters. If on 15 August, when at least a nominal division took place between these two Dominions—in some places, the actual division also took place on that date—all these matters had to be adjusted the situation would have been impossible. A new currency could not be started merely by a stroke of the pen, communications could not be divided up, defence could not be sorted out, and so on. Therefore, standstill agreements were arrived at by Pakistan and India, providing that these matters should continue to run undisturbed for a period of time—and different dates were fixed

for different matters—on the old basis. Also, standstill agreements were arrived at between the States. Each State would come to a standstill agreement with the Dominion of India or the Dominion of Pakistan, according to its own situation and requirements, providing that these matters—mainly communications, and so on—should continue to run on the old basis.

A standstill agreement had been arrived at, then, between the Maharajah of Kashmir and Pakistan. Later, the Maharajah appears to have been inclined in the other direction. But this presented a problem in regard to his people, of whom as I have said, 78 per cent were Muslims. Having regard to his geographical position and the distribution of population in his state, he knew that it was certainly as much as his throne was worth if he made any movement in the direction of accession to India, so long as his people were there to protest and to desire accession to Pakistan.

However, the other Hindu States of the Punjab solved this problem. For instance, Kapurthala had a majority of Muslims—but then the Maharajah of Kapurthala got rid of all of them. That is how the question was resolved. The Maharajah of Kashmir must have thought that in the case of Kashmir the killing of a few thousand of his Muslim subjects, the jailing of the leaders, and the expulsion of a million or so might sufficiently cow the rest. And apparently that was the scheme that was adopted.

In the month of September, atrocities upon the Muslim population by the troops of the Maharajah started, both in the Jammu portion and in the Kashmir State portion, particularly that part of the State which is known as Poonch. Poonch is a smaller State which is ruled by a member of the senior line of the Maharajah's family, but the ruler of Poonch owes allegiance to the Maharajah of Kashmir. But Poonch had this troublesome feature: that, on the best estimates, at least 70,000 Poonchis had served on the side of the United Nations in the last war, and therefore were not very easy to deal with.

This is what the Prime Minister of Pakistan said in his cable to the Prime Minister of the United Kingdom on 29 October 1947:

'There is no doubt that State troops first attacked Muslims at Poonch. Women and children took refuge in Pakistan, and burning villages could be seen from our border. There is no doubt that later they set out to massacre Muslims of Jammu. The Brigadier in command of Jammu-Sialkot border admitted to our Brigadier—that is the State Brigadier—that his orders were to drive out Muslims from a three-mile-wide belt, and that he was doing this with automatic weapons and mortars. There is no doubt that armed mobs headed by State troops invaded Pakistan on several occasions. After one of these raids,

1,760 dead bodies of Muslims were counted near one of our villages. There are now about 100,000 Muslim refugees from Jammu in West Punjab.'

Another element that was added was that Sikh refugees from West Punjab and the Rashtriya Sewak Sangh Volunteers had entered Jammu State and had started the massacre of the Muslims on a large scale.

Sheikh Abdulla himself gives these as the reasons for the disturbances in Kashmir: On 21 October, in New Delhi, speaking at an At Home given in his honour, and referring to Kashmir's accession, he said that while Pakistan was very keen on its accession owing to the strategic position of Kashmir, if the State joined the Indian Dominion, Pakistan would be completely encircled.

The report of his statement continues: 'Explaining the difficulties with which the people were beset in making up their minds without responsible government, Sheikh Abdulla said that the happenings in certain states, such as Patiala, Bharatpur and Kapurthala, and elsewhere, had naturally caused apprehensions in the minds of the Muslims in Kashmir, who formed the majority of the population. They were afraid that the State's accession to India might portend danger to them.'

Sheikh Abdulla said that the present troubles in Poonch, a feudatory of Kashmir, were caused by the unwise policy adopted by the State. The people of Poonch, who suffered under their local ruler and again under the Kashmir Maharajah, the overlord of the Poonch ruler, had started a people's movement for the redress of their grievances. It was not communal. Kashmir State sent its troops, and there was panic in Poonch. But most of the adult population of Poonch, he explained, were ex-servicemen in the Indian Army with close connections with the people in Jhelum and Rawalpindi—these are places in West Pakistan.

They evacuated their women and children, crossed the frontier, and returned with arms supplied to them by willing people. The present position was that the Kashmir State forces were forced to withdraw in certain areas.

On 20 October 1947, the Kashmir Muslim Association reviewed the position in the Kashmir State and passed the following resolution:

This meeting of the Kashmir Muslim Association strongly condemns the indiscriminate firing on the Muslims of Sri Ranbir Singhpura, Mirpur, Rajauri, Poonch, and Srinagar.

The lathi-charges and the use of tear-gas on the innocent children in Srinagar is a crime which no civilized Government in the world can ever resort to.

The meeting deplores that the Government of Pakistan is showing extreme neglect towards the State affairs at this critical juncture when the Maharaja is enlisting outside aid for the purpose of crushing the 80 per cent Muslim population of the State.

On 28 October the Association issued the following statement:

'Alarming reports are pouring in from Srinagar that during the last few days gangs of Dogra soldiers are combing out all those who are known to be supporters of Kashmir's accession to the Pakistan Dominion. Muslim personnel of the State military and police have either been disarmed or arrested; several important officials have been dismissed and hundreds of political workers have been lodged behind the iron bars of the dingy State cells. There have been innumerable instances of looting of the houses of political workers.

In Baramula and Rampur, several people have been shot dead on the mere suspicion that they were welcoming the armies of liberation. A reign of terror has been unleashed against the peace-abiding population of the State. The life and honour of no self-respecting patriot, whether Hindu or Muslim, who wants the question of State's accession to either of the Dominions settled in a democratic manner, is safe.

The Hindu and Sikh refugees in the State are being armed by the Kashmir Government and are encouraged to kill Muslims and others whose loyalty Sheikh Abdullah's Conference considers to be dubious.'

Two Englishmen compiled a summary of the facts when they visited Jammu and Kashmir in November and interrogated Muslim refugees and officials of the State as follows:

On the morning of 5 November, it was announced by beat of drums in Jammu City, in the name of His Highness the Maharajah, that all the Muslims must immediately leave the State and that, in fact, Pakistan had asked for them. They were instructed to assemble at the parade ground in Jammu. Conducted from there to the police lines, they were searched, deprived of most of their belongings and loaded on motor lorry convoys. They were told they would be sent to Suchetgarh, but instead the convoys took the Kathua Road and halted at Mawa, where the passengers were told to get down.

At Mawa, the lorry drivers, who were Sikhs and armed to the teeth, removed all the young women from the convoys and began to attack the remainder. The Kashmir State troops looked on indifferently, while mobs of Sikhs and Hindus were killing the Muslim refugees.

Out of the four thousand Muslims, who had left Jammu, only nine hundred managed to reach Sialkot. Among them was Mr Ghulam Mustafa, M.L.A., who lost his wife, child and sister. It was in this attack that a daughter and a sister of Mr Ghulam Abbas, President of the Kashmir Muslim Conference, were taken away by the attackers.

A convoy of seventy trucks, containing most of the respectable Muslim families of Jammu City left for Suchetgarh on 6 November. A few miles out of the city the trucks were halted and were attacked by armed *Jathas* of Sikhs. Only three survivors reached Sialkot, all the rest having been butchered by the attackers who included State troops and volunteers of the Rashtriya Swayam Sewak Sangh.

Another convoy of thirty trucks, escorted by the Dogra and Indian troops, reached Suchetgarh on 9 November. Seven women and practically all the luggage belonging to the refugees had been removed by the escorting troops at the border.

During the beginning of October 1947, about fourteen thousand Muslims living in Sabha were besieged by armed Hindus and Sikhs, who cut off the rations and water supply of the villages.

On 22 October, Sabha village was visited by His Highness the Maharajah himself, and almost immediately after his visit all the Muslim women in the village were taken away by the State troops, and the men were slaughtered with the exception of fifteen survivors, who escaped to Sialkot.

About eight thousand Muslims assembled at the Mulla Tank near Kathua on 20 October after their request for protection had been ignored by the Sub-Divisional Magistrate of Kathua. After marching three miles towards the Pakistan border, they were encircled by Dogra troops and armed Sikh civilians, and all of them were slaughtered with the exception of forty persons, who managed to escape to Sialkot.

Early in October, the Jammu police reported to the State authorities, and recorded the report in their daily register, that arms and ammunition were being smuggled into the Jammu State by Sikhs and Hindus from Gurdaspur through Kathua. When the local police seized the smugglers' arms, these were taken from them by the Hindu officers of the State Government and handed back to the smugglers.

All Muslim policemen in Jammu city were disarmed on October 22, and ordered to go to Pakistan. When some of the officers and men in the Jammu State police went to assist the Muslims, who were being attacked in Daghiana, on October 28, the State troops aimed their rifles at the police, and ordered them to turn back.

On the instructions of the State Government about twenty-five thousand Muslims from Piran Sahib area collected at the Maogaon to be evacuated to Pakistan. On 23 October, they were ordered to walk to Pakistan. But as they were doing so, their women and all their personal belongings were taken away from them by the Dogra troops, and the rest made to stand in a line, whereupon they were riddled with machine-gun bullets. Only about two hundred men out of the total number of twenty-five thousand refugees managed to

make their way to Pakistan, by hiding in the fields during the day and travelling by night.

About fifteen thousand Muslims were brought from the surrounding villages of Akhnoor Bridge on 20 October. They were asked there to go to Pakistan on foot. Refusing to do so, they were killed by the Rajput and Dogra soldiers. Only one hundred of them escaped, hiding in maize fields.

These foul deeds are still being perpetrated on innocent Muslims in the Poonch and Jammu Provinces and the number of Muslim refugees from the Kashmir State that have come to Pakistan for protection is at present well over two million. In the American Mission Memorial Hospital, Sialkot, alone, 6,423 children and 5,994 women received first aid, and 1,895 were treated in the Sialkot Civil Hospital. Most of them were suffering from sword, rifle and gun-shot wounds. . . .

Pakistan naturally started protesting against these happenings. The telegram dated 12 October 1947 from the Foreign Secretary, Government of Pakistan, to the Prime Minister of Kashmir State, reads as follows:

'Men of the Pakistan Army who have recently returned from leave at their homes in Poonch report that armed bands, which include troops, are attacking Muslim villages in that state. Their stories are confirmed by the large numbers of villages that can be seen burning from Murree hills. The Pakistan Government are vitally interested in the maintenance of peace on their borders and the welfare of Muslims in adjoining territories, and on these grounds alone would be justified in asking for an assurance that steps be taken to restore order in Poonch. One feature of the present situation in Poonch which however makes it peculiarly dangerous to the friendly relations which the Pakistan Government wishes to retain with Kashmir is that the Pakistan Army obtains a large number of recruits from Poonch. Feeling in the battalions to which these men belong is rapidly rising and the situation is fraught with danger. The Pakistan Government wishes to avoid such a situation as they are sure do the Government of Kashmir, but if it is to be avoided, immediate and effective steps must be taken to end the present state of affairs and in particular if it is true, that the state troops are taking part in the attack on Muslims to ensure the restoration of their discipline. The Government of Pakistan would like to be informed of the action taken.'

Another telegram of the same day reads as follows:

'The Foreign Secretary of Pakistan to the Prime Minister of Kashmir:

Pakistan Government wish to draw your Government's attention to series of raids made from Jammu State into Sialkot district during the month of September. At least six raids by armed Dogra gangs

and refugees from West Punjab sheltering in Jammu State territory have so far been reported. These raids have been accompanied by considerable loss of Muslim life. In the raids of two villages in police station Phulkian on 11 September, some sixty Muslims were killed and eleven women abducted by Dogra raiders. In a recent case, non-Muslim soldiers from Jammu State were reported to have waylaid and robbed Muslims of village Dhandar. Pakistan Government take a very serious view of the violation of their frontier by raiders from the Jammu State. They take strong exception also to non-Muslim refugees being allowed to use State territory as a base of operations against West Punjab. They would be forced to regard the continuance of such raids, unchecked by Government as an unfriendly act. Pakistan Government therefore strongly urge that immediate and firm action be taken to stop the raids into West Punjab territory.

There were various other raids on 10 and 11 September, 16, 18 and 20 September, 24 and 25 September 1947.

Now in answer to these telegrams, there was a telegram from the Prime Minister of Kashmir, in the course of which he stated:

'This Government has ample proof of infiltration. As is the result in every government including Pakistan Dominion military has to take action when disturbance caused cannot adequately be dealt with by civil administration. If this action hurts anyone's feelings Government hopes you will agree that it is for them to help in the task of restoration of peace. Government is prepared to have an impartial enquiry made into the whole affair with a view to remove misunderstanding and to restore cordial relations which this Government has strictly kept in view so far even in spite of provocation by the people across the border and has maintained it in its true spirit. If unfortunately this request is not heeded Government much against its wishes will have no option but to ask for assistance to withstand the aggressive and unfriendly actions of the Pakistan people along our border. . . .

Nothing is said with regard to any ill-treatment and so on. The whole thing is justified on the basis of proper military action and it is stated that there should be an impartial inquiry. Also, if the request for the impartial enquiry is turned down, then they will have to ask for outside assistance, presumably ask the Government of India to send its troops. . . .'

Several other telegrams were despatched with reference to raids which had taken place. After the so-called accession which took place on 26 October, the Government of India troops landed in Kashmir on 27 October. The Security Council is now aware of the geographical and economic situation which exists in Kashmir and Pakistan. It is also aware that Kashmir had concluded a standstill agreement

with Pakistan. There was a standstill agreement which existed between Pakistan and the Government of India. This request for accession was made and accepted as set forth in the written statement which was read out by the Indian representative as contained in the letter to Lord Mountbatten and Lord Mountbatten's acceptance of that request.

There was no intimation either from the Government of Kashmir or from the Government of India to the Pakistan Government that this was taking place or was about to take place. If the situation in Kashmir was causing grave anxiety—and it might very well be causing grave anxiety—then when the appeal was made to the Government of India, it was surely the business of the Government of India to get in touch immediately with the Government of Pakistan and say something to the effect: Both of us are interested in this. Can we not get together to remedy the situation? Were they not willing at the very least to notify the Government of Pakistan that the landing of troops in Kashmir was intended? No intimation was given. There was no opportunity for discussion and no opportunity to partake in joint action in order to arrive at a settlement.

By their own action, the Government of India now makes a complaint that Pakistan should have joined them in settling the problem. However, by their own action the Government of India put any kind of joint action or settlement out of the question. I should repeat that proposals from our side for joint action were made. The only intimation that was received was after the troops had landed in Kashmir on 28 October. On 28 October the following telegram was received from the Prime Minister of India by the Prime Minister of Pakistan:

'I have communicated to you text of telegram sent to the Prime Minister of United Kingdom regarding the Kashmir situation. I have also sent to you the text of the correspondence with the Governor-General of India and the Maharajah of Kashmir regarding accession of Kashmir State to Indian Union. I have sent a further message to the Prime Minister of United Kingdom informing him of imminent peril to Srinagar and Kashmir from raiders and of action we have taken to give protection to people there. I want to invite your Government's co-operation in stopping the raiders entering Kashmir territory from Pakistan. These raids have already resulted in wide-scale death and destruction and if not stopped immediately will lead to ruin of Kashmir. The consequences of success of such irresponsible raiders anywhere will before long reach all over India. Therefore, in the interests of Pakistan and India, such raids must be stopped. As raiders come across Pakistan territory, it should be possible to stop them there.

'I wish to assure you that the action that the Government of India has taken has been forced upon them by circumstances which put Srinagar in imminent and grave danger. We have no desire to interfere in affairs of Kashmir State after raiders have been driven away and law and order established.

'In regard to accession also, it has been made clear that this is subject to reference to people of State and their decision. The Government of India has no desire to impose any decision and will abide by the people's wishes, but those cannot be ascertained until peace and law and order prevail. Protection of Kashmir from armed raiders thus becomes first objective and in this we trust we shall have your co-operation.'

The letters written by the Maharajah and the letters written by Lord Mountbatten in reply were enclosed.

This is the reply from the Prime Minister of Pakistan:

'I have received your telegrams, including that of 28 October, to which I reply. The position is that Sikh attacks on Muslims in East Punjab in August greatly inflamed feeling throughout Pakistan and it was only with greatest difficulty that Pathan tribes were prevented from entering West Punjab to take revenge on Hindus and Sikhs. In Poonch Muslims were attacked and those in Jammu massacred by mobs led by Kashmir State Forces, and when it was evident that there was to be a repetition in Kashmir of what had happened in East Punjab, it became impossible wholly to prevent tribes from entering that State without using troops who would have created a situation on the frontier that might well have got out of control.

'Your recent action of sending troops to Kashmir on the pretext of accession has made things infinitely worse. The whole of the frontier is stirring and feeling of resentment among tribes is intense. The responsibility for what is happening is entirely yours. There was no trouble in Poonch or Jammu till State troops started killing Muslims. All along Kashmir Government has been in close touch with you. At the same time they ignored or refused our offers of friendly discussion. On 2 October, I suggested that both Pakistan and Kashmir should appoint representatives to discuss supplies to Kashmir and mutual allegations of border raids. The Prime Minister of Kashmir replied that he was too busy. When in spite of this we sent Shah, Joint Secretary, Ministry of Foreign Affairs and States to Kashmir, the Prime Minister refused to discuss with him. On 15 October, Prime Minister of Kashmir threatened that unless we agreed to an impartial enquiry into what was happening he would ask for assistance to withstand aggression on his borders. We immediately agreed to an impartial enquiry. Since then no more has been heard from Kashmir of this proposal.

'The Pathan raid on Kashmir did not start till 22 October. It is quite clear therefore that Kashmir's plan of asking for Indian troops—and it could hardly have been unilateral—was formed quite independently of this raid, and all evidence and action taken shows it was pre-arranged.

'It would seem rather to have been made after failure of their troops to suppress the people of Poonch and in anticipation of the reaction which they expected through their massacre of Muslims in Jammu. I, in my turn, appeal to you to stop the Jammu killings, which still continue. Yesterday, West Punjab was again invaded by a well-armed mob who, after a fight with villagers, retreated, leaving two Gurkha soldiers in uniform dead behind them. As long as this sort of thing continues, passions are bound to become further inflamed.'

(At this point the speech was interrupted and the Council adjourned its sitting for the following day.)

(Taken from Security Council verbatim record of the two hundred and twenty-eighth meeting on 16 January 1948. No. S/P.V. 228.)

. . . Lord Mountbatten, the Governor-General of India, came to Lahore to preside over the Joint Defence Council, and certain conversations took place with him. I was reading yesterday from the telegram sent by the Prime Minister of Pakistan to the Prime Minister of the United Kingdom, explaining the situation. I shall continue to read from this telegram in order to present some idea as to what happened between the Governor-General of Pakistan and the Governor-General of India on that occasion. The telegram goes on to say:

'The two Governors-General met at Lahore and had a long discussion on 1 November. The upshot of the discussion was that the Governor-General of Pakistan made the following proposals to the Governor-General of India for the acceptance of the Indian Dominion:

(1) To put an immediate stop to fighting, the two Governors-General should be authorized and vested with full powers by both Dominion Governments to issue a proclamation forthwith, giving forty-eight hours' notice to the two opposing forces to cease-fire. The Governor-General of Pakistan has no control over the forces of the Provisional Government of Kashmir or the tribesmen engaged in the fighting, but he will warn them in the clearest terms that if they do not obey the order to cease-fire immediately, the forces of both Dominions will make war on them;

(2) Both the forces of India Dominion and the tribesmen to withdraw simultaneously and with the utmost expedition from Jammu and Kashmir State territory;

(3) With the sanction of the two Dominion Governments, the two Governors-General to be given full powers to restore peace, undertake the administration of Jammu and Kashmir State, and arrange for a plebiscite without delay under their joint control and supervision.'

This was the proposal put forward on behalf of Pakistan. Lord Mountbatten was requested to place these proposals immediately before the Dominion of India and to get their acceptance of them. The Governor-General of Pakistan undertook to do likewise. The Governor-General of Pakistan is still awaiting a reply from the Governor-General of India.

The telegram proceeds as follows: 'On the evening of 2 November 1947, a day after the return of Lord Mountbatten to Delhi, Pandit Nehru broadcast what he calls the decision of the India Government, and it is most unfortunate that he should have thought fit to do so in the manner and language that he has used. Leaving aside the highly provocative attacks on the Pakistan Government, the proposal he has put forward is full of most dangerous potentialities, and will not bring peace to Kashmir. As long as the forces of the Dominion of India are on Kashmir's soil, the struggle of the Kashmir people will go on. What the Indian Government called the restoration of law and order is no more than an attempt to oppress, kill, terrorize and drive out the Muslim population of Jammu and Kashmir until, like East Punjab and the Indian States in East Punjab, the composition of the population is entirely changed.

'Pandit Nehru's broadcast indicates clearly that the India Government intend to complete their occupation of Jammu and Kashmir and get entire control over its territory, under the superficial, attractive slogan that ultimately the fate of Kashmir will be decided by the people of Kashmir. Pandit Nehru has even avoided the use of the word "plebiscite" and has spoken of a "referendum", which might mean anything. After the India Government have established complete mastery over the territory of Jammu and Kashmir, the holding of a plebiscite or referendum will be purely a farce.

'In the meantime, feelings throughout West Pakistan and tribal territories are running very high and will soon get beyond all control. After the ghastly massacres in East Punjab, it is impossible to expect the people to witness patiently a tragedy on an equal scale in Jammu and Kashmir.

'Very little news of Jammu is allowed to reach the outside world, but the situation there is extremely grave. According to our information, thousands of Muslims are being massacred every day. In Jammu City itself, 90,000 Muslims are bottled up and are in imminent peril of their lives. The problem is so inflammatory and dangerous

that it requires an immediate solution. All this was fully impressed upon the Governor-General of India in the talk that the Governor-General of Pakistan had with him.

'The Pakistan Government are convinced that the only solution which will avoid further bloodshed, and bring peace to Jammu and Kashmir and get a free verdict of the people of the State and restore friendly relations between the two Dominions, is that proposed by the Governor-General of Pakistan. Immediacy is essential. Every day that passes counts and makes the situation more and more dangerously grave. I once more urge upon you to take immediate action without a moment's delay, or else the consequences will be beyond control and most disastrous, having much wider repercussions not only in this sub-continent, but throughout the world.'

This was the fourth attempt to settle the matter by negotiation, and every one of these attempts was made on behalf of Pakistan. We had first offered to send a representative to discuss matters with the Kashmir Government, and actually sent him, but the Prime Minister of Kashmir declined to discuss the matter with him.

The Prime Minister of Kashmir then asked for an impartial inquiry, and we at once agreed. We asked them to nominate their representative, and we have heard nothing further with regard to that. We then suggested that the Prime Minister of Kashmir should come to Karachi to discuss matters, so that a way may be found out of the situation by amicable means. This offer was not accepted.

We then made this suggestion after the situation had deteriorated a great deal by the unilateral action that the Dominion of India had taken without consultation with us—without any reference to us—in sending their troops into Kashmir. This was a suggestion which, if adopted, could easily have stopped any further bloodshed in Kashmir. Either the tribesmen who were coming in from outside would have taken the warning issued to them and stopped the fighting, or the two Dominions together would have fought them and excluded them from Kashmir and Jammu territory. But this again was turned down and, therefore, no solution along these lines became possible. . . .

The two matters in controversy between the two Governments were how to deal with this situation, including the incursion of the tribesmen into Kashmir, and how the free plebiscite to enable the people of Kashmir to express their unfettered choice in the matter of accession is to be arranged. The Prime Minister of Pakistan makes this fifth attempt to come to some settlement, and invites the Prime Minister of India to Lahore so that together they might be able to find a way out.

The Prime Minister of India lays down two conditions. One condition is that in order to determine what shall be done to get rid

of the so-called raiders from Kashmir, 'You must first get rid of them before we will talk of how to get rid of them.'

The second is that in order to decide how a free plebiscite shall be held in Kashmir, in order to ascertain and determine whether the view of Sheikh Mohammed Abdullah, that is to say, of the National Conference, 'You must first accept Sheikh Mohammed Abdullah as the head of the administration, without whose consent and approval nothing can be done.' That, in effect, was the reply.

These are the two questions to be determined, but they must first both be decided in favour of the Dominion of India's view before any conversation can be held as to how they are to be dealt with.

Thereafter, the Prime Minister of Pakistan sent a telegram to the Prime Minister of India on 16 November, stating that he was issuing a press statement, and enclosing the text of it, from which I shall read one or two extracts. The Prime Minister of Pakistan said in this press statement:

'We have made repeated attempts to persuade the Kashmir Government to discuss these questions with us, but they were determined to join the Union of India against the will of the people of Kashmir by a *coup d'état*. The India Government in direct and clear repudiation of the principles on which they had questioned the accession of Junagadh to Pakistan, and without any reference to or consultation with the Pakistan Dominion whose security is vitally affected by events in Kashmir, occupied Kashmir by military force and have, since the very first day of their entry into Kashmir, been engaged in putting down the Muslims there by force. Pakistan territory itself has been twice violated by the Indian forces, bombs have been dropped in our territory in the vicinity of the Kohala Bridge and our police post at Garhi Habibulla in the District of Hazara has been machine-gunned by the Indian Air Force.'

Then, after detailing what steps had already been taken by Pakistan to bring about an amicable settlement of these matters, the Prime Minister of Pakistan goes on to say:

'There is not the slightest doubt that the whole plot of the accession of Kashmir to India was pre-planned. It cannot be justified on any constitutional or moral grounds. It is quite clear now that what the India Government are after is permanent occupation of Kashmir. They can maintain this occupation only by liquidating the Muslim population of Jammu and Kashmir, who are now suffering military repression in its worst form, and who are struggling for their freedom, and, indeed, for their very existence, against heavy odds. The India Government's whole conduct is based on "might is right" and on the belief that Pakistan is unable to fight them. If the India Government

are allowed to follow their imperialist land-grabbing policy, this will have repercussions not only in Asia but throughout the world.'

The telegram goes on to say: 'The fundamental principle of the Charter of the United Nations is to prevent might prevailing over right. The whole dispute should, therefore, be brought before the bar of international opinion. We are ready to request the UNO immediately to appoint its representative in the Jammu and Kashmir State in order to put a stop to fighting and repression of Muslims in the State, to arrange the programme of withdrawal of outside forces, set up an impartial administration of the State until a plebiscite is held, and undertake the plebiscite under its direction and control for the purpose of ascertaining the free and unfettered will of the people of the State on the question of accession. We are prepared to accept a similar solution of the dispute regarding Manavadar and Junagadh. . . .'

. . . The Prime Minister of Pakistan had addressed the Prime Minister of the United Kingdom in a telegram dated 24 November, in which he had said:

'The oft-repeated promise of the India Government and Pandit Nehru that they are willing to have a plebiscite in Kashmir is intended to mislead the world. There is no dispute that a plebiscite must be held as early as possible, asserting the free will of the people of Kashmir. This is not the question in dispute; this is axiomatic. The real issue is how this is to be done.

'You say the question has become intractable. It has been made purposely so by the India Government. If the India Government are honestly and genuinely desirous of a fair and peaceful settlement of the Kashmir question, they should immediately agree that fighting must cease and not take shelter behind the slogan that the raiders must be driven out. It is not the so-called raiders, but the people of Kashmir, who are fighting against heavy odds to end Dogra tyranny and to prevent Kashmir from falling into the hands of the India Dominion.

'The Azad Kashmir forces are almost wholly composed of the sons of the soil, and even foreign observers have testified that, wherever they have gone, they have been welcomed as forces of liberation. We are ready to exercise all our influence on the Azad Kashmir forces to stop fighting and to see that any tribesmen with them are not only stopped from fighting, but are made to leave Kashmir. These tribesmen, it should be remembered, are the kith and kin of those for whom they are fighting.'

The telegram went on to say:

'The India Government's insistence upon the retention of their troops in Kashmir until they have restored law and order to their

own satisfaction can only mean that India troops will stay in the State until they have ousted by military force all opposition to their permanent occupation of Kashmir. The methods by which the maintenance of law and order is used to consolidate an alien rule are well known. The Muslim population of the State has been feeling the impact of these methods in full force. The true leaders of the Muslims and the politically conscious among them are, with their families, the special targets of this repression.

'Practically all the leaders of the Muslim Conference are actually in gaol, and anybody who had made himself vocal on the matter of accession to Pakistan has been rounded up. My information is, although I have not been able to check it, that certain parts of Srinagar town, where there was a great feeling in favour of accession to Pakistan, were at one time cut off from the benefits of the ordinary municipal services.'

The telegram of the Prime Minister of Pakistan then continued:

'In spite of the protestation of the India Government, the number of Muslim refugees into Pakistan swells day by day and is now over 200,000. All these refugees bring with them horrible tales of most inhuman atrocities. I repeat that what the India Government is after is permanent occupation of Kashmir, and they know that they cannot achieve this object until they have changed the composition of the population by converting the Muslim majority into a minority. Behind their high-sounding phrases stands this hideous reality, the elimination and demoralization of a whole population by violent means, and any proposal which fails to tackle this basic fact offers no real solution.

'The above analysis shows that, first, fighting must stop and all outside forces must withdraw; and, secondly, which is no less essential, that the Kashmir administration must be taken over by an impartial and independent authority immediately. Not until these conditions are fulfilled is there any hope of getting a free plebiscite, which, in our opinion, need not wait till the Spring.

'I hope you now realize the actual position. If you will consider these basic facts, you will, I hope, support our proposal that the United Nations should immediately send out a commission to undertake the tasks outlined in paragraph 5 above. This commission should have under it an international police force to maintain law and order. The composition of this force can be left to the decision of the UNO commission. We, on our part, would be prepared to accept a force drawn solely from the Commonwealth. . . .'

. . . it is said by India: We did not even think of accession or a military action until 24 December. Sheikh Mohammed Abdullah, who

had been convicted and sentenced most unjustly,—I am quite certain myself—of treason, and who had already been in jail for eighteen months or so, was suddenly released—and I am happy that was so—and proceeded to Delhi. For what purpose? What was he doing there? I am not suggesting he was doing anything unlawful, but I am suggesting that he was negotiating the terms of accession to the Government of India, on behalf of His Highness the Maharajah of Kashmir—against whom according to the Maharajah of Kashmir—not according to me—he had been guilty of treason for which he languished in jail for eighteen months. He was already there even ahead of 22 October, the first date on which any incursion is alleged to have taken place from the North-West Frontier Province in Kashmir. But it is said that pressure was being applied on behalf of Pakistan against Kashmir, to induce Kashmir to accede to Pakistan. The pressure is suggested as having been applied in the form of stoppage of supplies which should have gone on normally under the standstill agreement.

I already explained yesterday what the conditions were in East Punjab and West Punjab during that period. Practically no normal traffic was moving between the two territories. None could move. There was so much killing going on. The only traffic was that of refugees and they, sometimes, even when under military escort, were massacred. Therefore, it was not only Kashmir that was suffering from lack of supplies; West Punjab itself was suffering from lack of supplies. If under those conditions, difficulties were experienced in moving supplies, it was not a pressure being put upon Kashmir; it was due to the circumstances then existing. This was explained in the telegram of 20 October from the Governor-General of Pakistan to His Highness the Maharajah of Kashmir.

Then, railways in western Pakistan were experiencing great difficulty in maintaining services, even behind their frontiers, where this question of refugees and killings and massacres was not acute, owing to lack of coal. Coal had to come from the Dominion of India. The Dominion of India was experiencing difficulties in the matter of supply of coal to Pakistan, and Pakistan, consequently, was experiencing difficulties in running its railways and other communications.

Then there was a third factor. The Dogra troops were killing Muslims inside the State of Kashmir, and Muslim lorry-drivers of vehicles that would normally have carried their supplies from Rawalpindi into Kashmir refused to move even in respect of such supplies as were already available inside West Punjab, unless military escort was provided. It was repeatedly explained to the Kashmir authorities that the West Punjab Government, having regard to much more urgent calls upon them, was unable to supply military escort for these

lorries. These and others were the reasons for the interruption of supplies, and not any kind of pressure that was being put upon the Kashmir Government to decide one way or the other. . . .

Further accusations are made with regard to the specific matter of incursions into Kashmir itself, and it has been said that the Pakistan Government is guilty, on the evidence which has been instanced and which, it is said, is in the possession of the Government of India. For instance, the Indian statement says, ' Captured vehicles have Pakistan number plates on them.' That is to say, vehicles captured in Kashmir have Pakistan numbers on them. But what is there to show that those vehicles were not in Kashmir on legitimate business or had not proceeded, so far as Pakistan is concerned, into Kashmir on legitimate business and that they were subsequently captured. There is no evidence that the Pakistan Government, as such, employed those private vehicles. The number plates merely mean that they were registered in Pakistan, not that the Government of Pakistan employed those vehicles for some nefarious purpose. But surely there is a wide gulf between a vehicle or several vehicles bearing Pakistan number plates being in Kashmir, where ordinarily they would be in large numbers in any case, and the Pakistan Government's being responsible for having employed them for some nefarious purpose against the Government of Kashmir.

Then the representative of India said that somebody observed that petrol was supplied at Pakistan pumps, without coupons or payment, to motor lorries carrying tribesmen. All that is meant and that could be meant by ' Pakistan pumps ' is petrol pumps in Pakistan territory. There are no Government pumps maintained by the Pakistan Government, by the Indian Government or by any other Government. The distribution of petrol throughout India—and here I use the word in the larger sense in which it was employed before 15 August 1947—is arranged by the oil companies themselves under their own organization. There is no Government organization for the distribution of petrol. That is point number one.

When it is said, 'without coupons', that in itself is an admission that the Government was not authorizing the issuance of this petrol. If the Government had authorized the issue of this petrol, it would have issued coupons for it. When it is said that petrol is being issued without coupons, that means that either the companies or the managers of the pumps were doing something illegal in the nature of blackmarket activities, or if the petrol was really issued without payment, they were doing something out of their sympathy for this movement. Even if the allegation is taken at its worst—and one does not know whether the allegation is correct or incorrect in itself—they were doing something

illegal in order to help this movement which was going on in Kashmir. How is the Government implicated when it is a matter of the issuance of petrol without coupons? If it were said that some Governmental department had issued coupons in order to procure petrol for these vehicles, there would be a measure of responsibility to be laid upon somebody.

Yesterday when I was making my submission I read reports from foreign correspondents in which they pointed out that in East Punjab and in Delhi itself there was a large movement of jeeps and other vehicles using petrol, taking Sikh killers about from one place to another, and they wondered who supplied the petrol and who supplied the arms. I am not talking now of Patiala State or Kapurthala State or of Nabha State where it might be said the State authorities were involved. I am talking of East Punjab and of Delhi itself, the capital of India. Who supplied the petrol? If it was supplied in exchange for coupons, then it must have been the Government. If it was done without coupons, then apparently, under the very nose of the Government of India in the Indian capital itself, there are means of obtaining petrol in that way, let alone in far away places near the frontier where there obviously cannot be so much supervision and so much observance of incidents happening as there can be in the capital of the Indian Dominion itself. But I assume that so much play has been made of petrol having been supplied without coupons that in Delhi it was always supplied with coupons to enable these people to go about and kill Muslims. Those coupons must have been issued by the Government of India.

It is then said that these people have arms of various descriptions and that those arms could only have come from the Pakistan Government. In the first place, anyone who is familiar with conditions on the north-west frontier of India will certainly know that these independent tribes have always been in the habit of accumulating quite large stores of arms by all sorts of means, legitimate as well as illegitimate. As a matter of fact guns, rifles and so on are manufactured by them, and other arms also. As a matter of fact, it is the saying all along the frontier that no young tribesman can obtain a bride unless he has first obtained a first-class rifle and can prove himself to be an expert in its use. So far as the Pakistan Government is concerned, the Government of India itself is the witness of how much military stores it has so far under the settlement itself handed over to the Pakistan Government that the Pakistan Government, out of its surplus, could supply these stores for use by these people. As a matter of fact, one of the matters to which attention has been invited by the Pakistan Government in its representation to the Security Council is the failure of the

Government of India to hand over to the Pakistan Government its due share of military stores. Pakistan is woefully short of its quota, much less that it could supply anybody out of it.

It is then said that these people who originally were without greatcoats and uniforms now have them and other things. This is another bit of evidence used against the Pakistan Government that it must have supplied those people with these articles. I shall presently be able to show that all of these people within the Kashmir territory itself, sixty thousand to seventy thousand in Poonch alone, who had been fighting in the forces of the United Nations, upon their demobilization were permitted to retain their uniforms and their badges. Therefore, that in itself is a good enough explanation. But equipment of that kind, namely clothes and so on, after the end of a war such as the one through which the world has recently gone, and all sorts of military stores, arms and ammunition, are in certain areas of the world floating about loose, and a good deal of illicit traffic in them is going on. We may pretend innocence in those matters as much as we like, but we know what is happening in different parts of the world. These supplies are not difficult to obtain. Quite large quantities of this type of clothing and equipment have been legitimately disposed of and are being disposed of by the disposal department of the Government of India itself. Anybody can go and buy this type of equipment, including steel helmets. It is much more difficult today for an honest man to try to procure by honest purchase a decent overcoat than it is to get a much better and much warmer army greatcoat. It is the same with regard to everything else.

In the first place these people may have those supplies legitimately because large numbers of them have been in the armed forces, and upon demobilization they were allowed to retain those articles. These people may have obtained those articles illegitimately. They allege that they have obtained these quite large quantities of material from the state troops themselves who deserted or ran away when the population rose against them. They may have obtained the material illicitly or illegitimately, but to pretend that the Pakistan Government is supplying them when the Government of India knows that it has withheld from Pakistan its due share of military stores is to add insult to injury.

It is then said that camps for training in small arms and elementary tactics have been established on the Pakistan border to train, if you please, these independent tribesmen in elementary matters of warfare. I would again invite the attention of the representative of India to the fact, which he can ascertain from any British military officer who has served on the frontier, that the tribesmen stand in no need of

training in the use of small arms and in military tactics. If that had not been so, one of the biggest headaches which had always confronted the British administration in India would not have arisen. These tribesmen have never stood in need of training in the use of arms. They manufacture arms, and they start playing with them as children.

It is not necessary to ask anyone about this fact. Let anyone take a trip on the road from Peshawar to Kohat through tribal territory. The road was British but it now belongs to the province of the North-West Frontier Province. On both sides of the road dwell the independent tribespeople. I have been along that road twice and I was amused to find one ragged tribesman minding two donkeys that were grazing, with a rifle slung over his shoulder. I also saw two village minstrels proceeding from one village to another, possibly going to entertain at a wedding and earn a few pennies, each having a rifle slung over his shoulder. No one in that area dares move about without having a rifle. And to talk about their being trained in the use of these weapons!

In the Indian statement it is then said that the methods employed by these people indicate that they are led by professional soldiers. Of course there are, as I have said, as many as 70,000 professional soldiers in Poonch itself who have served during this past war. What greater experience do you want in any soldier? They are there and they are subjects of Kashmir; they are the people of the Maharaja. These are the people whom he tried to suppress and massacre by the use of his State Troops which ran away, leaving their equipment, at first contact when these people rose. What more professional soldiers are wanted to lead these people? They are there; they are Kashmiris; they are subjects of Kashmir and they are inside the State.

It is then said that the Prime Minister of Pakistan had said that it was possible—the Prime Minister of Pakistan is not like the Government of India which denies everything and states that nothing could have happened—that men of Poonch who, while on leave at home, finding that their kith and kin were being murdered, had taken part in these uprisings, and the Government of India raised their hands in horror and stated that it seems extraordinary conduct for an army to allow its officers and men to go on leave and omit to take disciplinary action against them for participating during their leave in fighting against a neighbouring and friendly country. The very first protest to which I drew attention yesterday over the massacres in Kashmir from Pakistan was based on this.

We stated, 'We are particularly perturbed because large numbers of officers and men of our army are drawn from these areas and they are becoming very disturbed. Will you kindly look into the matter and stop this kind of thing happening, otherwise we shall be faced

with a very grave situation.' If, when they go home on leave, these officers or men find that their people are being massacred or persecuted, and if some of them take a hand in whatever is going on, it is nevertheless not a case of allowing them to go on leave in order to take part in the fighting. Again, unless we know which of them have taken specific part, what kind of action can we take against them? That is the situation, and whatever may be the technical aspect what would any human being do under those circumstances? As I said yesterday, there is a big human question involved quite apart from technicalities and legalities. . . .

On page 56 of the verbatim record—S/P.V. 227—it is complained that no effort has been made by Pakistan to stop these independent tribesmen coming in. By this time the Security Council is aware that 22 October was the crucial date in that respect. This is a telegram from the North-West Frontier Government to the Pakistan Government at Karachi on this date:

'Large number Muslim refugees have entered Hazara District bringing harrowing stories of atrocities committed by Kashmir forces. Precautionary measures have been taken along the border to stop tribesmen and local inhabitants from entering Kashmir. About 100 arrests have been made of persons trying to cross the border. Leading gangs have been bound under security to keep the peace and prevent their followers from seeking retaliation. The influx of refugees has created very tense atmosphere. Some retaliatory incursions are probable as many stretches of the border are remote from normal communications and inaccessible to control. Addressed to Frontier Pakistan, repeated to Foreign Karachi.'

Again, a person has to be familiar with the terrain to know that over these hundreds of miles of frontier there are only two or three roads for traffic, but that whenever they please the tribesmen can storm over the hills, most of which are inaccessible to any kind of vehicular traffic and cannot be negotiated except by people climbing like goats into the neighbouring districts of the frontier province or of Kashmir State. . . .

Consider the trouble in Kashmir itself. All the Muslims of the Jammu Provinces, all the Muslims of Poonch, such Muslims of the valley itself as have any choice in the matter—because, as I have said, the leaders are in gaol and others are being persecuted—are all behind this movement.

If this is denied, why does not Sheikh Mohammed Abdullah make an effort to persuade the Maharajah, if he has no authority—I understand he is now virtually the Prime Minister—to release his colleagues or opposite numbers, whichever way he regards them, of the Muslim

Conference? Why are they being kept in gaol, unless it is for the purpose that the movement for access on to Pakistan should be crushed by all means at the disposal of the Maharajah and those who are advising him?

I have here a statement of a neutral observer. This statement is from New Delhi, 12 January, by Robert Trumball special correspondent to the *New York Times*. It reads as follows: 'The Indian Government consistently refers to the Azad forces as raiders, implying that they are mostly Muslim tribesmen from Pakistan's north-west frontier and native Pakistan. Actually, according to reliable private informants, tribesmen bent solely on loot but with the strong strain of Muslim fanaticism in their nature comprise only about thirty per cent of the Azad army. About five per cent are Pakistanis, and the remaining sixty-five per cent are native Kashmiris in revolt against the Hindu Government of the princely state.'

The same is confirmed in an article that has appeared in the middle page of *The Times* of 13 January.

Even with regard to these five per cent Pakistanis, there is this further thing to be remembered. As I have explained to the Council, there are as many as five million refugees from East Punjab in West Punjab today, homeless wanderers, burning with shame and indignation, and with a sense of humiliation over the treatment which they and theirs were subjected to in East Punjab. At the moment, they are without occupation. Any of them who might have gone over into Kashmir to fight there, like the Sikhs have gone over to kill the Muslims there, cannot in fairness be described as Pakistanis. If we are to proceed in this matter on the basis of niceties, of international and constitutional law, they are nationals of the Indian Dominion. They were expelled from their homes, but nevertheless they are nationals of India. If they go over into Kashmir, the mere fact that they were compelled to leave their homes and to go into Pakistan, and from Pakistan to go to Kashmir does not make them Pakistan nationals. That is the picture; that is the position.

What is happening in Kashmir is a continuance of the process which has reached its culmination in the State of East Punjab and cannot be divorced from it. It would be no answer to say that a good deal of that kind of thing has happened in West Punjab also. I mentioned to the Council yesterday that it has. It is most regrettable, but it has. It is as deplorable that it has happened in West Punjab as it is that it has happened in East Punjab. However, when you are trying to appreciate a picture, you have got to take the picture against its background, and judge human reactions against that background.

The question is: How is this situation to be met? It can be met only in one way. When the people of Kashmir—when I say the people of Kashmir I mean the Muslims of Kashmir because the Hindus, the non-Muslims, are, at the moment, in no danger of being persecuted—are convinced that there is no further need for apprehension of their being dealt with in the manner in which their co-religionists have been dealt with in the other States such as Kapurthala, Faridkot, Jhind, Nabha, Patiala, Bharatpur, Alwar and Gwalior—and there is no further pressure upon them of any kind, they will be in a position to express their desire as to the accession to India or Pakistan.

If, under those circumstances, they are invited to express and make their free choice and if their choice is India, then they have made their free choice and can accede to their choice. If their choice is Pakistan, India should reconcile itself to the fact that their choice is Pakistan and they should be allowed to accede to Pakistan. This is the only anxiety which the Pakistan Government and the people of Pakistan have. It is claimed that they are going into the State merely to restore peace, law and order. It would surely be reasonable to expect that if this were the object of this incursion of the Indian Army into Kashmir, they would first have rid Kashmir of the Sikh bands who had carried out massacres and looting on such a large scale in the Province of Jammu of the Kashmir State.

Has the Government of India accomplished anything in that direction? Have they cleared these bands out of the Kashmir State? They are as great a menace to the peace and well-being of the people of Kashmir as the tribesmen who have infiltrated from the independent areas. These people are in areas over which the Indian Army has complete control. Has the Government of India accomplished anything in that direction? No. The only instance of peace that Pakistan nationals inside Jammu have discovered is that the Government of India has drawn the attention of the Security Council to the standstill agreement and the working of the postal department inside Kashmir. After the Indian troops had entered Kashmir, the majority of the employees of the Pakistan Government in the postal service who were performing their legitimate duties inside the State of Kashmir were murdered. . . .

What is to be done? All these details of the efforts made by Pakistan show what the attitude of the Pakistan Government has been. Every effort, every offer, every proposal toward that direction has come from us. We still adhere to all those proposals. All that we want to ensure is this: Everyone who has gone into Kashmir should go out, Sikh bands, Rashtriya Sevak Sangh volunteers, other people who have gone in, tribesmen, and any other people who may have gone in from the

Muslim side, and men from Pakistan, Muslims who are Indian nationals and who were refugees in Pakistan—everybody. They must get out, including Indian troops. Merely because they are troops of the Indian Government, from the point of view of reassurance to the people of Kashmir, makes a difference. Well, indeed, it does make a difference.

It makes this difference: that in East Punjab, in many parts, the Muslims were able to organize themselves and withstand the attacks of the infuriated Sikh mobs or gangs. But they were unable to withstand the attacks of the police and the army of the Indian Dominion, and they therefore had to leave their villages and get out. Our fear is—and we are convinced that fear is justified—that under the aegis of the Indian Army, there will be enacted in Kashmir, that which has been enacted in so many other places, including Delhi. There is no reason why that should not be enacted in that remote valley, when it has been enacted under their very noses in Delhi itself.

Therefore, by whatever means it may be necessary, the condition to be brought about is this: whether by joint administration under the two Governors-General, by joint occupation of predominantly Muslim areas by Muslim troops from Pakistan and predominantly non-Muslims areas in Kashmir by Indian troops, by joint occupation in each place, by inviting Commonwealth forces, non-Indian forces altogether, whether through the United Nations—Kashmir must be cleared. Fighting must stop. Kashmir must be cleared of everybody. Normal administration must be restored. There should be no kind of pressure, either from the Muslim Conference being in power and holding the administration or the National Conference being in power and holding the reins of administration. No kind of pressure should be brought upon the people. The people should then be invited to express the way in which they want to go, and whatever they decide they should be welcome to do it.

Security Council Official Records, Third Year, Nos. 1-15, pp. 36-120.

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SPEECH: SHEIKH MOHAMMED ABDULLAH (EXTRACT)

I do not propose to make a long speech this afternoon. I propose simply to review the actual state of affairs prevailing at present in my country.

I have heard with patience, attention and respect the statements made by the representative of Pakistan and other members of the

Security Council, as well as the statements made on various occasions by the members of my own delegation. The Security Council will concede that I am probably the one man most concerned in this dispute, because I happen to come from that land which has become the bone of contention between the sister Dominions of India and Pakistan.

I have been quoted profusely on either side, and rightly so, because I have had the fortune—or, should I say misfortune—of leading my countrymen to freedom from 1931 onwards. In this task, I have suffered a great deal. I have been imprisoned not once or twice, but seven times, and the last imprisonment carried with it an aggregate sentence of nine years.

The Real Issue

There are many troubles in Kashmir. I have listened patiently to the debate in the Security Council, but I feel that I am rather confused. After all, what is the point in dispute? The point in dispute is not that the sovereignty of the Prince is in question, as the representative of Pakistan stated yesterday. After all, I have suffered the punishment of being sentenced to nine years' imprisonment for saying what the representative of Pakistan said with regard to the Treaty of Kashmir of 1846. I am glad that he said it in the Security Council, where he is immune from any punishment. Therefore, I am not disputing that point, and that is not the subject of the dispute before the Security Council.

The subject of the dispute before the Security Council is not the maladministration of the Princely State of Kashmir. In order to set right that maladministration, I think I have suffered the most and today, when, for the first time, I heard the representative of Pakistan supporting my case, it gave me great pleasure.

After all, what is the dispute between India and Pakistan? From what I have learned from the complaint brought before the Security Council by my own delegation, the dispute revolves around the fact that Kashmir acceded legally and constitutionally to the Dominion of India. There was some trouble about the democratization of the Kashmir administration within the state, and the tribesmen from across the border have poured into my country. They have been helped and are being helped by the Pakistan Government with the result that there is the possibility of a greater conflagration between India and Pakistan. India sought the help of the Security Council so that Pakistan might be requested to desist from helping the tribesmen, and to desist from supporting the inside revolt, should I say, against the lawful authority.

Pakistan's Denial

I should have understood the position of the representative of Pakistan if he had come boldly before the Security Council and maintained: 'Yes, we do support the tribesmen; we do support the rebels inside the State because we feel that Kashmir belongs to Pakistan and not to India, and because we feel that the accession of Kashmir to India was fraudulent.' Then we might have discussed the validity of the accession of the State of Kashmir to India. But that was not the position taken by the representative of Pakistan. He completely denied that any support was being given by the Government of Pakistan to either the tribesmen or those who are in revolt within the State against the constituted authority.

How am I to convince the Security Council that the denial is absolutely untrue? I am sitting before the Security Council at a distance of thousands of miles from my country. I have fought many battles, along with my own men, on the borders of Jammu and Kashmir. I have seen with my own eyes the support given by the Pakistan Government, not only in supplying bases, but in providing arms, ammunition, direction and control of the tribesmen; and I have even seen the Pakistan Army forces from across the border.

The denial has come so flatly that it becomes very difficult for me to disprove it here before the Security Council, unless the Security Council accedes to our request to send a Commission to the spot and to first find out whether the allegations brought before the Security Council with regard to the aid given by the Government of Pakistan are correct or incorrect. If they are incorrect, the case fails; if they are correct, then the Security Council should take the necessary steps to advise the Government of Pakistan to desist from such support. . . .

. . . I was explaining how the dispute arose—how Pakistan wanted to force this position of slavery upon us. Pakistan had no interest in our liberation or else it would not have opposed our freedom movement. Pakistan would have supported us when thousands of my countrymen were behind bars and hundreds were shot to death. The Pakistani leaders and Pakistani papers were heaping abuse upon the people of Kashmir who were suffering these tortures.

Then suddenly, Pakistan comes before the bar of the world as the champion of the liberty of the people of Jammu and Kashmir. The world may believe this, but it is very difficult for me to believe.

When we refused the coercive tactics of Pakistan, it started full-fledged aggression and encouraged the tribesmen in this activity. It is absolutely impossible for the tribesmen to enter our territory without encouragement from Pakistan, because it is necessary for them

to pass through Pakistan territory to reach Jammu and Kashmir. Hundreds of trucks, thousands of gallons of petrol, thousands of rifles, ammunition, and all forms of help that an army requires, were given to them. We know this. After all, we belong to that country. What Pakistan could not achieve by the use of the economic blockade it wanted to achieve by full-fledged aggression.

I had thought all along that the world had got rid of the Hitlers and Goebbels, but from what has happened and what is happening in my poor country I am convinced they have only transmigrated their souls into Pakistan.

We are being attacked daily. Thousands of armed men come across the Pakistan border and raze each and every village of our country to the ground. That is what is actually happening. We see it daily with our own eyes, and yet we are being told that Pakistan has nothing to do with this—that it is not at all interested.

What do we request? We request nothing more than that the Security Council send some members to this area to see for themselves what is happening there.

If Pakistan comes forward and says: 'We question the legality of the accession,' I am prepared to discuss whether or not the accession of Jammu and Kashmir to India was legal. However, now they say: 'We want a plebiscite; we want to obtain the free and unfettered opinion of the people of Kashmir. There should be no pressure exerted on the people and they should make the free choice as to the State to which they wish to accede.'

This offer was made not only by the people of Kashmir to Pakistan long, long ago, but the Prime Minister of India at a time when, I think, he had not the slightest need for making it, as Kashmir was in distress, made this offer.

Aid from India

We realized that Pakistan would not allow us any time, that we had either to suffer the fate of our kith and kin of Muzaffarabad, Baramulla, and see the same happen to Srinagar and other towns and villages, or to seek help from some outside authority.

Under these circumstances, both the Maharajah and the people of Kashmir requested the Government of India to accept our accession. The Government of India could easily have accepted the accession and could have said: 'All right, we accept your accession and we shall render this help.' There was no necessity for the Prime Minister of India to add the proviso, when accepting the accession, that 'India does not want to take advantage of the difficult situation in Kashmir. We will accept this accession because without Kashmir's acceding

to the Indian Dominion we are not in a position to render any military help. But once the country is free from the raiders, marauders and looters, this accession will be subject to ratification by the people.' That was the offer made by the Prime Minister of India.

That was the same offer which was made by the people of Kashmir to the Government of Pakistan, but it was refused because at that time Pakistan felt that it could, within a week, conquer the entire Jammu and Kashmir State and then place the *fait accompli* before the world, just as it happened some time ago in Europe. The same tactics were used.

But, having failed in those tactics, Pakistan now comes before the bar of the world, pleading:

'We want nothing; we only want our people to be given a free hand in deciding their own fate. And in deciding their own fate, they must have a plebiscite.' There is no dispute as to that. After all, this very offer was made by the Prime Minister of India and by the people of Kashmir.

They then continue and say: 'No, a plebiscite cannot be fair and impartial unless and until there is a neutral administration in the State of Jammu and Kashmir.' I have failed to understand the terminology 'neutral administration'. After all, what does 'neutral administration' mean?

The Neutrality Myth

The representative of Pakistan has stated that Sheikh Abdullah, because he is a friend of Jawaharlal Nehru, because he has had sympathy for the Indian National Congress, because he has declared his point of view in favour of accession to India, and because he is head of the emergency administration, cannot remain impartial. Therefore, Sheikh Abdullah must depart.

Let us suppose that Sheikh Abdullah goes. Who is to replace Sheikh Abdullah? It will be someone from amongst the four million people of the Jammu and Kashmir State. But can we find anyone among these four million people whom we can call impartial? After all, we are not logs of wood; we are not dolls. We must have an opinion one way or the other. The people of Kashmir are either in favour of Pakistan or in favour of India.

Therefore, Pakistan's position comes down to this: that the four million people of that State should have no hand in running the administration of their own country. Someone else must come in for that purpose. Is that fair? Is that just? Do the members of the Security Council wish to oust the people of Kashmir from running their own administration and their own country?

Then, for argument's sake, let us assume that the four million people of Jammu and Kashmir State agree to have nothing to do with the

administration of their country; someone else must be brought into the country for this purpose. From where do the members of the Security Council propose that such a neutral individual may be secured? From India? No. From Pakistan? No. From anywhere in the world? No. Frankly speaking, even if the Security Council were to request Almighty God to administer the State during this interim period, I do not feel that He could act impartially. After all, one must have sympathy either for this side or that side.

If elections were to be held in the United Kingdom sometime with the Labour Government in power, would anyone say to Mr Attlee: 'The elections are now going on. Because you happen to belong to the Labour Party, your sympathies will be in favour of the labour vote. Therefore, you had better clear out. We must have a neutral man as Prime Minister until our elections are finished.'

However, we have been told that Sheikh Abdullah must walk out because he has declared his point of view in favour of India. Therefore, he cannot be impartial. We must have some impartial man; we must have some neutral man.

As I have submitted to the members of the Security Council, Sheikh Abdullah happens to be there because the people wish it. As long as the people wish it, I shall be there. There is no power on earth which can displace me from the position which I have there. As long as the people are behind me, I will remain there. Once the people cease to have any faith in me, I cannot hold that position.

Impartial Vote

We have declared, once and for all, that there shall be freedom of voting, and for that purpose we have said: 'Let anyone come in; we have no objection. Let the Commission of the Security Council on India come into our State and advise us how we should take a vote, how we should organize it, and how it can be completely impartial. We have no objection.' My Government is ready to satisfy, to the last comma, the impartiality of the vote.

But to have an impartial vote is one thing; to have a say in the administration of the State is a different thing entirely. After all, with what are we concerned? We are concerned only with the fact that no influence shall be exercised over the voters, one way or the other. The people shall be free to vote according to their own interests. We are ready to accept that.

Back Door Tactics

It is then said: 'You cannot have freedom of voting as long as the Indian Army remains in the Jammu and Kashmir State.' It is probably very difficult for me to draw a full picture of what is going on

in that country. There is absolute chaos in certain parts of the country, fighting is going on and thousands of tribesmen are there, ready to take advantage of any weakness on the part of the State of Jammu and Kashmir.

Once we ask the Indian army, which is the only protective force in Kashmir against these marauders, to clear out we leave the country open to chaos. After all, one who has suffered for the last seventeen years, in attempting to secure the freedom and liberation of his own country, would not like an outside army to come in and to remain in the country.

However, what is the present situation? If I ask the Indian army to clear out, how am I going to protect the people from looting, arson, murder, and abduction, with which they have been faced all these long months? What is the alternative? The Prime Minister of India long ago declared that the Government of India had no intention of keeping its army permanently stationed in Kashmir. He stated: 'We are there only as long as the country is in turmoil. Once law and order is established, once the marauders and the tribesmen leave the country, we will withdraw our army.' That pledge is already there.

There need be no fear, since the Indian Army is there, that they will interfere in the exercise of a free vote. After all, a Commission of the Security Council will be there in order to watch. It will be stationed at certain strategic points, so that in the event of danger from any border, the army will be there to protect that border. The army is there to curb disorders anywhere in the State; that is all. The army will not be in each and every village in order to watch each and every vote.

It is then said: 'Can we not have a joint control? Can we not have the armies of Pakistan and India inside the State in order to control the situation?' This is an unusual idea. What Pakistan could not achieve through ordinary means, Pakistan wishes to achieve by entering through the back door, so that it may have her armies inside the State and then start the fight. That is not possible.

After all, we have been discussing the situation in Kashmir. I should say that we have been playing the drama of Hamlet without the Prince of Denmark. The people of Kashmir are vitally interested in this question. Four million people in Kashmir are keenly interested in this entire issue. I have sympathies with the peoples of Poonch and Mirpur.

The representatives of Pakistan will probably concede that I have suffered greatly for the people of Poonch as well as for the people of Mirpur. There is no difference on this issue of internal democratization of the administration between me, my party and the people of Poonch. We are one; we want our own

liberty; we want our own freedom; we do not want autocratic rule. We desire that the 4,000,000 people in Jammu and Kashmir, Hindus, Sikhs and Muslims, shall have the right to change their destiny, to control their country, and to administer it as best they can. On that point there is absolutely no difference. However, it is not a question of internal liberation. The Security Council should not confuse the issue. The question is not that we want internal freedom; the question is not how the Maharajah got his State, or whether or not he is sovereign. These points are not before the Security Council. . . . According to my understanding there are two points at issue: first, how to secure this neutral, impartial administration; second, whether or not the Indian army shall remain.

It is not at all disputed that we must have a plebiscite and that the accession must be ratified by the people of Kashmir, freely and without any pressure on this or that side. That much is conceded; there is no dispute about that. The dispute arises when it is suggested that, in order to have the free vote, the administration must be changed. To that suggestion we say, 'NO'.

United People

I do not know what course future events will take. However I may assure the Security Council that, if I am asked to conduct the administration of this State, it will be my duty to make the administration absolutely impartial. It will be my duty to request my brothers, who are in a different camp at this time, to come to lend me support. After all, they are my own kith and kin. We have suffered together; we have no quarrel with them. I shall tell them: 'Come on; it is my country; it is your country. I have been asked to administer the State. Are you prepared to lend me support?' It is for me to make the administration successful; it is for me to make the administration impartial. It is not for Pakistan to say: 'No, we must have an impartial administration.' I refuse to accept Pakistan as a party in the affairs of the Jammu and Kashmir State; I refuse this point blank. Pakistan has no right to say that we must do this and we must do that. We have seen enough of Pakistan. The people of Kashmir have seen enough. Muzaffarabad and Baramulla and hundreds of villages in Jammu and Kashmir depict the story of Pakistan to the people of Jammu and Kashmir. We want to have no more of this.

The only issue before the Security Council is that Pakistan must observe its international obligations and must not support any outside raiders.

Pakistan should not encourage inside revolt. Pakistan has denied that it has. In order to verify the statements made by the representatives of India and Pakistan, the Security Council must send a commission to the spot to see whether the complaint brought before the Security Council is valid or invalid. If the Security Council finds that

the complaint brought before it by India is valid, then Pakistan should be asked to desist, or India should be permitted to use its means to carry out the decision of the Security Council.

Security Council Official Records, Third Year, Nos. 16-35, pp. 16-27.
(Italicized portions as in reprint issued by the Government of Jammu and Kashmir.)

93 17 *January* 1948

RESOLUTION OF SECURITY COUNCIL

The Security Council, having heard statements on the situation in Kashmir from representatives of the Governments of India and Pakistan; recognizing the urgency of the situation; taking note of the telegram addressed on January 6 by its President to each of the parties and of their replies thereto; and in which they affirmed their intention to conform to the Charter; calls upon both the Government of India and the Government of Pakistan to take immediately all measures within their power (including public appeals to their people) calculated to improve the situation and to refrain from making any statements and from doing or causing to be done or permitting any acts which might aggravate the situation; and further requests each of those Governments to inform the Council immediately of any material change in the situation which occurs or appears to either of them to be about to occur while the matter is under consideration by the Council, and consult with the Council thereon.

UNCIP, Report, S/1100, Annex I.

94 20 *January* 1948

RESOLUTION OF SECURITY COUNCIL

The Security Council, considering that it may investigate any dispute or any situation which might by its continuance endanger the maintenance of international peace and security, and that, in the existing state of affairs between India and Pakistan, such an investigation is a matter of urgency, adopts the following resolutions:

(*a*) A Commission of the Security Council is hereby established, composed of representatives of three members of the United Nations, one to be selected by India, one to be selected by Pakistan, and the third to be designated by the two so selected.

Each representative of the Commission shall be entitled to select his alternatives and assistants.

(*b*) The Commission shall proceed to the spot as quickly as possible. It shall act under authority of the Security Council, and in accordance with directions it may receive from it. It shall keep the Security Council currently informed of its activities and of the development of the situation.

It shall report to the Security Council regularly, submitting its conclusions and proposals.

(*c*) The Commission is invested with a dual function, firstly to investigate the facts pursuant to Article 34 of the Charter; secondly, to exercise, without interrupting the work of the Security Council, any mediatory influence likely to smooth away the difficulties, to carry out directions given to it by the Security Council, and to report how far advice and directions, if any, of the Security Council have been carried out.

(*d*) The Commission shall perform the functions described in Clause *(c)*, firstly, in regard to the situation in Jammu and Kashmir State set out in a letter of the representative of India, addressed to the President of the Security Council, dated January 1, 1948, and in the letter from the Minister of Foreign Affairs of Pakistan, addressed to the Secretary-General, dated January 15, 1948, and, secondly, in regard to other situations set out in the letter from the Minister of Foreign Affairs of Pakistan, addressed to the Secretary-General, dated January 15, 1948, when the Security Council so directs.

(*e*) The Commission shall take its decision by a majority vote. It shall determine its own procedure. It may allocate among its members, alternate members, their assistants and its personnel, such duties as may have to be fulfilled for the realization of its mission and the reaching of its conclusions.

(*f*) The Commission, its members, alternate members, their assistants and its personnel, shall be entitled to journey separately or together wherever necessities of their tasks may require, and in particular, within those territories which are the theatre of events of which the Security Council is seized.

(*g*) The Secretary-General of the United Nations shall furnish the Commission with such personnel and assistance as it may consider necessary.

UNCIP, Report, S/1100, Annex I.

95 21 *April* 1948

RESOLUTION OF SECURITY COUNCIL

The Security Council, having considered the complaint of the Indian Government concerning the dispute over the State of Jammu and Kashmir, having heard the representative of India in support of the complaint and the reply and counter-complaints of the representative of Pakistan.

Being strongly of opinion that early restoration of peace and order in Jammu and Kashmir is essential and that India and Pakistan should do their utmost to bring about cessation of all fighting.

Noting with satisfaction that both India and Pakistan desire that the question of accession of Jammu and Kashmir to India or Pakistan should be decided through the democratic method of a free and impartial plebiscite.

Considering that continuation of the dispute is likely to endanger international peace and security.

Reaffirms the Council's resolution of January 17.

Resolves that Membership of the Commission established by resolution of the Council of January 20, 1948, shall be increased to five and shall include, in addition to the Membership mentioned in that resolution, representatives of. . . . . .and. . . . . .(names to be chosen later) and that if the membership of the Commission has not been completed within 10 days from the date of adoption of this resolution, the President of the Council may designate such other members of the United Nations as are required to complete the Membership of five.

Instructs the Commission to proceed at once to the Indian subcontinent and there place its good offices and mediation at the disposal of the Government of India and Pakistan with a view to facilitating the taking of necessary measures both with respect to the restoration of peace and order and to the holding of a plebiscite by the two Governments acting in co-operation with one another and with the Commission, and further instructs the Commission to keep the Council informed of action taken under the resolution and to this end.

Recommends to the Governments of India and Pakistan the following measures as those which, in the opinion of the Council, are appropriate to bring about cessation of fighting and to create proper conditions for a free and impartial plebiscite to decide whether the State of Jammu and Kashmir is to accede to India or Pakistan.

A. *Restoration of Peace and Order:*

(1) The Government of Pakistan should undertake to use its best endeavours:

(*a*) to secure withdrawal from the State of Jammu and Kashmir of tribesmen and Pakistan nationals not formally resident therein who have entered the State for the purposes of fighting, and to prevent any intrusion into the State of such elements and any furnishing of material aid to those fighting in the State;

(*b*) to make known to all concerned that measures indicated in this and following paragraphs provide full freedom to all subjects of the State, regardless of creed, caste or party, to express their views and to vote on the question of the accession of the State, and that therefore they should co-operate in the maintenance of peace and order.

(2) The Government of India should

(*a*) when it is established to the satisfaction of the Commission set up in accordance with the Council's resolution of January 20 that tribesmen are withdrawing and that arrangements for the cessation of fighting have become effective, put into operation in consultation with the Commission a plan for withdrawing their own forces from Jammu and Kashmir and reducing them progressively to the minimum strength required for support of the civil power in the maintenance of law and order;

(*b*) make known that the withdrawal is taking place in stages and announce the completion of each stage;

(*c*) when the Indian forces shall have been reduced to the minimum strength mentioned in (*a*) above, arrange in consultation with the Commission for the stationing of the remaining forces to be carried out in accordance with the following principles:

(i) that the presence of troops should not afford any intimidation or appearance of intimidation to the inhabitants of the State,

(ii) that as small a number as possible should be retained in forward areas,

(iii) that any reserve of troops which may be included in the total strength should be located within their present base area.

(3) The Government of India should agree that until such time as the plebiscite administration referred to below finds it necessary to exercise powers of direction and supervision over State forces and police provided for in paragraph 8, they will be held in areas to be agreed upon with the plebiscite administrator.

(4) After the plan referred to in paragraph 2(*a*) above has been put into operation, personnel recruited locally in each district should so far as possible be utilized for the re-establishment and maintenance of law and order with due regard to the protection of minorities

subject to such additional recruitments as may be specified by the plebiscite administration referred to in paragraph 7.

(5) If these local forces should be found to be inadequate, the Commission, subject to agreement of both the Government of India and the Government of Pakistan, should arrange for the use of such forces of either Dominion as it deems effective for the purpose of pacification.

B. *Plebiscite:*

(6) The Government of India should undertake to ensure that the Government of the State invite major political groups to designate responsible representatives to share equally and fully in the conduct of the administration at ministerial level while the plebiscite is being prepared and carried out.

(7) The Government of India should undertake that there will be established in Jammu and Kashmir a plebiscite administration to hold a plebiscite as soon as possible on the question of accession of the State to India or Pakistan.

(8) The Government of India should undertake that there will be delegated by the State to the plebiscite administration such powers as the latter considers necessary for holding a fair and impartial plebiscite including for that purpose only direction and supervision of State forces and police.

(9) The Government of India should at the request of the plebiscite administration make available from Indian forces such assistance as the plebiscite administration may require for the performance of its functions.

(10) (*a*) the Government of India should agree that a nominee of the Secretary-General of the United Nations will be appointed to be the Plebiscite Administrator.

(*b*) The Plebiscite Administrator, acting as an officer of the State of Jammu and Kashmir, should have authority to nominate his assistants and other subordinates to draft regulations governing the plebiscite. Such nominees should be formally appointed and such draft regulations should be formally promulgated by the State of Jammu and Kashmir.

(*c*) The Government of India should undertake that the Government of Jammu and Kashmir will appoint fully qualified persons nominated by the Plebiscite Administrator to act as special magistrates within the State judicial system to hear cases which, in the opinion of the Plebiscite Administrator, have serious bearing on the preparation for and conduct of a free and impartial plebiscite.

(*d*) The terms of service of the Administrator should form the subject of separate negotiations between the Secretary-General of the United Nations and the Government of India. The Administrator should fix terms of service for his assistants and subordinates.

(*e*) The Administrator should have the right to communicate with the Government of the State and with the Commission of the Security Council and through the Commission with the Security Council and with the Governments of India and Pakistan and with their Representatives with the Commission. It would be his duty to bring to the notice of any or all of the foregoing (as he, in his discretion, may decide) any circumstances arising which may tend, in his opinion, to interfere with the freedom of the plebiscite.

(11) The Government of India should undertake to prevent, and to give full support to the Administrator and his staff in preventing any threat, coercion, or intimidation, bribery or other undue influence on the voters in the plebiscite, and the Government of India should publicly announce and should cause the Government of the State to announce this undertaking as an international obligation binding on all public authorities and officials in Jammu and Kashmir.

(12) The Government of India should themselves and through the Government of the State declare and make known that all subjects of the State of Jammu and Kashmir, regardless of creed, caste or party, will be safe and free in expressing their views and in voting on the question of the accession of the State and that there will be freedom of the Press, speech and assembly, and freedom of travel in the State, including freedom of lawful entry and exit.

(13) The Government of India should use and should ensure that the Government of the State also use their best endeavours to effect the withdrawal from the State of all Indian nationals other than those who are normally resident therein or who, on or since August 15, 1947, have entered it for a lawful purpose.

(14) The Government of India should ensure that the Government of the State release all political prisoners and take all possible steps to the effect that

(*a*) all citizens of the State who have left on account of disturbances are invited and are free to return to their homes and to exercise their rights as such citizens.

(*b*) there is no victimization and minorities in all parts of the State are accorded adequate protection.

(15) The Commission of the Security Council should at the end of the plebiscite certify to the Council whether the plebiscite has or has not been really free and impartial.

C. *General Provisions:*

(16) The Governments of India and Pakistan should each be invited to nominate a representative to be attached to the Commission for such assistance as it may require in the performance of its task.

(17) The Commission should establish in Jammu and Kashmir such observers as it may require of any of the proceedings in pursuance of measures indicated in the foregoing paragraphs.

(18) The Security Council Commission should carry out the tasks assigned to it herein.

UNCIP, Report, S/1100, Annex II.

96 5 *March* 1948

SPEECH: PANDIT NEHRU (EXTRACT)

. . . Now, before I speak on this particular Kashmir issue, I should like by your leave to say a few words on a wider issue of which the Kashmir issue is a part. We have been living through strenuous days; we have been passing through a period of dynamic history in India. Much has happened during the past six months, much that was good and much that was very bad. But, perhaps, when the history of India comes to be written, when much of the horror of today has been forgotten, one of the biggest things that will be mentioned, will be the change that has come over India and that is coming over India in regard to the Indian States. We see something very remarkable happening. It is perhaps difficult for us who live in the middle of this change to appreciate the bigness of what has happened. But it is an upsetting in a very curious way—a peaceful way—of a structure that has endured in India for the past 130 or 140 years, more or less ever since the beginning of the 19th century.

We see the sweep of history suddenly coming, the big broom of history, and changing this 130 years' old structure and putting something else in its place. We cannot definitely and absolutely say what the final and precise outcome of all this will be, though the picture is clearing up fairly rapidly. It would almost appear that there is the hand of destiny functioning. What is happening is nothing that we did not expect. In fact, many of us for the last many years have had certain objectives in regard to the Indian States and we have worked for them both through our political and other organizations in India, through the people of the States, through the people of the provinces and otherwise. And, on the whole, what is happening today is in line

with the objectives we had laid down. . . . The British Government had constructed a State structure in the course of a quarter of a century in the early days of the 19th century. Whether it fitted in, in reality, with conditions then existing in India or not, it is a little difficult to say, that is to say, minus the British Government what would have happened. Anyhow, that dominant power of the British created this system, no doubt, for their own advantage as they thought it. That system continued not because of any inherent strength, as is obvious today, but because of the continuance of that dominant power, of the paramount power as it was called. All manner of changes were going on in India and in the outside world and yet this Indian States structure continued. Many of us said that it was rather archaic, it was out of date, it had to change and must change and so on and so forth. But with the protecting hand of a foreign Government having been removed, the repressions are removed. The forces that had been kept in check suddenly began to function and we see them in action—in rapid action. The forces are there, of course; they have not been curbed by any of us, but I think in the manner of dealing with this situation,—an intricate and difficult situation—this House will agree with me that we owe a debt of gratitude to my friend and colleague, the Deputy Prime Minister.

So it is in this mighty context of a changing India in regard to the States that we have to view any particular aspect of it. We saw unfortunately six months back a partition of India, a splitting up of India, a part of India going out of India. Immediately after that process of cutting off, another process started, or rather always we have had these two processes—the process of integrating India. We have seen this process of integrating India going on in regard to the States, and not only in regard to the States but to some extent even in regard to the Provinces, but much more so in regard to the States. So, these two things have gone on together,—a process of cutting away and a process of integration,—and in the balance it is difficult to say how far we have gained and how far we have lost. It is difficult to say also how far this process of integration will go and whither it will take us ultimately. Nevertheless, it is interesting for us living through this rather strange and dynamic period of India's history to look at it in some perspective, not as actors in the drama but rather as historians looking back on what has happened. The historian who looks back will no doubt consider this integration of the States into India as one of the dominant phases of India's history.

Well, Sir, the process is taking various shapes. There has been an actual merger of a large number of small States into India; there has been a bringing together of a number of States into Unions of States

which form units of the Union of India and a certain number of major States remain as separate entities. But what is equally important—and if I may say so, even more important—is not this integration externally but an inner integration, that is, the growth of democratic institutions and responsible government in the States, because that brings about a real integration, not at the top levels of Government but at the level of the people. Both these processes have gone on and both these processes, may I remind the House, are in line with the objectives for which we have laboured for many years.

Now it is in this context of changes in the States system that I would like this House to consider the particular case of Kashmir, although it stands apart and many other factors come into play. Today in India two States stand quite apart from the rest in regard to these processes. Those States are Hyderabad and Kashmir. I am not going at this moment to say anything about Hyderabad. In regard to Kashmir, it stands apart for many reasons, partly because it has got entangled in certain external politics, that is to say, it has got entangled in the relations between India and Pakistan and so the two essentially State issues there are somewhat submerged. It is an odd thing that it should get so entangled. That it got entangled is not odd, but the manner of its entanglement because the Government of Pakistan have assured us time and again that they have nothing to do with recent events in Kashmir, raids and invasions etc.,—they go on repeating that—; nevertheless, they seek to profit by those events. They seek political advantages out of those events, so that while disclaiming all responsibility for what has happened they do want to share in whatever they might get out of it. Anyhow, the Kashmir problem stands apart.

But for the moment, leaving out this external implication of the Kashmir problem, if you consider it, it is essentially the same problem, that is to say a problem of the growth of the freedom of the people and the growth also of a new integration. Now, we have been aiming, —the Government of India and the States Ministry have been aiming —at the growth of this inner freedom of the people of all the States. If many of the States have agreed to merge in India or come into closer contact it is not because the States Ministry took a big stick and threatened them with consequences. It is because of those forces, rising up from the people, other forces, and, fundamentally, the sudden withdrawal of an external force which had kept the States together, or rather the States system together, the might of the British Government and the sanctions behind it. That disappearing, immediately the structure began to collapse and it is an astonishing thing—this sudden collapse of a structure which seemed so solid just a few months or a

year ago—, not surprising to those who knew the facts, but undoubtedly surprising to those people who take a superficial view of things. So, essentially we have been aiming at the freedom of the people, knowing and realizing that ultimately it will be for the people of the States to decide what their future will be. We are not going to compel them. We do not propose to compel them, and indeed we cannot compel them in the context of the world today in any State. There are other compulsions, the compulsions of geography. That is true; one cannot ignore that. There are many other compulsions. And naturally in considering the problem, we, that is, the Government of India have always to consider the interests of India as a whole,—the interests of India in regard to security, defence etc.,—but apart from that, we do not wish to exercise any other compulsion in the slightest over the growth of freedom. In fact, we want to encourage it in the people of the States. We know well that if there is that growth of freedom and freedom of decision by the people of the States, that it will be a powerful factor to bring them nearer to our people, because we hope that whatever constitution we might adopt in India it will be based completely on the will of the people. . . .

Now, there is one other factor which I should like to put before the House in regard to Kashmir. We have got too used in India unfortunately to thinking of every problem or many problems in terms of communalism, of Hindu versus Muslim or Hindu and Sikh versus Muslim and so on and so forth. That has been an unfortunate legacy of ours and the extent to which it took us cannot be forgotten by us and the tragedies that it has led to. We are trying, I hope, to get rid of the spirit of communalism in this country, in India at least. We hope to put an end to it, not suddenly perhaps, but certainly fairly rapidly.

Now in this context of communal conflict the case of Kashmir stands apart, because Kashmir is not a case of communal conflict; it may be a case of political conflict, if you like; it may be a case of any other conflict, but it is essentially not a case of communal conflict. Therefore this struggle in Kashmir, although it has brought great suffering in its train to the people of Kashmir, it has placed a burden on us—on the Government of India, and the people of India; nevertheless it stands out as a sign of hope that there we see a certain co-operation, combination and co-ordination of certain elements, Hindu and Muslim and Sikh and others on an equal level and for a political fight for their own freedom. I wish to stress this because it is continually being said by our opponents and critics on the other side that this is a communal affair and that we are there to support the Hindus or the Sikh minorities as against the Muslim masses of Kashmir

—nothing can be more fantastically untrue. We could not for an instant send our armies and we would not be there if we were not supported by very large sections of the population, which means the Muslims of Kashmir. We would not have gone there in spite of the invitation of the Maharaja of Kashmir, if that invitation had not been backed by the representatives of the people of Kashmir and may I say to the House that in spite of our armies having functioned with great gallantry, even our armies could not have succeeded except with the help and co-operation of the people of Kashmir. Now we are charged by people outside beyond the borders of India for going to Kashmir to support an autocratic monarch. The House will remember that one of the conditions that we made at that critical moment, when we had to decide whether to send the Indian army or not, whether to accept accession or not, one of the conditions was that there must be a popular Government there, and not as a goal and an ideal, but immediately. It was an immediate thing and it was given effect to immediately in so far as it could be given effect to. So, it is strange that this charge should be brought against us. Look at this charge in another context. Those people, men and women of Kashmir, who are with us and who are fighting for their freedom and liberty there they are not newcomers in the struggle for freedom; for the greater part of a generation, they have fought for the freedom of Kashmir, in Kashmir; they have suffered for it and some of us have deemed it a privilege to be associated with them in this fight for the freedom of Kashmir against autocratic rule. These people are with us today. Who are their opponents, who are against them in Kashmir or elsewhere? What has been their record in the past ten, twenty years in regard to the freedom of Kashmir? It is an interesting speculation and an interesting inquiry, because these gentlemen who talk about the autocracy of the Ruler of Kashmir, who talk about autocracy there, what did they do during these last ten, twenty years? They never fought for the freedom of the people of Kashmir; most of them supported that autocracy; most of them opposed the freedom movement in Kashmir. Now because of entirely different reasons, they become the champions of the freedom of Kashmir. And what is the type of freedom they have brought into Kashmir today? The freedom so-called that they have brought into Kashmir is the licence to loot and murder and burn that lovely country and to abduct and carry away the beautiful women of Jammu and Kashmir State; and not only carry them away, but place some of them in the open market place for sale! So, let us have this background before us when we consider this Kashmir story. It is a stirring background of events and many of us have been distressed at the strangely narrow view that people in the Security Council have

taken on this matter. I do not desire to enter into the details of what happened in the Security Council or not, but I do feel that this background must be appreciated. It is not a Hindu-Muslim question in Kashmir; it is certainly not a question of our standing for any autocracy or anything. We have always, not only during the last fifteen, twenty years, shown where we stand in regard to the states with the people and the rulers. In regard to Kashmir, more particularly, we have shown by our actions from the very first day we went there in October last up to today, and I shall have something more to say about it before I finish, as to how we feel about the freedom of Kashmir.

Now, Sir, I shall go into some slight detail about events in Kashmir.

The House will recall the statement I made on Kashmir on the 25th November 1947. In that statement I recounted briefly the course of events in the Jammu and Kashmir State up to that day, the part played by the Government of Pakistan in these events, and our own objectives.

Our complaint against Pakistan was that it incited and aided tribesmen from outside and its own nationals to wage war on Jammu and Kashmir State. The month of December showed an intensification of military pressure on the State. Nearly 19,000 raiders had been reinforced in the Uri area. 15,000 raiders were operating against the western and south-western borders of the State. Incursions by the raiders into State territory, involving murder, arson, loot and the abduction of women were continuing. The booty was being collected and carried to tribal areas to serve as an inducement to tribesmen to swell the ranks of the raiders. In addition to those actively participating in the raids, a large number of tribesmen and others estimated at 100,000, had been collected in different places in the districts of West Punjab bordering upon Jammu and Kashmir State, and many of them were receiving military training under Pakistan nationals, including officers of the Pakistan Army. They were being looked after in Pakistan territory, fed, clothed, armed and otherwise equipped and transported to the territory of the Jammu and Kashmir State with the help, direct and indirect, of Pakistan officials, both military and civil. The equipment of the invaders included modern weapons such as mortars, medium machine guns, the men wore the battle dress of regular soldiers, fought in regular battle formation and used the tactics of modern warfare. Man-packed wireless sets were in regular use and even Mark ' V ' mines were being employed.

More than once, the Government of India had asked the Pakistan Government to deny facilities to the invaders, facilities which constituted an act of aggression and hostility against India, but without any satisfactory response. On the 22nd December, I handed personally to

the Prime Minister of Pakistan in New Delhi a letter in which the various forms of aid were briefly recited and his Government were asked to put an end to such aid promptly and without reservation.

As no reply to this letter was received for some days I sent a reminder by telegram on the 26th December. On the 31st December the Government of India informed their Ambassador in Washington to convey a message to the Chairman of the Security Council of the United Nations. This message was a reference to the Security Council under Article 35 of the Charter of the United Nations. On that same day the full text of the message was sent to the Prime Minister of Pakistan by telegram.

On the 1st of January I received a reply from the Prime Minister of Pakistan to my letter dated 22nd December. The contents of this letter revealed no helpful approach to a solution of the Kashmir problem. They consisted only of a series of fantastic charges against India, e.g., a determination to crush Pakistan, organize genocide of Muslims in India, and the procurement of the accession of Kashmir by force and fraud. This letter, even if it had been received earlier, could not have modified our decision to request the Security Council of the United Nations to ask the Government of Pakistan:

(1) to prevent Pakistan Government personnel, military or civil, from participating and assisting the invasion of Jammu and Kashmir State; (2) to call upon other Pakistan nationals to desist from taking part in the fighting in Jammu and Kashmir State; (3) to deny to the raiders; (*a*) access to and use of its territory for operations against Kashmir; (*b*) military and other supplies; (*c*) all other kinds of aid that might tend to prolong the present struggle.

The House will remember the circumstances in which we had sent our forces to Kashmir. Kashmir State territory, that is, after accession Indian Dominion territory, was being invaded to the accompaniment of murder, arson, loot and the abduction of women. The whole countryside was being ruined. Fresh raiders were continually coming from Pakistan territory into Kashmir State. All the fighting was taking place in Indian Dominion territory. The invaders had their principal bases across the border in Pakistan, received supply and reinforcements from them and could go back there to rest and recuperate in safety. Our troops had strict orders not to enter Pakistan territory. The normal course to prevent raids on Indian territory would have been to deny the use of any bases to them in Pakistan. Since Pakistan was unwilling to co-operate with us in this manner, the alternatives left to us were to send our armed forçes across Pakistan territory for dealing effectively with the invaders, or to request the United Nations to ask Pakistan to do so. Any resort to the first course would have involved armed conflict with Pakistan. We were anxious to avoid this and to try every

available method to find a peaceful solution. Therefore the only course left open to us was to make a reference to the Security Council.

I shall not take up the time of the House with a detailed account of the proceedings of the Security Council; these have been fairly fully reported in the press. I must confess that I have been surprised and distressed at the fact that the reference we made has not even been properly considered thus far and other matters have been given precedence. If the facts we stated in our reference were correct, as we claim they were, then certain consequences naturally flowed from them, both in law and from the point of view of establishing peace and order.

On behalf of Pakistan there was a repetition of the fantastic charges against India which had been made previously in the letter of the Prime Minister of Pakistan to which I have referred. Pakistan refused to act at once, to deny assistance in men and material to our enemies in Jammu and Kashmir, to prevent further incursions through Pakistan into the State, and to ask the tribesmen and Pakistanis now in the State to withdraw unless a previous agreement was reached and announced to the effect that the Indian armed forces should be withdrawn completely from Jammu and Kashmir State and the administration of the State should be replaced by another administration. There were some other matters in dispute also but the principal ones were the two I have mentioned above.

In effect Pakistan not only admitted that they were aiding the raiders but made it clear that they would continue to do so till certain political objectives of theirs were achieved by them. This was a proposal to which the Government of India could not agree. For such an agreement would have been not only a betrayal of the people of Kashmir to whom they had pledged their word, but also a surrender to methods of violence and aggression which would have had disastrous consequences both for India and Pakistan. It was impossible for us to withdraw our forces without grave danger to the State and without handing over the people of the State who trusted in us to an unscrupulous and cruel invader who had already brought so much misery to the State and its people. Nor could we share the responsibility of protecting the people of Kashmir with any other outside force. It was equally impossible for us to agree to the replacement of Sheikh Abdullah's administration by any other. The Government of Jammu and Kashmir is now no longer an autocratic government; it is a government representing the largest popular party in the State and is under a leader who, during these many months of unparalleled stress, has sustained the morale of his people, has maintained an effective administration over the greater part of the State, and generally, has inspired effective

resistance to the brutal attempts of the invaders to overrun and destroy Kashmir. There is no alternative administration possible in Kashmir, unless that administration rested on coercion. If Sheikh Abdullah were not there by the will of the people, he could not have survived, much less could he have accomplished what he has done during these difficult months. It is for him to choose any national of Kashmir to assist him in his government and it would be improper for us to interfere with his discretion in this matter.

I regret greatly that the representative of Pakistan before the Security Council should have made many statements and charges against India which have no foundation in fact. A great deal has happened in India and Pakistan during the last six months or more which has brought shame to all of us and I am prepared to admit at any stage and at any time the errors of our own people, for I do not think that it is good for the individual or the nation to lapse from truth. That is the lesson our Master taught us and we shall hold to it to the best of our ability. Many horrible things have happened in India and Pakistan during these past months and while we hold strong views as to the initial responsibility for all the frightfulness that has occurred, all of us in a greater or lesser degree have a certain responsibility for it. But so far as the events in Kashmir are concerned, I am convinced in my mind that every action that the Government of India has taken has been straight and above board and inevitable in the circumstances. Our going there at the end of October was thrust upon us by the course of events. Not to have rushed to the rescue of the people of Kashmir when they were in dire peril would have been an eternal disgrace, a gross betrayal and a deep injury. We feel deeply about this matter and it is not merely a question of political advantage or disadvantage. It has been and is a moral issue with us apart from other aspects of the case, and because of this at every stage and at every step I consulted Mahatma Gandhi and had his approval. In the confusion of a welter of charges and exaggerated statements, the basic facts are apt to be forgotten. I should like to know from anyone who studies our record in Kashmir since that fateful day when the raiders swooped down at Muzaffarabad and started their career of rapine and arson. I should like to know what major step we took that was morally or otherwise wrong.

The role of the Indian Army in this conflict, which I repeat was not of our seeking, has been conspicuous for its discipline, impartiality, endurance and gallantry. They have extended their protection to every section of the people of the State. To suggest that they should be withdrawn before complete order is restored is to suggest something which is neither practicable nor reasonable and which is further a

reflection on the exemplary record of our forces in Kashmir. We are in Kashmir and our forces are there because legally we are on unassailable ground. But even apart from law the moral case of the Indian Union in Kashmir is equally unassailable. If we had not gone there and if our armed forces had not been rushed at great peril into Kashmir, that lovely country would now have been sacked, destroyed and ruined and its men and women who have been noted for ages past for their intelligence and their cultural traditions would have been crushed under the heel of a barbaric invader. No Government in India could tolerate such happening so long as it had the strength to resist it with all its might and if such a fate befell Kashmir what freedom of security would we have in the rest of India?

We have only two objectives in Jammu and Kashmir State; to ensure the freedom and the progress of the people there, and to prevent anything happening that might endanger the security of India. We have nothing else to gain from Kashmir, though Kashmir may profit much by our assistance. If those two objectives are assured to us we are content.

Our making a reference on this issue to the Security Council of the United Nations was an act of faith because we believe in the progressive realization of world order and a world government. In spite of many shocks we have adhered to the ideals represented by the United Nations and its Charter. But those very ideals teach us also certain duties and responsibilities to our own people and to those who put their trust in us. To betray these people would be to betray the basic ideals for which the United Nations stands or should stand. Even at the moment of accession we went out of our way to make a unilateral declaration that we would abide by the will of the people of Kashmir as declared in a plebiscite or referendum. We insisted further that the Government of Kashmir must immediately become a popular government. We have adhered to that position throughout and we are prepared to have a plebiscite, with every protection for fair voting and to abide by the decision of the people of Kashmir.

ORCA(L)D, Vol. III, pp. 1648-55.

97 7 *September* 1948

SPEECH: PANDIT NEHRU (EXTRACT)

. . . The present story and tragedy of Kashmir began over ten months ago. Late in October last year there was an invasion of Kashmir

by people coming across or from Pakistan territory, and the Government of India were faced with a very difficult problem, calling for a decision as difficult as any Government has had to make, and we had to make that decision within a few hours. We made that decision and since then we have followed that decision. It became clear to us then, and that fact has become abundantly clear to all the world that wants to know it, that this invasion was not only encouraged and patronized but actively supported by the Pakistan Government. Later it became clear that apart from supporting others, there was active participation of the Pakistan army in it. Now, throughout these ten months the Pakistan Government have denied that fact, they denied it aggressively, loudly and persistently. We stated it before the Security Council of the United Nations. . . .

. . . Even till yesterday, as far as the world is concerned, even till 4 p.m. yesterday, there was no admission by Pakistan that they were participating in any way in these Kashmir operations. Of course, we knew. We have the most definite and positive evidence to that effect and ultimately you cannot hide large armies. Nevertheless, till 4 p.m. yesterday, when these papers were issued to the public, there was no public admission. In fact, there was a continual denial in the course of the last few weeks, while this large Pakistan Army was active in Kashmir, battling with the Indian forces in Indian Union territory.

Please remember that all the fighting that has taken place in the last ten months has been in Kashmir, has been on Indian territory; there has been no fighting, there has been no incursion, there has been no Indian Army anywhere on Pakistan territory. That is a fundamental and basic fact, which apart from any other enquiry and any other facts would lead one to the conclusion that if any outsiders are fighting in Indian Union territory, those outsiders are the aggressors. Why are they there? During the last six weeks or so, again we pointed out in the most explicit language to the Pakistan Government and to the Prime Minister of Pakistan this presence of Pakistan troops in the Kashmir State. . . .

. . . The whole case [of Pakistan before the Security Council] was based on . . . the denial of Pakistan's complicity in Kashmir. They denied throughout that they had actively participated in it. If this fact is proved, as it is proved out of their very mouths today to have been false, then what happens to that whole case so laboriously built up by the Pakistan Government before the Security Council? What happens to the charge that we brought against them which was never considered by the Security Council at all, much to our regret and amazement? So the fundamental thing for us to remember is this, that a fact which was denied for ten months and more has at last

been publicly admitted by the Pakistan Government. They have, of course, admitted it in their own way. I shall now read out some passages from their letter to the Commission. They say:

'India was steadily building its armed forces in Jammu and Kashmir. This building up process did not cease on the 21st April, 1948, but was continued and intensified. The Indian Army mounted a big offensive in the beginning of April, thereby causing a material change in the situation. This offensive action has continued ever since. The publicly declared intention of the Government of India was to secure a military decision in Jammu and Kashmir, thus presenting the United Nations Organization with a *fait accompli*. This situation not only put in jeopardy the entire population of the areas under the Azad Kashmir Government, and led to a big influx of refugees into Pakistan, but also constituted a direct threat to Pakistan's security. It was this which compelled the Government of Pakistan to move their troops into certain defensive positions.'

Observe here, too, they do not say clearly that the defensive positions happened to be in another country.

Quite apart from their decision in regard to cease-fire and other proposals, the country which participates in aggression against a neighbouring country, maybe in the name of defence or its own security, denies it for many months and then, in fact, when it finds that its guilt is proved, when it cannot hide it any more, then grudgingly admits it and gives some reason for it—how shall we consider the politics of that country from any international or national or moral point of view? Observe that, according to this statement, they took this action in April last, four months or four and a half months ago. If they felt that their security was imperilled, or that something was happening which endangered them and that they had to send their troops, what then should they have done? Obviously, they should have informed the Government of India, and informed the United Nations Organization that this was happening and that there had been, as they say, a material change in the situation, and therefore they were compelled to take this or that action.

I cannot conceive of any country in the wide world which would not have done so. Quite apart from motives, this is the obvious and inevitable thing to do. They sent this army, according to them, in April last or thereabouts and there is no intimation to us into whose territory they were coming, and there was no intimation to the United Nations Organization which was seized of this question, and was, as a matter of fact, then thinking of sending out a Commission to India. You will remember that in the very early stages of the Security Council's activities, an appeal was made to India and Pakistan in regard to

these military operations and in regard to avoiding any situation arising between India and Pakistan. That appeal was repeated. In the few lines I have read to you from Pakistan's reply, they accused India of mounting an offensive. We are trying to push out the invader from Indian Union territory. It has been our declared policy, which we have repeated before the United Nations Security Council, which in fact was inevitable for us and would have been for any other country with any grain of self-respect.

On the other hand, what did the Pakistan Government do? We have, right from the beginning, taken whatever step we have taken, in the limelight; there has been no hiding about it. . . .

There have been long discussions over the Kashmir issue and every aspect and phase and the past and present history have been considered. But what has been the major point? I repeat that, because I think the fundamental factor is the aggression of Pakistan on Indian Union territory; secondly, the denial of the fact of that aggression; thirdly, the present admission of the fact. These are the governing factors of that situation. And the argument has gone on for so long, because these governing factors were slurred over and were not emphasized. We emphasized them, of course, and the problem was discussed in intricate detail.

Now, if you start from a wrong premise in an argument, obviously your whole argument goes wrong and you land yourself in difficulties. If you try to solve a problem without analysing or stating the nature of the problem, how are you to solve it? And that has been the fundamental difficulty in the Kashmir business; the fundamental issue has been slurred over and by-passed and passed over. Therefore, we have been dealing with other matters which cannot yield a solution. Now, the basic factor is revealed by the very admission of the Pakistan Government.

Now, coming to this proposal of the United Nations Commission in India in regard to cease-fire and truce, etc., I shall not discuss it much, because I do not wish at this moment to say anything which might embarrass that Commission. But certain papers are before you. I need hardly say that the proposal they made was not welcomed by us with joy and enthusiasm; there were many matters in it which went against the grain. But we tried to look at the matter as coolly and dispassionately as possible with a view to establishing peace in the harried State of Kashmir, to avoid needless suffering and shedding of blood; and we agreed to that cease-fire proposal after the Commission had been good enough to elucidate certain points which we had placed before them. We did not place too many points before them but only certain simple obvious points relating to the security of Kashmir.

We placed these before them and they were good enough to tell us their meaning. Thereupon we accepted the cease-fire proposal, accepted many things in it which we did not like because we felt that both in the interest of peace and of international order, it was a good thing for us to go a few steps forward even though some of the steps might be unwilling ones. We did so in order to bring about this peace and to show that we were prepared to go as far as possible to meet the wishes of an international organization like the United Nations. The original proposal of the United Nations was given to us on the 14th August. The 15th was our Independence Day. Immediately after, on the 16th, we met the members of the Commission and discussed the matter with them to find out exactly what they meant and told them exactly what we meant; and within four days, i.e. on the 20th August, we sent them our reply. We did not want to delay matters as they were anxious that they should not be delayed.

The Pakistan Government had also received these proposals at the same time, on the 14th August, at 3 or 4 p.m. They also had the same amount of time. But even after the return of the Commission to Pakistan—and some members of the Commission went in between to Karachi—they were not ready with their reply. And, in fact, it was by the pressure of events or the pressure of the Commission that ultimately they gave some kind of a reply yesterday. Meanwhile, they sent long letters seeking elucidation. I am sorry I have not yet read the reply wholly because I received it just a little before coming here. But I have read the significant parts of it, and in effect it is a rejection of those proposals.

Now, the Commission told us that these proposals stood as a whole and while they were prepared to discuss any matter gladly it was difficult—in fact, it was not possible for them to accept conditional acceptances, because if we made some conditions and Pakistan naturally made other conditions, what exactly was accepted and by whom? So they said that these proposals were to be accepted as they were, and if there were conditions attached to them, it was not an acceptance but a rejection. Now, therefore, what the Pakistan Government have done is tantamount to rejection. It is for the Commission to decide and to say what they are going to do. It is not for me to advise them. So we arrive at a curious state of affairs, that the country which was the aggressor nation according to its own showing, now even rejects and refuses a proposal for a cease-fire, or puts forward conditions which are tantamount to such a refusal.

Nehru, Jawaharlal, *Independence and After*, 1949, pp. 91-8.

98 13 *July* 1948

REPORT: SHRI G. S. BAJPAI (ANNEXURE 21)

Mr Vellodi and I met the UN Commission yesterday at 4.30 p.m. at Faridkot House. The meeting took place at the Commission's request. Besides the Chairman and Members of the Commission, the alternates, the secretaries and other members of the staff were present. . . .

(2) Turning to Kashmir, I said that the point of view of the Government of India had been placed repeatedly, and at length, before the Security Council. I assumed that men of the experience and industry of the members of the Commission had studied the records of the proceedings of the Security Council. Nevertheless, since human memories were apt to be short and, in these dynamic times, apt to be crowded with events, I would readily give the Commission a short résumé of the Government of India's case. Before dealing with Kashmir specifically, however, I said that I should like to deal with a delusion, widely held, and a fiction, equally widely believed in Pakistan, that India was determined to destroy Pakistan. This belief had actually been expressed in the form of a charge against the Government of India by the Foreign Minister of Pakistan. Since such propaganda as had been done in support of this belief was likely to influence the thinking of men, it seemed necessary to state the truth. Had India desired to destroy Pakistan, those now in authority in India need have done no more, before Pakistan was created by the partition of India, than to have opposed partition. Though many in India disliked partition, and disliked it intensely, they had agreed to it in order to bring to India political freedom and the opportunity for her leaders to apply themselves to constructive national tasks. Far from there being any desire to destroy Pakistan, India was most eager to live on terms of friendship and peace with her new neighbour. Indeed, after the experience that we had had of the interim Government, which came into being in September 1946, India's one anxiety was to avoid impeding her own evolution by any kind of union with Pakistan even if Pakistan desired such union. The Security Council had been informed that we had already paid to Pakistan Rs 75 crores and, in accordance with the terms of the partition, done all that we could to deliver to her what was due in the way of stores, including military stores. This money and the military stores handed over to Pakistan were being used against us in Kashmir. In other words, we had supplied to Pakistan the sinews of war for waging war against us, if Pakistan were so minded. This, indeed, would be a strange means of encompassing Pakistan's

destruction! The Commission must, as reasonable men, judge for themselves what truth there was in what I had already described as a delusion and a fiction.

(3) I next took up the issue of Kashmir specifically. I said that we had been accused of obtaining the accession of Kashmir by force and fraud. The Commission must be aware that, after the transfer of power to India and Pakistan on the 15th of August, 1947, each Indian State which, previously, had treaty relations with the Crown, became free to accede to India or to Pakistan. Kashmir had approached both us and Pakistan with the proposals for a standstill agreement. Pakistan had entered into such an agreement. Aware of the intricacies of the position of Kashmir, we had not acceded to Kashmir's request for a standstill agreement. Further, there was no iota of evidence to suggest that, before the invasion of Kashmir by the tribesmen created an unprecedented situation, we had made any attempt to obtain the accession of Kashmir. Where, then, was the evidence in support of the charge that accession had been obtained by fraud? As regards force, the position was that, from September, we had heard of incursions into Jammu and Kashmir State from the Pakistan border. On the 24th October, we received news of the invasion of the Kashmir valley by tribesmen. The facts of this invasion had already been reported to the Security Council and must be known to the members of the Commission. The invasion was one by barbaric hordes who respected neither life nor honour. With them, they brought fire and sword to the inhabitants of the peaceful valley of Kashmir. Faced with this menace to her very existence, the Government of Jammu and Kashmir State, as also the leader of the most representative popular party, the National Conference, appealed to the Government of India for military aid and also asked that the State be allowed to accede to India. Both requests were accepted. The accession took place on the 26th of October; India's troops landed in Kashmir the following morning. As regards the military aid that India rushed to Kashmir, this was not only in discharge of a constitutional obligation which she undertook when she accepted the accession of Kashmir; it was also in response to a moral obligation, namely the obligation of every civilized nation to protect the life, honour and territory of a neighbour which had been suddenly attacked and whose destiny the perpetrators of this unprovoked aggression sought to determine by methods practised by gangsters. On both sides of the border, communal passions were at fever heat at this time. Those who were attempting to coerce Kashmir into accession to Pakistan were also raising the cry 'On to Delhi'. Had they succeeded in their aim in Kashmir, India would have been the next victim. India had, therefore, sent her forces to Kashmir

under the triple obligation of a constitutional and a moral duty to a neighbour and friend and the obligation of self-defence. But, though India had accepted the accession of Jammu and Kashmir, she had voluntarily declared to the world that, once peace was restored, the question of accession to India or to Pakistan would be settled by the freely expressed will of the people of the State, by means of a plebiscite under neutral auspices such as those of the United Nations. This offer of a plebiscite had been made, not to please Pakistan but in conformity with the declared policy and principle of the Government of India that, in these democratic days, on vital issues affecting the people of a State, the will of the people should prevail.

(4) We had approached the Security Council, at the beginning of the present year, with the request that Pakistan, which was aiding and abetting the raiders who were invading Kashmir, should be asked to withdraw this aid. The forms in which the raiders were being helped had been clearly stated in our complaint. The action that we desired the Council to take, namely to require Pakistan to stop this aid immediately, had been equally clearly stated. In the four months' debate that had followed, the issue raised by us had got lost in a miasma of dialectics. I added that I said this in no spirit of disrespect to the Council but merely stated a fact. In the resolution which the Council had adopted on the 21st of April, there was no mention either of Pakistan's complicity in the fighting in Kashmir or of her obligation to put an end to this complicity immediately. Since the Council passed its resolution a great change had occurred in the situation. Our troops in Kashmir were no longer fighting tribal raiders—their numbers had greatly diminished—or the insurgents who, it was said, had risen in revolt against the Government of the Maharaja in order to win their liberty. Our troops were fighting the regular armed forces of Pakistan on all fronts in and around Jammu and Kashmir State. We had abundant evidence of this. If the Commission so desired, this evidence would be tendered by our military advisers. What was in progress today was an undeclared war between India and Pakistan. It was for the Commission to judge whether, in the face of these facts, it was India that could be accused of using force to secure the accession of Jammu and Kashmir or Pakistan.

(5) Continuing, I said that I had referred earlier to the moral motive which had inspired us to go to the rescue of Jammu and Kashmir. It was to this, the moral issue, that we attached the highest importance; unfortunately it was the moral issue which the Security Council had ignored. Either our charge of Pakistan's complicity, now complicity in the shape of an undeclared war against us, was true or untrue. If it were untrue, we were prepared to face the obloquy or

condemnation of the civilized world. On the other hand, if it were true, then the Council of the United Nations was under an obligation to demand that Pakistan should cease hostilities against us, deny all aid to the raiders and withdraw her own troops as well as the outsiders from the State territory. We had nothing to hide and there was nothing of which we were ashamed, or need be ashamed. But, I repeated, we attached the highest importance to the declaration of Pakistan's guilt and, if this guilt were proved, to Pakistan being directed to do what, seven months ago, we had asked the Council that Pakistan should be asked to do. Until this matter was settled, there could be no question of discussing the details of a plebiscite.

(6) Continuing, I reminded the Commission that we had offered a plebiscite on the issue of accession to India or Pakistan, spontaneously and voluntarily. We had made the offer in the hope that the Kashmir issue would be settled peacefully and quickly. This had not happened. The military campaign, with the increasing participation of Pakistan, had assumed greater violence. What began in unprovoked violence continued in mounting violence and the present prospects were that force alone would decide the issue. If the future of Jammu and Kashmir was to be determined by the arbitrament of the sword, then, without in any way wishing to utter a threat, or use the language of menace, I should like the Commission, as realists, to recognize that the offer of plebiscite could not remain open. If Pakistan wanted a decision by force and that decision went against her, she could not invoke the machinery of the United Nations to obtain what she had failed to secure by her chosen weapon of force. This did not mean that the Government of India would in any way coerce the people of Kashmir. After hostilities had ceased and peace had been restored, the people of Kashmir would be free to determine both the form of their internal Government and the nature of their relations with India, but Pakistan could have no lot or part in this process.

(7) Thus I concluded my statement. I offered to answer questions but none were asked. The Chairman thanked me for my clarification of the Government of India's position and asked that Mr Vellodi and I should meet the Commission again this afternoon at 4.30 p.m.

UNCIP, Report, S/1100, Annex 21.

99 13 *August* 1948

RESOLUTION OF UNCIP

Having given careful consideration to the points of view expressed by the Representatives of India and Pakistan regarding the situation in the State of Jammu and Kashmir, and

Being of the opinion that the prompt cessation of hostilities and the correction of conditions the continuance of which is likely to endanger international peace and security are essential to implementation of its endeavours to assist the Governments of India and Pakistan in effecting a final settlement of the situation,

Resolves to submit simultaneously to the Governments of India and Pakistan the following proposal:

PART I

Cease-fire order

(*a*) The Governments of India and Pakistan agree that their respective High Commands will issue separately and simultaneously a cease-fire order to apply to all forces under their control in the State of Jammu and Kashmir as of the earliest practicable date or dates to be mutually agreed upon within four days after these proposals have been accepted by both Governments.

(*b*) The High Commands of the Indian and Pakistan forces agree to refrain from taking any measures that might augment the military potential of the forces under their control in the State of Jammu and Kashmir. (For the purpose of these proposals ' forces under their control ' shall be considered to include all forces, organized and unorganized, fighting or participating in hostilities on their respective sides.)

(*c*) The Commanders-in-Chief of the forces of India and Pakistan shall promptly confer regarding any necessary local changes in present dispositions which may facilitate the cease-fire.

(*d*) In its discretion and as the Commission may find practicable, the Commission will appoint military observers who under the authority of the Commission and with the co-operation of both Commands will supervise the observance of the cease-fire order.

(*e*) The Government of India and the Government of Pakistan agree to appeal to their respective peoples to assist in creating and maintaining an atmosphere favourable to the promotion of further negotiations.

PART II

Truce Agreement

Simultaneously with the acceptance of the proposal for the immediate cessation of hostilities as outlined in Part I, both Governments accept

the following principles as a basis for the formation of a truce agreement, the details of which shall be worked out in discussion between the Representatives and the Commission.

(*a*) (1) As the presence of troops of Pakistan in the territory of the State of Jammu and Kashmir constitutes a material change in the situation since it was represented by the Government of Pakistan before the Security Council, the Government of Pakistan agrees to withdraw its troop from the State.

(2) The Government of Pakistan will use its best endeavour to secure the withdrawal from the State of Jammu and Kashmir of tribesmen and Pakistan nationals not normally resident therein who have entered the State for the purpose of fighting.

(3) Pending a final solution, the territory evacuated by the Pakistan troops will be administered by the local authorities under the surveillance of the Commission.

(*b*) (i) When the Commission shall have notified the Government of India that the tribesmen and Pakistan nationals referred to in Part II (*a*)(2) hereof have withdrawn, thereby terminating the situation which was represented by the Government of India to the Security Council as having occasioned the presence of Indian forces in the State of Jammu and Kashmir, and further, that the Pakistan forces are being withdrawn from the State of Jammu and Kashmir, the Government of India agrees to begin to withdraw the bulk of its forces from that State in stages to be agreed upon with the Commission.

(ii) Pending the acceptance of the conditions for a final settlement of the situation in the State of Jammu and Kashmir, the Indian Government will maintain within the lines existing at the moment of the cease-fire those forces of its Army which in agreement with the Commission are considered necessary to assist local authorities in the observance of law and order. The Commission will have observers stationed where it deems necessary.

(iii) The Government of India will undertake to ensure that the Government of the State of Jammu and Kashmir will take all the measures within their power to make it publicly known that peace, law and order will be safeguarded.

(*c*) (i) Upon signature, the full text of the Truce Agreement or a communiqué containing the principles thereof as agreed upon between the two Governments and the Commission will be made public.

PART III

The Government of India and the Government of Pakistan reaffirm their wish that the future status of the State of Jammu and Kashmir

shall be determined in accordance with the will of the people and to that end, upon acceptance of the Truce Agreement, both Governments agree to enter into consultations with the Commission to determine fair and equitable conditions whereby such free expression will be assured.

Defending Kashmir, India, Ministry of Information and Broadcasting, 1949, pp. 177-80.

100 20 *August* 1948

LETTER FROM PRIME MINISTER OF INDIA TO CHAIRMAN, UNCIP

On the 17th of August, my colleague, the Minister without Portfolio, and I discussed with you and your colleagues of the Commission now in Delhi the resolution which you had presented to us on the 14th instant. On the 18th, I had another discussion with you, in the course of which I tried to explain to you the doubts and difficulties which members of my Government, and representatives of the Government of Kashmir whom we consulted, had felt as the result of a preliminary but careful examination of the Commission's proposals.

(2) During the several conferences that we had with the Commission when it first came to Delhi, we placed before it what we considered the basic fact of the situation which had led to the conflict in Kashmir. This fact was the unwarranted aggression, at first indirect and subsequently direct, of the Pakistan Government on Indian Dominion territory in Kashmir. The Pakistan Government denied this although it was common knowledge. In recent months, very large forces of the Pakistan regular army have further entered Indian Union territory in Kashmir and opposed the Indian Army which was sent there for the defence of the State. This, we understand now, is admitted by the Pakistan Government, and yet there has been at no time any intimation to the Government of India by the Pakistan Government of this invasion. Indeed, there has been a continual denial and the Pakistan Government have evaded answering repeated inquiries from the Government of India.

In accordance with the resolution of the Security Council of the United Nations adopted on the 17th January, 1948, the Pakistan Government should have informed the Council immediately of any material change in the situation while the matter continued to be under the consideration of the Council. The invasion of the State by

large forces of the regular Pakistan Army was a very material change in the situation, and yet no information of this was given, so far as we know, to the Security Council.

The Commission will appreciate that this conduct of the Pakistan Government is not only opposed to all moral codes as well as international law and usage, but has also created a very grave situation. It is only the earnest desire of my Government to avoid any extension of the field of conflict and to restore peace, that has led us to refrain from taking any action to meet the new situation that was created by this further intrusion of Pakistan armies into Jammu and Kashmir State. The presence of the Commission in India has naturally led us to hope that any arrangement sponsored by it would deal effectively with the present situation and prevent any recurrence of aggression.

(3) Since our meeting of the 18th August, we have given the Commission's resolution our most earnest thought. There are many parts of it, which we should have preferred to be otherwise and more in keeping with the fundamental facts of the situation, especially the flagrant aggression of the Pakistan Government on Indian Union territory. We recognize, however, that, if a successful effort is to be made to create satisfactory conditions for a solution of the Kashmir problem without further bloodshed, we should concentrate on certain essentials only at present and seek safeguards in regard to them. It was in this spirit that I placed the following considerations before Your Excellency:

(i) That paragraph (*a*)(3) of Part II of the resolution should not be interpreted, or applied in practice, so as

(*a*) to bring into question the sovereignty of the Jammu and Kashmir Government over the portion of their territory evacuated by Pakistan troops,

(*b*) to afford any recognition of the so-called 'Azad Kashmir Government', or

(*c*) to enable this territory to be consolidated in any way during the period of truce to the disadvantage of the State.

(ii) That from our point of view the effective insurance of the security of the State against external aggression, from which Kashmir has suffered so much during the last ten months, was of the most vital significance and no less important than the observance of internal law and order, and that, therefore, the withdrawal of Indian troops and the strength of Indian forces maintained in Kashmir should be conditioned by this overriding factor. Thus at any time the strength of the Indian forces maintained in Kashmir should be sufficient to ensure security against any form of external aggression as well as internal disorder.

(iii) That as regards Part III, should it be decided to seek a solution of the future of the State by means of a plebiscite, Pakistan should have no part in the organization and conduct of the plebiscite or in any other matter of internal administration in the State.

(4) If I understood you correctly, (*a*)(3) of Part II of the resolution does not envisage the creation of any of the conditions to which we have objected in paragraph (3)(i) of this letter. In fact, you made it clear that the Commission was not competent to recognize the sovereignty of any authority over the evacuated areas other than that of the Jammu and Kashmir Government.

As regards paragraph (3)(ii), the paramount need for security is recognized by the Commission, and the time when the withdrawal of Indian forces from the State is to begin, the stages in which it is to be carried out and the strength of Indian forces to be retained in the State, are matters for settlement between the Commission and the Government of India.

Finally, you agreed that Part III, as formulated, does not in any way recognize the right of Pakistan to have any part in a plebiscite.

(5) In view of this clarification, my Government, animated by a sincere desire to promote the cause of peace and thus to uphold the principles and prestige of the United Nations, have decided to accept the resolution.

UNCIP, Report, S/1100, pp. 32-4.

101 20 *August* 1948

LETTER FROM PRIME MINISTER OF INDIA TO CHAIRMAN, UNCIP

You will recall that in our interview with the Commission on August 17, I dealt at some length with the position of the sparsely populated and mountainous region of the Jammu and Kashmir State in the north. The authority of the Government of Jammu and Kashmir over this region as a whole has not been challenged or disturbed, except by roving bands of hostiles, or in some places like Skardu which have been occupied by irregulars of Pakistan troops. The Commission's resolution, as you agreed in the course of our interview on the 18th, does not deal with the problem of administration or defence in this large area. We desire that, after Pakistan troops and irregulars have withdrawn from the territory, the responsibility for the administration of the evacuated areas should revert to the Government of Jammu and

Kashmir and that for defence to us. (The only exception that we should be prepared to accept would be Gilgit). We must be free to maintain garrisons at selected points in this area for the dual purpose of preventing the incursion of tribesmen, who obey no authority, and to guard the main trade routes from the State into Central Asia.

UNCIP, Report, S/1100, p. 35.

102 25 *August* 1948

LETTER FROM CHAIRMAN, UNCIP TO FOREIGN MINISTER, INDIA

I have the honour to acknowledge the receipt of your communication dated 20 August 1948, regarding the terms of the Resolution of the United Nations Commission for India and Pakistan which the Commission presented to you on 14 August 1948.

The Commission requests me to convey to Your Excellency its view that the interpretation of the Resolution as expressed in paragraph 4 of your letter coincides with its own interpretation, it being understood that as regards point 1 (*c*) the local people of the evacuated territory will have freedom of legitimate political activity. In this connection, the term ' evacuated territory ' refers to those territories in the State of Jammu and Kashmir which are at present under the effective control of the Pakistan High Command.

The Commission wishes me to express to Your Excellency its sincere satisfaction that the Government of India has accepted the Resolution and appreciates the spirit in which this decision has been taken.

I wish to avail myself of this opportunity to renew to Your Excellency the assurances of my highest consideration.

UNCIP, Report, S/1100, p. 34.

103 25 *August* 1948

LETTER FROM CHAIRMAN OF COMMISSION TO PRIME MINISTER OF INDIA

I have the honour to acknowledge receipt of your letter of 20 August 1948 relating to the sparsely populated and mountainous region of the State of Jammu and Kashmir, in the North.

The Commission wishes me to confirm that, due to the peculiar conditions of this area, it did not specifically deal with the military aspect of the problem in its Resolution of August 13, 1948. It believes, however, that the question raised in your letter could be considered in the implementation of the Resolution.

UNCIP, Report, S/1100, p. 35.

104 19 *August* 1948

PAKISTAN'S MEMORANDUM

Preliminary

(1) It has been explained to the Commission that it is only the Azad Kashmir Government that can authorize the issue of cease-fire orders to their own forces. The Pakistan Government wish to be informed what steps the Commission has taken or proposes to take to secure the agreement of the Azad Kashmir Government to its proposals.

Preamble to Commission's Resolution

(2) The preamble to the Resolution of the Commission states that certain conditions are essential to the implementation of the Commission's endeavours 'to assist the Governments of India and Pakistan in effecting a final settlement of the situation'. The Government of Pakistan are unable to appreciate the exact significance of this statement. The preamble to the Security Council's Resolution dated the 21st April 1948 clearly affirms the desire of both India and Pakistan 'that the question of accession of Jammu and Kashmir to India or Pakistan should be decided through the democratic method of a free and impartial plebiscite', and instructs the Commission to 'place its good offices and mediation at the disposal of the Governments of India and Pakistan with a view to facilitating the taking of the necessary measures, both with respect to the restoration of peace and order and the holding of a plebiscite by the two Governments, acting in co-operation with one another and with the Commission', and recommends certain measures to the two Governments as being in its opinion 'appropriate to bring about a cession of the fighting and to create proper conditions for a free and impartial plebiscite to decide whether the State of Jammu and Kashmir is to accede to India or Pakistan'.

It is thus clear that the dispute between the two Dominions relating to Jammu and Kashmir is 'whether the State of Jammu and Kashmir

is to accede to India or Pakistan', and that the settlement of this dispute is to be brought about by means of a free and impartial plebiscite. It is presumed, therefore, that the expression 'a final settlement of the situation' employed by the Commission in the preamble to its Resolution means in the words of the Security Council the creation of 'proper conditions for a free and impartial plebiscite to decide whether the State of Jammu and Kashmir is to accede to India or Pakistan'. If the expression 'a final settlement of the situation' has any implication, direct or indirect, whether falling short of or going beyond the quotation set out from the Security Council's Resolution, the Government of Pakistan wish to be apprised of it.

Part I of the Commission's Resolution

(3) The Pakistan Government are unable to appreciate the exact significance of the opening words of paragraph (*d*) of Part I of the Resolution. If and when a cease-fire has been arranged, the Commission will be under the inescapable necessity of appointing military observers for the purpose set out in the paragraph. The number, duties, functions and postings of these observers will, no doubt, be at the discretion of the Commission. The Pakistan Government wish to be certain that the Commission are not in any doubt that if a cease-fire order is agreed to, its observance will inevitably require supervision by neutral military observers appointed by and acting under the authority of the Commission.

Part II of Commission's Resolution

(4) The discussions before the Security Council on the subject of Jammu and Kashmir proceeded on the basis that India did not desire a military solution of the problem, but would be content to abide by the results of a free and impartial plebiscite. It was recognized by the Security Council that the fighting in Jammu and Kashmir had flared up as the result of military and other repressive measures adopted by the Ruler against his subjects, and that the only method of securing a cessation of the fighting was to create conditions which would satisfy everybody concerned that the question of accession of the State to India or Pakistan would be settled on the basis of a free and impartial plebiscite. While the Security Council was still engaged on the consideration of the Kashmir case, India was steadily building up its armed forces in Jammu and Kashmir. This building up process did not cease on 21st April 1948, but was continued and intensified. The Indian Army mounted a big offensive in the beginning of April, thereby causing a material change in the situation. This offensive action has continued ever since. The publicly declared intention

of the Government of India was to secure a military decision in Jammu and Kashmir, thus presenting the United Nations Commission with a *fait accompli*. This situation not only put in jeopardy the entire population of the areas under the Azad Kashmir Government, and led to a big influx of refugees into Pakistan, but also constituted a direct threat to Pakistan's security. It was this which compelled the Government of Pakistan to move their troops into certain defensive positions.

Paragraph (*a*)(1) of Part II of the Commission's Resolution states that the presence of Pakistan troops in the territory of the State constitutes a material change in the situation since it was represented by the Government of Pakistan before the Security Council. This is obviously a one-sided and inadequate description, since, as pointed out above, the build up of India's forces, and their launching an all-out offensive had already materially changed the situation. Even as a factual statement, apart altogether from the feasibility or otherwise of the proposal based upon it, the paragraph should have included the facts mentioned above which necessitated the presence of Pakistan troops in Jammu and Kashmir. The Government of Pakistan are unable to appreciate the omission.

(5) Without at all implying that the proposals set out in the Resolution of the Commission could form the basis of discussion, the Pakistan Government feel that the possibility of the truce being broken by the Government of India cannot be ruled out. It would materially assist the Pakistan Government in their appreciation of the various proposals contained in the Resolution, if the Commission would be so good as to take the Pakistan Government into its confidence as to the measures or guarantees which the Commission may have in mind to safeguard the security of Pakistan and the population of the areas under the control of the Azad Kashmir Government against any subsequent aggressive action by the Government of India and of the Sikh and RSS volunteer bands. In particular, the Pakistan Government would be glad to know whether the Commission intend to secure the services of an international or neutral force for this purpose, and if so, what the strength of such a force would be.

(6) Paragraph (*a*)(2) seeks the agreement of the Pakistan Government to the using of their best endeavours to secure the withdrawal from the State of tribesmen, etc., who have entered the State for the purpose of fighting. The Commission is no doubt aware that the Security Council was convinced that it would not be possible to persuade the tribesmen and other sympathizers of the Azad Kashmir Government to withdraw unless they were satisfied as to the security of the Muslim population of the State and the establishment of conditions for a free and impartial plebiscite. The Government of Pakistan are unable to discover any

proposals in the Resolution of the Commission designed to secure and guarantee these conditions. Would the Commission kindly indicate what measures it proposed to adopt to convince the tribesmen and other elements concerned that these conditions have been or will be established, and that no danger or prejudice would result to the Muslim population of the State even if the terms of the truce were subsequently broken by the Government of India?

(7) It has been explained to the Commission that a large number of Sikh and RSS volunteer bands have entered the State since the 15th August 1947, and have been operating in the areas occupied by the Indian armed forces, committing all kinds of atrocities upon and terrorizing the Muslim population. There is no proposal in the Resolution of the Commission to the effect that such elements must withdraw from the State. The Pakistan Government wish to be informed what proposal the Commission has in mind in this connection.

(8) In paragraph (*a*)(3) the Commission proposes that, pending a final solution, the territory at present under the control of the Azad Kashmir Government will be administered by that Government under the surveillance of the Commission. The Commission no doubt realizes that the population of this territory is almost wholly Muslim and is in full support of the Azad Kashmir Government. On the other hand, the majority of the population of the territory under the control of the Government of India is opposed to the régime established by the Government of India. The Government of Pakistan would wish to be enlightened as to the reasons which, while necessitating or rendering desirable the surveillanee of the Commission over the Azad Kashmir Government in respect of the territories of the latter, would not with much greater force call for the surveillance of the Commission over the régime operating in the rest of the State. Since the Commission considers that it is in a position to take certain territories under its surveillance, there would appear to be no objection, in principle, to the Commission taking the whole of Jammu and Kashmir under its surveillance.

(9) The Commission has asked for the withdrawal of Pakistan troops from Jammu and Kashmir, though these troops are in wholly Muslim areas and have been welcomed by the local population. On the other hand, the Commission is aware of the serious objections to the quartering of non-Muslim troops on a predominantly Muslim population. The Government of Pakistan therefore wish to be informed of the reasons which necessitate the retention of any portion of India's armed forces in Jammu and Kashmir.

(10) Assuming that a truce could be agreed upon on the basis of the Commission's proposals, the Government of Pakistan would

appreciate an indication from the Commission of the manner in which the Commission proposes, in accordance with the concluding portion of paragraph (*b*)(1), to secure a synchronized and simultaneous withdrawal of the Pakistan forces and the bulk of the Indian forces from the State.

(11) The Pakistan Government wish to know whether the surveillance of the Commission over the territories of Azad Kashmir implies any control over the Azad Kashmir forces which would under the Commission's proposals remain intact. If so, what control does the Commission contemplate exercising over the State forces, the local militia raised by Sheikh Abdullah and over any Indian armed forces that may be left in the State under the Commission's proposals?

(12) The Security Council's Resolution of 21st April 1948, contemplates the maintenance of law and order throughout the State with the aid of local forces. Does the Commission contemplate that any additional forces would be required for the maintenance of law and order in any part of the State? If so, the Pakistan Government would welcome an indication of the Commission's view whether it intends to call upon both India and Pakistan to provide such forces as contemplated in Article 5 of the Security Council's Resolution of 21st April, 1948.

(13) The Security Council's Resolution of April 21st, 1948, sets out in Articles 11, 12 and 14 a number of conditions for the restoration of human and political rights, including the return of those who had left or been compelled to leave the State since 15th August 1947. The Pakistan Government wish to be informed whether paragraph (*b*)(3) of the Commission's Resolution is intended to cover and guarantee all these conditions from the moment a truce is agreed upon.

Part III of the Commission's Resolution

(14) The observations submitted in paragraph (2) above apply with equal force to Part III of the Commission's Resolution. The Government of Pakistan would welcome an elucidation of this Part. It states that 'the future status of the State of Jammu and Kashmir shall be determined in accordance with the will of the people' and that the Government of India and the Government of Pakistan shall 'enter into consultations with the Commission to determine fair and equitable conditions whereby such free expression will be assured'. It may be pointed out that some of these conditions are set out in the Security Council's Resolution of 21st April, 1948. It is presumed that consultations between the two Governments and the Commission would be designed to secure the implementation of these conditions and the

devising of any further conditions that may become necessary or may appear to be desirable.

The most important of the conditions agreed upon by the Security Council were that:

(*a*) The Government of Jammu and Kashmir would be reconstituted so as to ensure that the major political groups in the State would share 'equitably and fully in the conduct of the administration at ministerial level' (Article 6), and the interim administration so formed would, in the words of Senator Austin, be such as 'would command the confidence and respect of all the people of the State and would be a symbol to the people on both sides that the Government of the State was officially neutral on this issue' of accession to India or Pakistan.

(*b*) A Plebiscite Administrator would be appointed by the Secretary-General of the United Nations and would be vested with wide powers, including power of direction and supervision of State forces and police (Articles 7, 8 and 9).

(*c*) The appointment of Special Magistrates to deal with certain types of cases (Article 10).

The Pakistan Government presume that the object of the concluding portion of Part III of the Commission's Resolution is to secure agreement on the implementation of these among other conditions of a free and impartial plebiscite to decide whether the State of Jammu and Kashmir is to accede to India or Pakistan.

UNCIP, Report, S/1100, Annex 26, pp. 3-7.

105 27 *August* 1948

REPLY OF UNCIP TO PAKISTAN'S MEMORANDUM

(1) (*a*) On 18 July 1948, during the interview between Dr Alfredo Lozano and Sir Mohammed Zafrullah Khan, the latter emphasized that in submitting the condition that the proposal for a cease-fire order should have the consideration or approval of the Azad Kashmir forces, his only aim was to ensure that their views be taken into account —whether by the appearance of representatives of the 'Azad Kashmir' before the Commission or through the Pakistan Government as intermediary.

(*b*) In answer to the questionnaire placed by the Commission before the Government of Pakistan on 4 August 1948, the Minister for Foreign Affairs stated that 'the Pakistan Army is at present responsible for the overall command . . . of Azad Kashmir forces'.

(*c*) During the exposé made by the High Command of the Pakistan Army on 9 August 1948, it was stated that the Azad Kashmir forces were operationally controlled by the Pakistan Army.

(*d*) In view of these assurances, the Commission understands that the Government of Pakistan will ascertain and reflect the position of the Azad authorities in arriving at their decision with regard to the Commission's resolution of 13 August 1948.

(2) The expression ' a final settlement of the situation ' does not fall short of, nor go beyond the terms of the Security Council resolution of 21 April 1948, and is in harmony with it. The Commission, however, is not committed to a rejection of a peaceful solution which might be agreed upon by the two Governments, provided that such solution reflects the will of the people.

(3) The Commission is in no doubt that the observance of the cease-fire order will require neutral military observers. These observers will be appointed by the United Nations and will act under the authority of the Commission.

(4) The Security Council resolution of 21 April 1948, which sets forth the terms of reference of the Commission was adopted with cognizance of the presence of Indian troops in the State of Jammu and Kashmir. The presence of Pakistan troops in Jammu and Kashmir, however, constitutes a material change in the situation inasmuch as the Security Council did not contemplate the presence of such troops in that State, nor was it apprised thereof by the Government of Pakistan. The Commission cannot accept the statement in the memorandum that the Commission's description in this respect is ' one-sided and inadequate '.

(5) In drawing up the resolution of 13 August 1948, the Commission did not and could not proceed on the assumption that one or the other party would violate the truce. The implementation of the resolution presupposes good faith and co-operation between the two parties.

As the Government of Pakistan are aware, the United Nations does not have at its disposal an international force. The use of a neutral force has not been contemplated by the Commission. However, the Government of Pakistan will have noted that the resolution provides for neutral military observers to be stationed where the Commission deems it necessary.

(6) The Commission reaffirms its conviction that good faith and active collaboration on the part of both Governments are essential to the implementation of the resolution. Under the terms of the resolution, the Government of India are bound to assist local authorities in maintaining law and order in areas now occupied by Indian troops; further, the Government of India undertake to ensure that the

Government of the State of Jammu and Kashmir will take all measures within their power to make it publicly known that peace, law, and order will be safeguarded and that all human and political rights will be guaranteed.

The Commission is convinced that confidence in the purpose and objectives of the resolution will be promoted by the appeals that the two Governments make to all concerned for the creation and maintenance of an atmosphere conducive to a satisfactory solution.

Acceptance of the truce agreement will lead directly to consultation between the two Governments and the Commission to determine fair and equitable conditions whereby the free expression of the will of the people will be assured.

(7) Pending the acceptance of the conditions for a final settlement, Indian forces as provided for in Part II (*b*)(2) will assist local authorities in the maintenance of law and order. Upon acceptance of the truce agreement, withdrawal of elements mentioned in the memorandum will be considered in the implementation of Part III and under the provisions of the Security Council's resolution of 21 April 1948.

(8) Surveillance of territories of the State of Jammu and Kashmir other than those now occupied by the Pakistan Army and forces under their control is not provided for in the resolution. The administration of such areas remains under the jurisdiction of the Government of the State.

(9) A portion of the Indian armed forces will remain in the State of Jammu and Kashmir for the purposes indicated in Part II (*b*)2 of the resolution.

(10) In accordance with Part II (*b*)1 of the resolution, the Indian Government, when apprised that the Pakistan forces are being withdrawn from the State of Jammu and Kashmir, agree to begin to withdraw the bulk of their forces from the State in stages to be agreed upon with the Commission. Synchronization of the withdrawal of the armed forces of the two Governments will be arranged between the respective High Commands and the Commission.

(11) The Commission does not contemplate measures of control over forces remaining within the State of Jammu and Kashmir beyond the provisions of the resolution.

(12) The Commission has not contemplated the use of forces for the maintenance of law and order other than those envisaged under the terms of its resolution of 13 August 1948.

(13) Paragraph (*b*)3 of Part II of the Commission's resolution which relates to the truce agreement, is not intended to deal with the questions raised in paragraphs 11, 12, and 14 of the Security Council's resolution of 21 April 1948. These questions, relating to the plebiscite

will logically arise in the implementation of Part III of the Commission's resolution of 13 August 1948.

(14) Part III of the Commission's resolution envisages that both Governments reaffirm their desire that the future status of the State of Jammu and Kashmir be decided in accordance with the will of the people, and that upon the acceptance of the truce agreement, their representatives enter into consultation with the Commission in order to establish the conditions under which the free expression of the will of the people will be assured.

UNCIP, Report, S/1100, Annex 27, pp. 2-4.

106 3 *September* 1948

CHAIRMAN, UNCIP TO FOREIGN MINISTER, PAKISTAN

On 19 August 1948 you were kind enough to present to Minister Dr A. Lozano, then Chairman of the United Nations Commission for India and Pakistan, a letter dated 19 August 1948 with a Memorandum attached asking for clarification of a number of points in the United Nations Commission's Resolution of 13 August 1948.

The points contained in the Memorandum were answered by the Commission's letter dated 27 August 1948.

Moreover, during the two meetings which the Commission had with you on 31 August and 2 September, ample opportunity was given for further clarification of certain points of the Resolution.

At your request the Commission is glad to offer you the following interpretation of points on which you asked for additional elucidation:

(1) In connection with paragraph (*a*)3 of Part II of the Resolution the term ' evacuated territory ' refers to those territories in the State of Jammu and Kashmir which are at present under the effective control of the Pakistan High Command, it being understood that the population of these territories will have freedom of legitimate political activity.

(2) The Commission reaffirms that, according to its Resolution, United Nations neutral military observers will be posted on both sides of the cease-fire line with the object of ensuring that the conditions of the truce are adhered to. In case of a breach of any of these conditions, a report will be made to the Commission, and the Commission, on being satisfied that action in respect of the report is necessary, will call upon the authorities in either area to take the desired action.

(3) As regards paragraphs (*b*)1 and 2 of Part II, the Commission, while recognizing the paramount need for security of the State of Jammu and Kashmir, confirms that the minimum strength required for the purpose of assisting the local authorities in the observance of law and order, would be determined by the Commission and the Government of India. The Commission considers that it is free to hear the views of the Government of Pakistan on the subject.

(4) As regards Part III:

(*a*) You are respectfully referred to paragraph (2) of the Commission's Memorandum accompanying its letter dated 27 August, which clarifies the position of the Commission on this subject.

(*b*) The Commission will be guided by the terms of the Security Council's Resolution of 21 April, 1948, setting forth the conditions for a plebiscite, subject to such modifications as the Commission might determine with the agreement of the Governments of Pakistan and India.

(5) Regarding publication, the Commission has the honour to inform you that it will publish, after having received the answers of both Governments to its Resolution, the full text of the Resolution and the correspondence relevant to it as exchanged between the Commission and the two respective Governments.

UNCIP, Report, S/1100, pp. 38-9.

107 6 *September* 1948

PAKISTAN GOVERNMENT REPLY TO UNCIP RESOLUTION OF 13 AUGUST 1948

The Government of Pakistan have had under serious and anxious consideration the proposals made by the Commission in its Resolution of the 13th August, 1948, and the clarifications and elucidations of its provisions that the Commission has since furnished in the course of discussion and in writing. They are now in a position to transmit to the Commission their views on these proposals as clarified and elucidated by the Commission.

(2) They desire to make it quite clear at the outset that these views are the views of the Government of Pakistan and are not as such in any sense binding upon the Azad Kashmir Government, nor do they in any manner reflect the views of the Azad Kashmir Government. They note that it is the intention of the Commission to hold discussions with Azad Kashmir representatives, as individuals, and

they do not doubt that these representatives will convey to the Commission the views of their Government on the proposals of the Commission. The Government of Pakistan would at all times be prepared to lend their good offices to persuade the Azad Kashmir Government to accept the view of the proposals of the Commission which the Pakistan Government themselves take, but such acceptance must rest finally with the Azad Kashmir Government themselves. As has already been explained to the Commission, political control over the Azad Kashmir forces vests in the Azad Kashmir Government, and it is the latter Government alone that has authority to issue a cease-fire order to those forces, and to conclude terms and conditions of a truce which would be binding upon those forces.

(3) It must further be stressed that the struggle for the liberation of Kashmir was initiated by Azad Kashmir, now represented by the Azad Kashmir Government, and that that Government is a necessary party to any settlement of the Kashmir question. Indeed, this view is implicit in the proposals of the Commission itself, inasmuch as these proposals postulate a course of co-operation between the Commission and the local authorities in several respects.

(4) It is common ground that the question in dispute with reference to the State of Jammu and Kashmir is the accession of the State as a whole to Pakistan or India, and that this question is to be determined by the democratic method of a free and impartial plebiscite.

(5) With regard to the conditions of the plebiscite the Commission has explained that it will be guided by the terms of the Security Council Resolution of the 21st April, 1948, setting forth the conditions for a plebiscite subject to such modifications as the Commission might determine with the agreement of the Governments of Pakistan and India. In interpreting the terms of the Security Council's Resolution the Commission will no doubt be guided by the explanations offered by the sponsors of the Resolution during the course of the discussion of the Resolution in the Security Council.

(6) As a result of the clarifications and elucidations furnished by the Commission, the Government of Pakistan understand that the Commission's Resolution of the 13th August, 1948 seeks to achieve the objectives outlined below:

First, a cease-fire order in accordance with the proposals set out in Part I of the Resolution, so that the fighting may be brought to an end.

Secondly, that the conditions of a truce, the period of which the Commission is anxious to reduce to a minimum, be agreed upon in accordance with the proposals set out in Part II of the Commission's Resolution. These proposals contemplate that the actual determination

of the cease-fire line and the synchronization of the withdrawal of the armed forces of the Governments of Pakistan and India shall be arranged between the High Commands of the two Governments and the Commission, and that all territory under the authority or control of Azad Kashmir, shall during the period of the truce continue to be administered by the authorities which are in *de facto* control of it at the time of the cease-fire, and that no civil or military officer of the Government of India or of the State Government shall enter into or exercise any authority over it. The Azad Kashmir forces shall remain intact, i.e. shall not be disarmed or disbanded. The surveillance contemplated by the Commission over the local authorities does not imply the exercise of control over or interference with the administration.

Thirdly, that this period be utilized towards restoring peaceful conditions throughout the territories of the State of Jammu and Kashmir, so that once that was achieved to a reasonable degree, the conditions for preparing and holding a free and impartial plebiscite could be put into effect forthwith. The Commission would also consider during this period, along with the representatives of the Government of India and the Government of Pakistan, any proposals suggesting additions to or modifications of the conditions set out in Part B (articles (6) to (15), both inclusive) of the Security Council's Resolution of the 21st April, 1948.

Fourthly, that the Commission proceed to prepare and hold the plebiscite at the earliest possible date. As soon as this stage is reached, the conditions of a free and impartial plebiscite shall be put into operation and shall over-ride all arrangements in operation during the period of the truce which are inconsistent with those conditions.

(7) The Government of Pakistan desire to stress that they are interested in and would be affected by the result of the plebiscite at least in an equal degree with the Government of India, and they assume that it will be the constant endeavour of the Commission to bring about and promote conditions in and affecting the State of Jammu and Kashmir which would place the two Governments on a position of absolute equality and advantage *vis-à-vis* the plebiscite, and should leave no room for any feeling on the part of either Government and indeed of any section of the people of the State that any party or section was subject to any handicap or disadvantage, or enjoyed any position of privilege or advantage denied to any other.

(8) In the view of the Pakistan Government the presence of the armed forces of the Government of India in any part of the State would militate against the restoration of peaceful conditions and would also conflict with the establishment of conditions for a free and impartial

plebiscite. This is a view that the Government of Pakistan intend to continue to urge upon the Commission for their acceptance.

(9) The Commission will recall that the Security Council was firmly of the view that the only effective method of stopping fighting in Kashmir was to provide clear and adequate assurance to Azad Kashmir and to the tribesmen helping them that the structure of a settlement had been erected which would guarantee to the people of the State the free expression of their will in respect of the accession of the State of Jammu and Kashmir to Pakistan or India, and to this end the Security Council laid down a set of conditions in Part B of its Resolution of 21st April, 1948. The considerations that led the Security Council to this view operate with even greater force today. Without these assurances the Pakistan Government could not be expected successfully to persuade the tribesmen to withdraw from the State. It is therefore absolutely essential that as part of the Truce Agreement, the acceptance of the Government of India should be secured to the minimum conditions for a free and impartial plebiscite to decide whether the State of Jammu and Kashmir shall accede to India or Pakistan as laid down in Part B (articles (6) to (15), both inclusive) of the Security Council's Resolution dated the 21st April, 1948, and explained by the sponsors of the Resolution in the Security Council. In the view of the Government of Pakistan these conditions are susceptible of improvement, and the Commission would no doubt hold further discussions with both Governments for the purpose of securing their agreement to such additions and modifications as may be urged before the Commission or which the Commission may consider necessary.

(10) The Government of Pakistan have not been informed of any clarifications and elucidations of the proposals contained in the Commission's Resolution of the 13th August, 1948, that the Commission may have furnished to the Government of India. If no clarifications or elucidations have been furnished, no point in that behalf arises. If any clarifications or elucidations have been furnished by the Commission to the Government of India, it is necessary that they should be communicated to the Government of Pakistan and the latter's agreement to them secured. It is equally necessary that the clarifications and elucidations furnished by the Commission to the Government of Pakistan should be communicated to the Government of India and their acceptance of them secured. The Commission will recognize that it is of the utmost importance that any agreement between the two Governments should be arrived at on the clearest possible basis, so that there is left no possibility of any misunderstanding of any of the matters agreed upon. In other words, it is essential that the two

Governments should agree simultaneously to the same thing and in the same sense.

(11) Although there are several features in the Commission's proposals which from the point of view of the Pakistan Government are not satisfactory, nevertheless, as a step towards the solution of the situation in the State of Jammu and Kashmir, and in the interest of furthering international peace and security, the Pakistan Government have authorized me to inform the Commission that:

Subject to the clarifications and elucidations furnished by the Commission to the Government of Pakistan being accepted by the Government of India, and the elucidations and clarifications, if any, furnished by the Commission to the Government of India being acceptable to the Government of Pakistan, and provided the Government of India accept the conditions laid down in Part B (articles (6) to (15) both inclusive) of the Security Council's Resolution of 21st April, 1948, as explained by the sponsors of the Resolution in the Security Council, for a free and impartial plebiscite to decide whether the State of Jammu and Kashmir is to accede to India or Pakistan, the Government of Pakistan accept the proposals contained in the Commission's Resolution of the 13th August, 1948, as clarified and elucidated to the Pakistan Government by the Commission.'

UNCIP, Report, S/1100, pp. 41-5.

108 19 *September* 1948

CHAIRMAN, UNCIP TO FOREIGN MINISTER, PAKISTAN

The Commission has given careful consideration to your first letter of 6 September 1948 in which you have transmitted the views of your Government on its Resolution of 13 August. Several of the points raised therein are covered by the terms of the Resolution and by the elucidations offered to you in its communications of 27 August (S/AC. 12/55), 3 September (S/AC. 12/58), and 7 September (S/AC. 12/62).

(2) As regards the other points of your letter, the Commission wishes to confirm its oral explanations, as follows:

(*a*) With respect to point 2, the Commission was repeatedly informed by you and by representatives of the Pakistan Army that the Azad Kashmir forces were under the overall control of the Pakistan High Command. In connection with the political aspect of the question raised in points 2 and 3, the existence of the Azad Kashmir Movement

has not been ignored by the Commission, consideration thereof appearing in Part II (*a*)(3) of its Resolution of 13 August.

(*b*) As regards the last sentence of point 5, the Commission wishes to repeat that the individual explanations offered by the sponsors of the Security Council's Resolution do not form a part of that document and are not binding upon the Commission, but receive due consideration by the Commission in its deliberations.

(*c*) Concerning point 6, the objectives the Commission seeks to achieve are clearly outlined in its Resolution and are elucidated in its letter of 27 August, Appendix 1, and in its letter of 3 September. Moreover, the Commission agrees that it will be anxious to reduce the truce period to a minimum and that the Resolution does not contemplate the disarmament or disbanding of Azad Kashmir forces.

(*d*) The Commission considers that the questions raised in points 7, 8 and 9 of your letter are not pertinent at this stage, but relate instead to the agreement envisaged in Part III of the Resolution. As for the particular issue raised in point 9, the Commission stresses again its conviction that the objectives and terms of its Resolution provide adequate incentives to obtain the co-operation of the Azad Kashmir forces and of the tribesmen in the implementation of the Resolution through the good offices offered by the Pakistan Government.

(*e*) As regards point 10, the text of the Resolution and the correspondence relevant to it, as exchanged between the Commission and the two respective Governments, has been published. The explanations offered by both Governments are in full harmony.

(3) As regards the conclusions contained in point 11 of your letter, upon presentation of the Resolution the Commission requested the Governments of Pakistan and India to consider and accept this document as a whole. It was intended that the details for the implementation of the Resolution be discussed at common meetings between the representatives of both Governments and the Commission in subsequent stages, and following the cessation of hostilities. The Commission observes with regret that the Government of Pakistan has been unable to accept the Resolution without attaching certain conditions beyond the compass of this Resolution, thereby making impossible an immediate cease-fire and the beginning of fruitful negotiations between the two Governments and the Commission to bring about a peaceful and final settlement of the situation in the State of Jammu and Kashmir.

The Commission sincerely hopes that the Government of Pakistan may find it possible to reconsider their position and accept the proposals

contained in its Resolution of 13 August 1948, as clarified and elucidated in the present letter and the correspondence mentioned therein.

UNCIP, Report, S/1100, pp. 51-2.

109 21 *December* 1948

MINISTRY OF EXTERNAL AFFAIRS, INDIA TO UNCIP

His Excellency Dr Lozano, accompanied by his Alternate, Mr Samper, and His Excellency Mr Colban, Personal Representative of the Secretary General of the United Nations, met the Prime Minister yesterday. The Hon'ble Shri Gopalaswami Ayyangar and Sir G. S. Bajpai were also present. The discussions of the Commission's plebiscite proposals fell into two parts: (i) General, (ii) Particular in reference to individual clauses.

(2) The Prime Minister drew attention to Pakistan's repeated acts of aggression against India. In spite of the presence of Pakistan troops in Jammu and Kashmir, which is Indian territory now, and the offensive action of Pakistan troops, the Government of India had accepted the Commission's Resolution of 13 August. Pakistan had not accepted that Resolution. In paragraph 143 of its report, the Commission has referred to its conference with the Prime Minister on the conditions attached by the Government of Pakistan to its acceptance of the Resolution of 13 August. As stated in paragraph 144 of the report, the Prime Minister had informed the Commission that he stood on his original premises that the Pakistan forces must be withdrawn from the State before the Government of India could consider any further steps. This had specific reference to an amplification of Part III of the Resolution of 13 August. Nevertheless, the Government of India had agreed to informal conversations in Paris which had resulted in the formulation of the proposals now put forward by the Commission. The Government of India naturally wondered how far this process of rejection of proposals put forward by the Commission by Pakistan and the adoption of a responsive attitude on the part of the Government of India towards the Commission's proposals could continue. The Commission must realize that there were limits to the forbearance and spirit of conciliation of the Government of India. The Prime Minister emphasized (i) that, if the Government of India were to accept the Commission's plebiscite proposals, no action could be taken in regard to them until Parts I and II of the Commission's Resolution of 13 August had been fully implemented;

(ii) that in the event of Pakistan not accepting these proposals, or having accepted them, not implementing Parts I and II of the Resolution of 13 August, the Government of India's acceptance of them should not be regarded as in any way binding upon them; (iii) Part III of the Commission's Resolution of 13 August provided 'that the future status of the State of Jammu and Kashmir shall be determined in accordance with the will of the people and to that end, upon acceptance of the truce agreement, both Governments agree to enter into consultations with the Commission to determine fair and equitable conditions whereby such free expression will be assured'. The present proposals appeared to limit the method of ascertaining the will of the people regarding the future status of the State of Jammu and Kashmir to a plebiscite. While the Government of India adhered to their position in regard to a plebiscite, they had pointed out that, in view of the difficulties of holding a plebiscite in present conditions in Kashmir, other methods of ascertaining the wish of the people should also be explored. The Commission had itself recognized the difficulties of carrying out a plebiscite in Kashmir. The Government of India feel that the exploration of other methods should not be ruled out.

(3) As regards (i) Dr Lozano enquired whether there would be objection to the appointment of a Plebiscite Administrator until Parts I and II of the Resolution of 13 August had been implemented. Both he and Mr Colban thought that the Plebiscite Administrator could do useful exploratory work even before arrangements for holding a plebiscite could be taken in hand. The Prime Minister pointed out that it was always open to the Commission to employ advisers or experts for work within its terms of reference. The Government of India, however, would regard the appointment of a Plebiscite Administrator, as such, to be premature until Parts I and II of the Resolution of 13 August had been implemented. Dr Lozano accepted (ii). As regards (iii), he said that the Commission wished the possibility of a plebiscite to be explored first. Should the Plebiscite Administrator, however, find a plebiscite to be impracticable, the way would be open to consider other methods for ensuring a free expression by the people of Jammu and Kashmir of their wish regarding the future status of the State.

(4) *B. (i) Preamble.* The phrase 'The Governments of India and Pakistan simultaneously accept' is incorrect in that either Government may not accept the principles supplementary to the Resolution of 13 August. Even if both Governments accept them, the acceptance cannot be simultaneous. The wording should be changed accordingly.

B.3 (b) The question was raised whether the form of words employed was intended to give to the Plebiscite Administrator powers of interference in the administration of the State, e.g., by ' direction and supervision of State forces and police', mentioned in paragraph B. (8) of Security Council's Resolution of 21 April, 1948. Dr Lozano said that this was not the intention of the Commission and that the words quoted above had been deliberately omitted. The Prime Minister pointed out that all that the Plebiscite Administrator could in reason expect was that, for the purpose of organizing and conducting the plebiscite and ensuring its freedom and impartiality, the Government of Jammu and Kashmir should give him such assistance as he might require. Dr Lozano said that a Plebiscite Administrator of international standing and commanding general confidence, who would be appointed after consultation with the Government of India, could be expected to act reasonably and that the Commission did not intend that he should usurp the functions of the State Government in the field of normal administration and law and order. His functions and powers would be limited to ensuring that the plebiscite was free and impartial.

B.4 (b) The Prime Minister drew attention to the fact that the Azad Kashmir forces which had been armed and equipped by Pakistan and were under the operational command of the Pakistan Army ran into tens of thousands. Their presence in the territories referred to in *(a)* (3) of Part II of the Resolution of 13 August, even after demobilization, would be a constant threat to the territory under the control of Indian and State forces, a deterrent to the return of many refugees, and an obstacle to the free expression of opinion regarding the future status of the State by those who might be opposed to the accession of the State to Pakistan. Dr Lozano pointed out that it was the Commission's intention that there should be large-scale disarming of these forces, though it would not be possible to require withdrawal from these territories of genuine inhabitants of these areas.

B.6 (a) Dr Lozano agreed that it was not the Commission's intention that the Pakistan Commission should operate outside Pakistan. Thus, the Pakistan Commission would not operate in the territory referred to in *(a)* (3) of Part II of the Resolution of 13 August. The Prime Minister then raised the question of the ' free return ' to the State of all citizens who had left it on account of the disturbances. He said that the tendency of Pakistan would be to push as many people as possible into Jammu and Kashmir. If the plebiscite was to be limited, as it should be, to genuine citizens of the State, the entry of persons claiming to be citizens into the State will have to be most carefully checked. How was this to be achieved? Dr Lozano said that the Commission

fully realized the necessity of an accurate and effective check but had not gone into details. Possibly those returning to the State could be stopped and examined at the frontier. The Prime Minister pointed out that, considering the length of the frontier and the ease with which people could slip across the border over mountain tracks, a check on the frontier would be neither easy nor effective, except by the employment of large forces.

Apart from the problem of entry, there is the even more important problem of the rehabilitation and protection of those who have left the State on account of recent disturbances. Homes have been destroyed; property has been lost; there has been wholesale dispossession of persons from the land that they used to cultivate. It is not enough to 'invite' these persons to return to the State. They have to be given full security and to be housed, fed and put in a position to maintain themselves. It may be necessary to lodge these returning citizens of the State temporarily in camps for distribution to their homes. They could not, however, be expected to remain in relief camps for long or to take part in a plebiscite from such camps. The administrative and economic implications of this task were at once significant and onerous. They must receive full attention.

B.6 (b) It is assumed that the Government of Jammu and Kashmir will decide whether or not a person entered the State for a lawful purpose.

B.7 (b) India is a secular State; the United Nations also are a secular organization. Pakistan aims at being a theocratic State. An appeal to religious fanaticism which might tend to disturb law and order could not be regarded as legitimate political activity. The same test would apply to freedom of press and of speech.

As regards the freedom of lawful entry and exit, this must obviously be governed by *B.6* of the proposals. It is assumed that in the territory under their control, entry and exit will be regulated by rules framed for the purpose by the Government of Jammu and Kashmir, with due regard to the Security of the State and the maintenance of law and order. Dr Lozano said that a system of permits would probably be necessary.

B.7 (c) Persons guilty of ordinary offences against law and order will not be regarded as political prisoners.

(5) In all their negotiations the Government of India have emphasized the paramount need of ensuring the security of the State. The Commission recognized this in their Resolution of 13 August; they have also provided in 4(*a*) of the plebiscite proposals that measures with regard to the final disposal of Indian and State forces will be taken with due regard to the security of the State. The Government

of India wish to emphasize the supreme importance which they attach to adequate provision for the security of the State in all contingencies.

UNCIP, Report, S/1196, pp. 23-6.

110 22 *December* 1948

MINISTRY OF EXTERNAL AFFAIRS, INDIA TO UNCIP

His Excellency Dr Lozano and His Excellency Mr Colban met the Prime Minister. The Hon'ble Shri N. Gopalaswami Ayyangar, Sir Girja Shanker Bajpai and Mr Pai were also present.

(2) Dr Lozano said that the *aide mémoire* of the conference which took place on Monday, the 20 December, was a correct account of the proceedings. He suggested, however, that the phrase ' large-scale disarming ' of the Azad Kashmir forces used in the portion of the *aide mémoire* dealing with *B.4(b)* of the Commission's plebiscite proposals did not, perhaps, represent the Commission's intention. What the Commission had in mind was the disbanding of these forces; disarming, it was assumed, would follow. The Prime Minister pointed out that disbandment was not the same thing as disarming. Pakistan had raised something like 35 battalions of 28,000 to 30,000 men who now formed part of the Azad Kashmir forces. The presence of such a large number of armed people, even if the regular formations were disbanded, would not be conducive either to ensure the security of that part of Jammu and Kashmir which is under the control of Indian and State forces, or the security of those inhabitants of the territories referred to in (*a*) (3) of Part II of the Resolution of 13 August who did not fully subscribe to or share the political views of pro-Pakistan elements. Moreover, the question of the re-entry into these territories of State citizens who had left it on account of the present conflict had to be kept in mind. With such a large number of members of the Azad Kashmir forces under arms, former inhabitants of these territories who held different political views would not dare to re-enter and, therefore, would be debarred from participation in a ' free and impartial ' plebiscite. In view of this explanation, Dr Lozano agreed that the phrase ' large-scale disarming ' should be regarded as correctly interpreting the Commission's intention.

(3) Discussion then turned on *B.10* of the proposals. Dr Lozano, answering an enquiry of the Prime Minister, said that the Commission

did not contemplate that the Plebiscite Administrator should undertake any administrative functions in regard to the plebiscite until Parts I and II of the Commission's Resolution of 13 August 1948 had been implemented. Until such implementation, the conditions for the discharge of such functions would not exist. What the Commission had in mind was that discussions on details connected with the plebiscite might begin as soon as possible as this would create a good impression all around. Monsieur Colban supported this view on the ground that the announcement of a plebiscite administrator of high standing would have an excellent psychological effect. Monsieur Colban added that, of course, if difficulties arose in the implementation of Part II of the Resolution of 13 August, the preliminary consultations regarding the functions of the Plebiscite Administrator and other detailed arrangements for the plebiscite would have to be deferred.

The Prime Minister replied that, under the Commission's proposals, the Government of India and Jammu and Kashmir assumed a great many responsibilities while Pakistan had to do practically nothing. The Government of India and Jammu and Kashmir could not, in fairness, be expected to discharge any of their responsibilities regarding the plebiscite until there was satisfactory evidence that Pakistan was carrying out its obligations under Part II of the Resolution of 13 August. Moreover, once the present proposals had been accepted, the things left over for discussion with the Plebiscite Administrator would be (i) his functions and (ii) detailed arrangements for carrying out a plebiscite. A consideration of (ii) would clearly be impracticable until Parts I and II of the Resolution of 13 August had been implemented. Unless cease-fire was carried out and Pakistan forces, hostile tribesmen and Pakistan nationals who had entered the State for purposes of fighting had withdrawn, there could not be, in the territories referred to in (*a*) (3) of Part II of the Resolution of 13 August, any local authorities with whom plebiscite arrangements could be discussed. *B.9*, as at present worded, could be interpreted to mean that consultations with the Plebiscite Administrator should start immediately on the signature of the truce. This clearly was not feasible. Dr Lozano and Monsieur Colban pointed out that, when the paragraph in question was drafted, all these considerations were not present to the mind of the Commission. The Commission, according to Dr Lozano, had assumed that since the Prime Minister of India had informed the Commission, two days after it had placed before him the conditions attached by the Government of Pakistan to their acceptance of the Resolution of 13 August, that he stood on his original premises that the Pakistan forces must be withdrawn from the State before the Government of India could consider any further

steps, action in relation to *B.9* would be feasible only after satisfactory progress had been made with the implementation of Part II of the Resolution of 13 August. He and Monsieur Colban agreed that the consultations envisaged in *B.9* could take place only after the Commission was satisfied that satisfactory progress had been made with the implementation of Part II of the Resolution, that is, after hostile tribesmen, Pakistan forces and Pakistan nationals who had entered Jammu and Kashmir for the purpose of fighting had withdrawn from State territory. Dr Lozano said that this was the interpretation of *B.9* which they could present to the Pakistan Government in Karachi.

(4) Dr Lozano stressed the importance of appointing the Plebiscite Administrator as soon as possible. In view of the preliminaries that had to be gone through, he thought that it might take some time before the Plebiscite Administrator was finally appointed. The Prime Minister pointed out that, if Pakistan accepted the present proposals and carried out its obligations under Part II of the Resolution of 13 August promptly, he saw no reason why the appointment should take such time. What he wishes to emphasize was that there would be nothing which the Plebiscite Administrator could usefully do in India until progress had been made with the implementation of Part II of the Resolution as now explained by Dr Lozano and Mr Colban.

(5) As regards alternative method of ascertaining the wish of the people regarding the future status of Jammu and Kashmir, Dr Lozano said that the statement in paragraph 3 of the *aide mémoire* dated 21 December, 1948, was substantially similar to his own record which reads ' Dr Lozano said that it would be up to the Plebiscite Administrator to report to the Security Council (through the Commission) if he found the plebiscite procedure to be impossible for technical or practical reasons. The Plebiscite Administrator and/or the Commission could then recommend alternative solutions.'

(6) Concluding the discussion, the Prime Minister once again emphasized the need for security for displaced State nationals returning to the territory referred to in Part II (*a*)(3) of the Commission's Resolution of 13 August. Equally important would be the task of rehabilitation of refugees returning to this area as well as to the part of the State under the control of the Government of Jammu and Kashmir. Hundreds of thousands of persons were involved. Not only organization and machinery but time and money would be needed to accomplish the formidable task of restoring these unhappy persons to what once was their home. Until this task was completed, the conditions for a free and impartial plebiscite would not exist. Dr Lozano recognized the importance of this matter and pointed out that it would have to

be carefully gone into when the consultations on the details of the present proposals took place.

UNCIP, Report, S/1196, pp. 27-9.

111 25 *December* 1948

PAKISTAN GOVERNMENT TO UNCIP

General

These proposals represent the considered views of the Commission in so far as the organization and conduct of the plebiscite is concerned, and should be accepted in their entirety. While the Commission does not close the door to further changes, and is not unwilling to consider counterproposals, no modifications or additions to these proposals can be entertained unless they are acceptable to the Commission and to the Governments of India and Pakistan.

Clause A

The Commission's Resolution of 13 August 1948 will be interpreted in the light of the elucidations and clarifications given by the Commission.

Clause B.3.(a)

(1) The Plebiscite Administrator will be selected as soon as possible after the acceptance of these proposals.

(2) The Plebiscite Administrator will be selected in consultation with the Governments of India and Pakistan, but the final decision will rest with the Secretary-General of the United Nations in agreement with the Commission.

(3) The expression ' the Plebiscite Administrator will be formally appointed to office by the Government of Jammu and Kashmir ' does not mean that he will be an employee of the Government of Jammu and Kashmir, or subject to its control.

Clause B.3.(b)

By the expression ' the Plebiscite Administrator shall derive from the State of Jammu and Kashmir the powers he considers necessary ', is meant that the Plebiscite Administrator will be competent to exercise such powers as he considers necessary for organizing and conducting the plebiscite and for ensuring its freedom and impartiality, and he shall be deemed to have derived those powers from the authorities

concerned. The organizing and conducting of the plebiscite will be the responsibility exclusively of the Plebiscite Administrator.

Clause B.4

(1) For (*a*)(2) of Part II of the Resolution of 13 August in sub-clause *B.4.*(*b*) read (*a*)(3).

(2) The intention of the Commission is to ensure a large scale reduction and disarmament, the exact scope of which will be determined by the Commission and the Plebiscite Administrator in consultation with the authorities concerned.

Clause B.6(*a*)

(1) The objective of the Commission is to enable all citizens of the State who have left it on account of the disturbances since 15 August 1947 to return to the State and to exercise all their rights as citizens of the States. The manner in which this operation will be carried out has not been examined by the Commission, and is a matter for determination by the Plebiscite Administrator in consultation with the Governments of India and Pakistan.

(2) The proposals provide for two Commissions, one operating in India and the other in Pakistan. The Commission has not, however, entered into a detailed study of the manner in which these Commissions will operate and considers that it must be left to the discretion of the Plebiscite Administrator to adopt such other practical methods as may be necessary to give effect to the intentions of the Commission.

Clause B.6(*b*)

The object of this provision is to ensure the withdrawal of elements which have endangered or might endanger the maintenance of peace and order, and of refugees and other nationals of India and Pakistan who have entered the State since 15 August 1947, otherwise than for a lawful purpose. The manner in which this objective will be achieved will be determined by the Plebiscite Administrator in consultation with the Governments of India and Pakistan.

Clause B.7

The review of cases of officials dismissed on account of their political sympathies is not excluded from the scope of clause 7. The Commission, however, feels that this is a matter of detail, and should be taken up in connection with the consultations envisaged under clause *B.10* of these proposals.

Clause B.10

(1) The Plebiscite Administrator will begin his study of the problem and the recruitment of his staff as soon as possible after his nomination.

(2) The discussion of details of these proposals will not, however, be stated until the truce agreement has been signed, and the Commission is satisfied that implementation of Part II of its Resolution of 13 August is making satisfactory progress.

(3) The formal appointment of the Plebiscite Administrator will be made, and he shall assume formal charge of his duties within the State, when it is found by the Commission that the cease-fire and truce arrangements set forth in Parts I and II of its Resolution of 13 August have been carried out.

UNCIP, Report, S/1196, pp. 32-4.

112 5 *January* 1949

RESOLUTION OF UNCIP

UNCIP having received from the Governments of India and Pakistan in communications dated December 23 and December 25, 1948, respectively their acceptance of the following principles which are supplementary to the Commission's Resolution of August 13, 1948:

(1) The question of the accession of the State of Jammu and Kashmir to India or Pakistan will be decided through the democratic method of a free and impartial plebiscite.

(2) A plebiscite will be held when it shall be found by the Commission that the cease-fire and truce arrangements set forth in Parts I and II of the Commission's Resolution of August 13, 1948, have been carried out and arrangements for the plebiscite have been completed.

(3) (*a*) The Secretary-General of the United Nations will in agreement with the Commission nominate a Plebiscite Administrator who shall be a personality of high international standing and commanding general confidence. He will be formally appointed to office by the Government of Jammu and Kashmir.

(*b*) The Plebiscite Administrator shall derive from the State of Jammu and Kashmir the powers he considers necessary for organizing and conducting the plebiscite and for ensuring the freedom and impartiality of the plebiscite.

(*c*) The Plebiscite Administrator shall have authority to appoint such staff or assistants and observers as he may require.

(4) (*a*) After implementation of Parts I and II of the Commission's Resolution of August 13, 1948, and when the Commission is satisfied

that peaceful conditions have been restored in the State, the Commission and the Plebiscite Administrator will determine in consultation with the Government of India the final disposal of Indian and State armed forces, such disposal to be with due regard to the Security of the State and the freedom of the plebiscite.

(*b*) As regards the territory referred to in (*a*)(2) of Part II of the Resolution of August 13, 1948, final disposal of the armed forces in that territory will be determined by the Commission and the Plebiscite Administrator in consultation with the local authorities.

(5) And civil and military authorities within the State and the principal political elements of the State will be required to co-operate with the Plebiscite Administrator in the preparation for and the holding of the plebiscite.

(6) (*a*) All citizens of the State who have left it on account of the disturbances will be invited and be free to return and to exercise all their rights as such citizens. For the purpose of facilitating repatriation there shall be appointed two Commissions, one composed of nominees of India and the other of nominees of Pakistan. The Commissions shall operate under the direction of the Plebiscite Administrator. The Governments of India and Pakistan and all the authorities within the State of Jammu and Kashmir will collaborate with the Plebiscite Administrator in putting this provision into effect.

(*b*) All persons (other than citizens of the State) who on or since August 15, 1947, have entered it for other than lawful purpose shall be required to leave the State.

(7) All authorities within the State of Jammu and Kashmir will undertake to ensure in collaboration with the Plebiscite Administrator that

(*a*) there is no threat, coercion or intimidation, bribery or other undue influence on the voters in the plebiscite;

(*b*) no restrictions are placed on legitimate political activity throughout the State. All subjects of the State regardless of creed, caste or party shall be safe and free in expressing their views and in voting on the question of the accession of the State to India or Pakistan. There shall be freedom of the Press, speech and assembly and freedom of travel in the State, including freedom of lawful entry and exit;

(*c*) all political prisoners are released;

(*d*) minorities in all parts of the State are accorded adequate protection; and

(*e*) there is no victimization.

(8) The Plebiscite Administrator may refer to the United Nations Commission for India and Pakistan problems on which he may require assistance and the Commission may in its discretion call upon the

Plebiscite Administrator to carry out on its behalf any of the responsibilities with which it has been entrusted.

(9) At the conclusion of the plebiscite the Plebiscite Administrator shall report the result thereof to the Commission and to the Government of Jammu and Kashmir. The Commission shall then certify to the Security Council whether the plebiscite has or has not been free and impartial.

(10) Upon the signature of the truce agreement the details of the foregoing proposals will be elaborated in the consultations envisaged in Part III of the Commission's Resolution of August 13, 1948. The Plebiscite Administrator will be fully associated in these consultations.

Commends the Government of India and Pakistan for their prompt action in ordering a cease-fire to take effect from one minute before midnight of January 1, 1949, pursuant to the agreement arrived at as provided for by the Commission's Resolution of August 13, 1948, and

Resolved to return in the immediate future to the sub-continent to discharge the responsibilities imposed upon it by the Resolution of August 13, 1948, and by the foregoing principles.

UNCIP, Report, S/1430, pp. 30-2.

113 7 *January* 1949

PRESS COMMUNIQUÉ OF UNCIP

Text of the communiqué issued on Friday, January 7

The Governments of India and of Pakistan have informed the United Nations Commission for India and Pakistan that they have accepted the principles proposed by the Commission for the holding of a plebiscite in the State of Jammu and Kashmir for the purpose of determining the State's future status. These principles are supplementary to the Commission's Resolution of August 13, 1948, which provided for a cease-fire and truce. Following the agreement, the two Governments ordered the forces under their control in the State to cease fire effective at 11.59 p.m., January 1, 1949.

The Governments of India and Pakistan are commended for their endeavour to reach a friendly and peaceful solution of the Kashmir problem. Worthy of especial note is the prompt proclamation of the cease-fire by both Governments.

India, Ministry of Information and Broadcasting, *Defending Kashmir*, 1949, pp. 184-5.

114 9 *March* 1949

STATEMENT : PAKISTAN DELEGATION IN TRUCE SUB-COMMITTEE OF UNCIP

(5) Part II of the Commission's Resolution of 13 August 1948 deals first with Pakistan's obligations and leaves the initiative entirely to Pakistan as to how these obligations should be discharged. It then goes on to set out the obligations devolving on India and states that these are to be discharged in stages to be agreed upon with the Commission. It is therefore obvious that Pakistan should start the ball rolling in this joint meeting by stating the basis on which it is proposed to discharge her obligations. Before doing this, I would stress that the August Resolution makes the Pakistan Government, and not the Azad Kashmir authorities, a party to the truce agreement, and therefore responsible that its terms are properly observed on the Azad Kashmir side of the line. It is therefore essential that the Pakistan Government must themselves be satisfied that, quite apart from the truce terms themselves, the conditions under which those terms are to be implemented are such as to enable the Pakistan Government effectively to discharge their responsibility for the proper observance of the truce conditions by the Azad Kashmir authorities and forces.

(6) The declared objective of the truce arrangements is to create a military balance between the forces on each side so as to develop a feeling of mutual confidence between those forces themselves and among the displaced persons and refugees—both non-Muslims and Muslims—who will be returning to the State of Jammu and Kashmir during the truce period as a preliminary to the taking of the plebiscite. Before putting forward the basis on which the Pakistan Government propose to carry out their part of the truce agreement, I would here mention three fundamental necessities. The first is the delimitation of the boundaries between the Indian and the Azad Kashmir controlled areas, secondly, the immediate lifting of all land mines by the side which sowed them so that the civilian population may move about on lawful occasions without the present risk to life and limb. And thirdly, agreement for the free use of roads throughout both areas for refugee movement, refugee maintenance and for free egress and ingress for all other legitimate purposes. As regards delimitation of boundaries, we would hope that this could be done in general terms during the present series of meetings, and that exact local delimitation could be left to local military commanders on both sides in each of the forward areas to settle with the help of the United Nations observer parties.

(7) To revert to the Pakistan Government's obligations under Part II (*a*) of the 13 August Resolution, these are *firstly* to do their best to secure the withdrawal from Azad Kashmir territory of tribesmen and nationals of Pakistan who had entered the territory for the purpose of fighting. *Secondly,* to withdraw all their regular forces from Azad Kashmir territory.

(8) The first of these obligations, namely, the withdrawal of the tribesmen, has been carried out already—in advance of the truce agreement, and was completed by February 15.

(9) The discharge of the second obligation—namely, withdrawal of the Pakistan regular forces, is dependent upon plans acceptable to the Pakistan Government for synchronization of this withdrawal with that of the bulk of the Indian forces from Jammu and Kashmir State territory. This is provided for in paragraph 10 of appendix 1 to the Commission's letter of 27 August 1948 to the Pakistan Government. These plans for synchronization must be acceptable to the Pakistan Government because they have to convince, in turn, the Azad Kashmir authorities, the tribesmen and the people of Pakistan that the truce conditions are such as to assure in due course a free and impartial plebiscite. In this regard, I would stress that one of the main essentials is that the truce conditions must be such as to give non-Muslim refugees from the Azad Kashmir area full confidence that they can return in safety to that area and equally give Muslim refugees from the area controlled by the Indian and State Forces confidence as to their return to the latter areas. The fact that the Muslim refugees number nearly half a million as against some forty thousand non-Muslim refugees underlines the importance of this aspect to Pakistan.

(10) This postulates organized and disciplined forces on both sides, strictly controlled by the authorities ultimately responsible for the proper observance of the truce terms, and capable of maintaining law and order in their respective territories. To produce such forces on the Azad Kashmir side, reorganization and training of the Azad Kashmir forces is essential. It will be recalled that at the meeting of the two Commanders-in-Chief on 15 January 1949, they agreed to recommend to their respective Governments that, as soon as the truce agreement was signed, the Azad Kashmir forces should be relieved in the forward areas by Pakistan regular forces and concentrated in the rear areas behind a minimum screen of regular Pakistan troops on the existing cease-fire line. The basis of this recommendation was the feeling that it was better in the early stages at least of the truce period to have regular troops opposite each other in the forward areas. The Commission's Military Adviser was informed of this recommendation at the time.

(11) The Pakistan Government have considered the recommendations of this meeting and they informed the Commission on 8 February at a meeting in Karachi that they considered the following arrangements essential to enable them to discharge effectively their obligations under the Resolutions of the Commission:

First the relief of the Azad Kashmir forces now in the forward areas by Pakistan regular troops.

Second the temporary withdrawal from the forward area and concentration in the rear areas of Azad Kashmir territory, of all Azad Kashmir forces to enable them to be reorganized and trained, under the supervision of G.H.Q. Pakistan, into a disciplined force of infantry units with the necessary administrative and ancillary units.

Third the relief, on completion of this reorganization and training, of the Pakistan regular forces in the forward areas by the Azad Kashmir forces.

Fourth the withdrawal from Azad Kashmir territory of the Pakistan regular forces as soon as this relief had been completed.

Fifth overall operational and administrative control of the reorganized Azad Kashmir forces to continue to rest with G.H.Q. Pakistan, this being the most important safeguard the Pakistan Government would have that the Azad Kashmir forces would scrupulously observe the truce agreement.

(12) The Commission has also been informed that it is estimated that a period of some three months would be needed for the reorganization and training of the Azad Kashmir forces, but that, in order not to allow this to delay implementation of the truce agreement, the withdrawal of the Pakistan regular forces would be started simultaneously with the relief of the Azad Kashmir forces in the forward areas. The Pakistan Government propose, subject to satisfactory arrangements for synchronization with the withdrawal of the bulk of the Indian forces on the other side, to reduce the Pakistan regular troops in Azad Kashmir territory to a screen of eight infantry battalions only in the forward area, and to withdraw the remainder, including all the Pakistan artillery, from Azad Kashmir territory altogether as soon as the relief of the Azad Kashmir forces and their concentration in the rear areas have been completed.

(13) Here I would inform the Sub-Committee that at present the Azad Kashmir forces consist of:

(*a*) *Artillery*

One A.A. Bty. of eighteen 20 mm. guns

One 25 pdr. gun

Two 6 pdr. A.T. guns

One Azad Mountain Battery armed with mortars

(*b*) Eight infantry brigades, numbers 2 and 7 of which consist of three battalions each, number 8 of six battalions, and the remainder of four battalions each, making a total of 32 battalions. The strength of an Azad battalion is 650 all ranks.

(*c*) Six Pioneer battalions employed on roads and only partly armed.

(*d*) Four Animal Transport and one Camel Company.

(14) We propose to reorganize this force into a small artillery group containing the artillery units I have mentioned, and into eight infantry brigades each of three battalions, i.e., a total of 24 battalions as compared with the present 32 units. The remaining personnel will be reorganized into administrative and L of C units to produce as far as possible an administratively balanced force. I hope it will be clear to the Sub-Committee from this outline that the reorganized Azad Kashmir forces will be extremely weak in artillery, and completely lacking in air support, in ground reconnaissance units and in armour. It will be really an infantry force dependent on infantry weapons only.

(15) The Pakistan Government intends to place these Azad Kashmir Forces under a General Officer Commanding appointed by them on the advice of the Commander-in-Chief, Pakistan Army, and that this G.O.C. be assisted by the requisite number of senior officers selected by G.H.Q. Pakistan in consultation with the G.O.C. Azad Kashmir Forces. These arrangements are again necessary safeguards to ensure that the Azad Kashmir Forces can be relied upon to observe the truce agreement and fulfil their role of maintaining law and order and of instilling confidence in all elements of the civil population of the Azad Kashmir territory during the truce period.

(16) Thus, for the first, say, three months of the truce period, the military forces in Azad Kashmir territory would be eight Pakistan regular battalions, no Pakistan artillery or armour, and the Azad Kashmir forces in process of reorganization. For the remainder of the truce period the military forces in the Azad Kashmir territory would be the Azad Kashmir force of eight brigades of infantry, with practically no artillery, and no armour or other supporting arms.

(17) The Commission has stated that it considers itself free to hear the views of the Pakistan Government on the way in which the withdrawal of the bulk of the Indian forces should be synchronized with the withdrawal of Pakistan regular troops. In view of this, and of the fact that, as I have stated, the declared objective of the truce agreement is to produce a balanced military situation during the truce, I now propose to give, in outline, the Pakistan Government's views on this point.

(18) According to Part II (*b*) of the Resolution of 13 August 1948, the Indian withdrawal should start as soon as the Commission notifies the Indian Government that the Pakistan Forces are being withdrawn. As I have shown, the Pakistan withdrawal will start and be notified as soon as the relief of the Azad Kashmir forces in the forward areas has started. The Pakistan Government suggests that, by the time the Pakistan regular forces are reduced to a screen of eight battalions, the Indian regular forces should have been reduced to :

(*a*) *Two infantry brigades* each of three battalions in the Valley area, that is, Uri-Tithwal, Gurais.

(*b*) *Two infantry brigades* each of three battalions in the Poonch-Naushera sector.

(*c*) *One infantry brigade group* of three battalions and supporting arms in the Jammu sector.

(19) Other than the normal proportion of artillery and armour with the infantry brigade group in Jammu, all other Indian regular artillery and armour should be withdrawn from Jammu and Kashmir State territory by the end of this first phase of the truce period.

(20) This would give a total of 15 Indian regular infantry battalions plus supporting arms of one brigade group, plus the six Kashmir State Force brigades (which have a proportion of artillery and armour) as against the eight regular Pakistan battalions in the forward areas and the Azad Kashmir forces under reorganization and training in the rear areas. The Commission may well object that this hardly represents a military balance owing to the great numerical preponderance of the Indian side especially in supporting arms. The Pakistan Government, however, on the advice of their Commander-in-Chief, are prepared to accept this during this stage of the truce agreement as an evidence of their belief that the object of both sides is to bring about conditions for a free and impartial plebiscite as soon as possible. The Pakistan Government will, of course, have to persuade their half million Muslim refugees that they can begin to return with confidence to their homes on the Indian side.

(21) As regards the second stage of the truce period, by the time the reorganized Azad Kashmir forces have taken over the forward areas from the Pakistan regular screen, and the latter has been withdrawn from Azad Kashmir territory, thus completing the Pakistan Government's obligation to withdraw their regular forces in entirety, the Pakistan Government suggest that the final dispositions, for the remainder of the truce period, of the Indian and Kashmir State forces should be :

(*a*) *In the Valley and Poonch-Naushera sector*

Five Kashmir State Force brigades with their proportion of artillery and armour ; and

(*b*) *In Jammu province*

One Kashmir State Force brigade with its proportion of artillery and armour, and

One Indian infantry brigade group.

(22) Here again in this phase there is a considerable difference between the military strengths in the Azad Kashmir area and those in the Indian controlled area, but for the reasons already given the Pakistan Government is prepared to accept this.

(23) The Sub-Committee will have noted that I have not mentioned the Abdulla militia which we believe to number about 4,000. The Pakistan Government hopes that early steps will be taken by the Indian Government to bring about the disbandment of this irregular force with the same object as the Pakistan Government had in effecting the withdrawal of the tribesmen during the cease-fire period instead of waiting for the truce agreement—viz., the feeling that the presence of such irregular forces is one of the greatest obstacles to the return of mutual confidence. The Pakistan Government in this hope has not included this militia in giving its views on the basis for synchronization of withdrawals on both sides.

(24) It will be clear, I hope, to the Committee that the above proposals of the Pakistan Government provide a framework within which, if it is agreed to, the two High Commands can work out together a detailed and synchronized withdrawal programme. I hope it is clear too that all these proposals refer to the period of the truce only and do not cover the plebiscite stage.

UNCIP, Report, S/1430/Add. I, Annex 10, pp. 2-9.

115 28 *March* 1949

GOVERNMENT OF INDIA TO UNCIP

(1) *Truce Line*

A map indicating the line which the Government of India wish to see established is attached. It will be observed that no claim is made to the inclusion of Gilgit District within the Indian part of the line. What is claimed for inclusion within the Indian line is territory which strictly answers the description given in the Prime Minister's letter, dated 20 August, 1948, to Mr Korbel; it is territory over which the authority of the Government of Jammu and Kashmir has not been challenged or disturbed, except by roving bands of hostiles, or, in some places like Skardu, which has been occupied by irregular or

other Pakistan troops. After Pakistan troops and irregulars have withdrawn from the region referred to, the responsibility for the administration of these areas will revert to the Government of Jammu and Kashmir and that for defence to the Government of India. It is not the intention to garrison these sparsely populated portions of the State of Jammu and Kashmir extensively. All that the Government of India propose to do is to maintain garrisons at selected points for the dual purpose of preventing the incursion of tribesmen, who obey no authority, and to guard the main trade routes from the State into Central Asia.

(2) *Formation of a Civil Armed Force*

The Pakistan representatives who appeared before the Truce Sub-Committee had made certain recommendations in a memorandum, dated 9th March, which, as has already been pointed out to the Commission, were designed to achieve the objective of a 'military balance between the forces on each side'. In the Secretary-General's letter to the Chairman, dated 10 March, 1949, it was explained that the proposals in the memorandum regarding the strength, training and control of Azad Kashmir forces during the period of the truce would be (i) a preparation neither for peace nor a peaceful plebiscite but for the resumption of hostilities and (ii) contrary to the objective stated in para 3(1)(*c*) of the Prime Minister's letter, dated 20th August, 1948, and broadly accepted by the Commission, that nothing should be done which would enable the territory evacuated by the Pakistan troops to be consolidated in any way during the period of the truce to the disadvantage of the State. The Government of India adhere to this view and reaffirm their request that action should be taken to disband and disarm the so-called Azad Kashmir forces. So long as these forces are not disbanded and disarmed, so long will it be necessary for the Government of India, in the interests of the security of the rest of the State of Jammu and Kashmir under their control, to maintain a larger force than would otherwise be necessary. A force of 32 battalions, armed but without discipline, and inspired by fanaticism would obviously be a menace to the security of a territory which it covets and against whose Government its fanaticism is directed. That discipline would make this force militarily more manageable does not imply that it would also eliminate the fanaticism of its members. Indeed, the disciplining and reorganization proposed in the Pakistan memorandum would make this force a greater menace to the security of this part of the State. Moreover, as was explained to Dr Lozano during his visit to Delhi in December 1948, so long as a military force of this character is maintained in the so-called

Azad Kashmir territory, there will be no security for those inhabitants who do not fully subscribe to or share the political views of pro-Pakistan elements and, therefore, no inducement to the re-entry into this territory of the State citizens of this class who had left it on account of the present conflict. Disbandment and disarming of these forces is, therefore, essential both to the fulfilment, by the Government of India, of their obligations under (*b*)(1) and (2) of Part II of the Commission's Resolution of 13 August, and the creation, in the territory in question, of conditions which would ensure a free and impartial plebiscite.

For the maintenance of law and order in the so-called Azad Kashmir territory, a civil armed force has to be created. Before the outbreak of hostilities in the State, the total strength of the police force maintained in this territory for the preservation of law and order was approximately 560 men of whom 256 were armed. The Government of India realize that the physical and psychological conditions created by the conflict of the last 18 months necessitate a substantial augmentation of these numbers. They suggest, therefore, that a force of 2,500 persons, of whom one-half may be armed, be formed. This should be more than sufficient for the maintenance of law and order which must be the sole purpose of such a force.

Some of the considerations which have been urged in favour of disbanding and disarming the so-called Azad Kashmir forces equally govern, in the opinion of the Government of India, the composition of the armed police force and its command. If the force is composed of, or officered by, followers of Azad Kashmir alone, the fear of insecurity amongst persons, both Muslims and non-Muslims, who do not belong to this category, whether they are already resident in this territory or are entitled to return to it, will persist. It is, therefore, suggested, that, to the extent of half its numbers, the force should be composed of nationals (Muslim and non-Muslim) of Jammu and Kashmir State who are or were normally resident in this area, but who do not follow the political creed of Azad Kashmir. The higher officers in command of this force should be neutrals and appointed by the Commission.

(3) *Withdrawal of Indian Forces*

Part II of the Commission's Resolution of 13 August, 1948, recommends

'(*b*)(1) When the Commission shall have notified the Government of India that the tribesmen and Pakistan nationals referred to in Part II (*a*)(2) (of the Resolution) have been withdrawn . . . , that the Pakistan forces are being withdrawn from the State of Jammu and

Kashmir, the Government of India agree to begin to withdraw the bulk of their forces from the State in stages to be agreed upon with the Commission.

'(*b*)(2) Pending the acceptance of the conditions for a final settlement of the situation in the State of Jammu and Kashmir, the Indian Government will maintain within the lines existing at the moment of the cease-fire, those forces of its Army which, in agreement with the Commission, are considered necessary to assist local authorities in the observance of law and order. . . .'

The Government of India accepted the Resolution of 13 August, 1948, on the basis of clarifications furnished by the Commission which are explained in the Prime Minister's letter to the then Chairman of the Commission, dated 20th August 1948. The portions of the Prime Minister's letter which are relevant to the part of the Resolution quoted are paragraph 3 sub-paragraph 2 and the second sub-paragraph of paragraph 4. The Government of India reaffirm their adherence to the position set out in these communications.

The memorandum presented by the Pakistan representatives to the Truce Sub-Committee of the Commission mentions three months as the period during which the withdrawal of Pakistan forces should be complete. This period seems to have been suggested with regard to the need for making suitable arrangements, *inter alia*, for the maintenance of law and order. Although, as explained in paragraph 2 of this memorandum, the Government of India are unable to agree with certain basic assumptions and with proposals regarding the strength and training of the force needed to maintain law and order made in the Pakistan memorandum, they are willing to accept the period of three months for the completion of the withdrawal of Pakistan forces and for the creation of a civil armed force which will maintain law and order in the so-called Azad Kashmir territory.

At the request of the Government of India, the schedule of the withdrawal of troops is not reproduced here.

The fulfilment of the foregoing programme of withdrawal will be contingent upon

(i) the complete withdrawal of Pakistan forces including ancillary forces and arms, equipment and stores;

(ii) the disbanding and disarming of the so-called Azad Kashmir forces and the creation of the Civil Armed Force mentioned in para (2) of this memorandum.

The phasing of the withdrawal of Pakistan forces has not been discussed in this memorandum. The Government of India will be prepared to instruct their representatives to discuss this matter with the Commission, its Truce Sub-committee and/or Pakistan

representatives, if desired. The Commission will appreciate that, so far as their own programme of withdrawal is concerned, the Government of India are not willing to disclose it to the Government of Pakistan until a satisfactory agreement has been reached regarding the withdrawal of Pakistan forces and the replacement of the so-called Azad Kashmir forces by a civil armed force.

UNCIP, Report, S/1430/Add. I, Annex 16, pp. 2-6.

116 26 *April* 1949

GOVERNMENT OF PAKISTAN TO UNCIP

In continuation of Mr Ayub's letter of 23rd April, 1949, to Ambassador Colban forwarding a note regarding the areas north of the cease-fire line, it might be of assistance to the Commission if I were to recapitulate why we regard the proposal to post Indian troops in the area north of the cease-fire line in any contingency as a clear contravention of Part II of the Commission's Resolution of 13 August 1948.

In the first place, the area north of the cease-fire line is ' evacuated territory ' precisely in the same way as any area west of the cease-fire line. In their letter of 3rd September, 1948, to the Foreign Minister of Pakistan, the Commission explained that the term ' evacuated territory' used in paragraph (*a*)(3) of Part II of the Resolution of 13th August, 1948 ' refers to those territories which are at present under the effective control of the Pakistan High Command '. The area north of the cease-fire line was as much under the effective control of the Pakistan High Command as the area west of the cease-fire line.

The Commission also gave us an undertaking on 31st August, 1948, that neither the Government of India nor the Maharaja's Government would be permitted to send any military or civil officials to the evacuated territory. The presence of Indian garrisons in any part to the area north of the cease-fire line would be a violation of this undertaking.

Secondly, under para (*b*)(2) of Part II of the Commission's Resolution of 13th August, 1948, such Indian forces as are allowed to stay after the withdrawal of the ' bulk ' of the Indian forces are to be posted ' within the lines existing at the moment of the cease-fire '. This applies as much to the area north of the cease-fire line as to the rest of the evacuated territory.

(2) During the discussions preceding the acceptance of the Resolution of 5th January, 1949, by the Governments of India and Pakistan,

the Government of India had, again and again, stressed their interest in the security of the State. Nevertheless, the Commission did not recognize their right to post Indian troops beyond the cease-fire line. The undertaking given by the Pakistan Government to deal effectively with any possibility of a tribal raid within their own borders applies as much to the areas north of the cease-fire line as to areas west of the cease-fire line.

UNCIP, Report, S/1430/Add. I, Annex 24, pp. 1-2.

116(*a*) 3 *May* 1949

PAKISTAN NOTE ON NORTHERN AREAS (EXTRACT)

(7) *A brief history of the revolt and subsequent operations*

In October, 1947 there were the following forces in the area and the adjoining territories:

(*a*) Gilgit Agency and Sub-division approximately 500 Gilgit Scouts officered by Jammu and Kashmir State officers, and two British officers in State employ.

(*b*) Gilgit Wazarat and Baltistan

Gilgit Wazarat—One Battalion, less one Coy (State forces 50 per cent Muslim, 50 per cent non-Muslim).

Skardu (*Baltistan*)—One Coy (State forces, 25 per cent Muslim, 75 per cent non-Muslim).

Leh—One Coy less one platoon (State forces—all non-Muslims).

On 28 October, 1947, the Gilgit Scouts, assisted by the Muslim element of the State Army, staged a successful bloodless *coup d'état,* and the Military Governor and the non-Muslim elements of the State Army and Civil Administration were disarmed and arrested. The treasury, and large quantities of arms, ammunition, equipment, clothing and supplies were captured.

An emergency administration was set up which took over effective control of the entire Gilgit Agency and Subdivision, Gilgit Wazarat and Rondu Sub-Tehsil of Baltistan. The local authorities announced the desire of the people to accede to Pakistan in a series of telegrams to the Pakistan Government.

In view of the international importance of the area, and the danger of foreign intervention in disturbed conditions, the Pakistan Government sent a Political Agent in the middle of November, 1947 to provisionally take over the administration in order to restore law and order and to stabilize conditions.

The Muslim element of the State Army (approximately 400 strong) started raising more volunteers for the Azad Army, and equipped them with weapons they had seized from the non-Muslim elements. This Azad Army set up its Headquarters in Astor (Gilgit Wazarat), and towards the middle of January 1948, sent out a strong column to Baltistan.

On 10th February, 1948 the column reached Skardu where it was joined by the Muslim elements of the garrison with their arms, and by hundreds of local Baltistani volunteers. The non-Muslim elements of the garrison, along with the non-Muslim civil population of Skardu, withdrew into the fort where they were besieged.

All the local Rajas of Baltistan (who are all Muslims) denounced the Maharaja's rule and pledged their allegiance to Azad Kashmir. Civil administration was set up in the area up to, but excluding Kargil. Volunteers were recruited and organized into battalions.

Towards the end of February, 1948 a column of the Maharaja's State forces sent by the Indian Army to relieve the besieged garrison of Skardu, was almost completely wiped out north of Kargil, and its supplies and equipment captured.

Early in April, 1948, an Azad column from Astor (one Battalion) moved South and occupied Gurais and the Kishenganga Valley, and captured Tragabal Pass. A civil administration was set up in the whole area and local militia was raised.

About the end of April a much stronger relief column, approximately 2 Battalions of State forces, with some Indian army troops under the overall command of Lt.-Col. Sampuran Singh (Indian Army), left Kargil in a determined attempt to relieve Skardu. This column was completely routed, losing approximately half in killed and nearly all the rest taken prisoner. All their arms, ammunition, and equipment were captured. After this victory the Azad forces pushed through to capture Kargil on 11 May, Dras on 27 May, the Zojila Pass early in June, and advanced to within 30 miles of Leh. This force was composed mainly of locals. The trained nucleus for tactical direction and leadership was provided by the ex-servicemen of the area and the Muslim element of the State Army who had revolted earlier.

In June, 1948 a contingent of about 400 volunteers from Chitral State arrived in Skardu and were entrusted with its siege. The local forces thus released were able to extend their operations to the Ladakh Tehsil till by the middle of July Leh was virtually besieged.

On 12 August 1948 the Skardu garrison, having run out of supplies and ammunition, capitulated.

After repeated attempts supported by artillery, and air force, one Indian brigade succeeded in recapturing Tragabal Pass and Curaiz

in June 1948, but was firmly held and could not make any further advance beyond this point in any direction.

In the Zojila Pass area repeated attacks by four Indian Battalions, supported heavily by artillery, armour and air during the period June-November, 1948 were beaten back with very high casualties. In November-December, 1948, however, after a 14 days continuous air and artillery bombardment, and led personally by Maj.-Gen. Thimayya, they succeeded in breaking through the Azad positions, and this only after the Azad forces had completely run out of ammunition. The Indian Army captured Dras and Kargil early in December, 1948 and achieved a link-up with Leh. The Azad forces re-established a defence line north of Kargil and west of the line Zojila-Kargil. This line held firm until cease-fire and is still held. A small Azad force east of the road Zojila-Kargil-Leh remained in control of the entire Zanskar-Suru areas to the south of Leh up to the day of cease-fire. This force is still occupying the above area.

No Pakistan regular troops have at any stage been employed in any of these operations. The only Pakistan force in this area is one company of infantry stationed at Gilgit, since October, 1948.

Ever since May, 1948, when Pakistan troops entered Kashmir and overall tactical control was taken over by G.H.Q. Pakistan, the Commandant Gilgit Scouts, a Pakistan Army Officer, has been exercising overall tactical and administrative control of Gilgit Scouts, Baltistan Scouts and the local militias.

(8) *Civil Administration*

Before the overthrow of the Maharaja's administration in October, 1947, the civil administration of Gilgit Wazarat was in charge of a ' Revenue Assistant ' with headquarters at Astor, and in the Baltistan-Ladakh area there was a Wazir-i-Wazarat with winter headquarters at Skardu and summer headquarters at Leh. The above officials were helped by a small number of Police, Public Works Department, Forests and Revenue officials.

Since the overthrow of the Maharaja's administration in October, 1947, the civil administration of this area has been run by an Assistant Political Agent, assisted by two Tehsildars for Skardu and Kargil Tehsils, and three Naib-Tehsildars for the Deosai, Kargil-Marol, and the Skardu-Rondu areas. After the capture of Skardu fort on 12 August, 1948, the headquarters of the Assistant Political Agent were located at Skardu. The Gilgit Wazarat has been administered by another Assistant Political Agent with his headquarters at Astor, assisted by one Tehsildar and two Naib-Tehsildars for Astor and Guraiz areas.

The above officials are helped by the requisite number of Police, Public Works Department and Revenue officials. Revenue is properly collected and credited to the local treasury. The civil administration is running much more efficiently than in the days of Dogra rule, and the people are content.

The Political Agent, Gilgit, keeps a general eye on the civil administration.

(9) *Defence*

Any danger of a tribal incursion into this area can be ruled out as such an incursion could only take place through territory held by Pakistan. The Pakistan Government have already given an assurance to deal effectively with any such incursions within their own borders even if this should necessitate the use of their armed forces.

The only possibility of external aggression is from the North.

A threat from the North can develop along two main routes:

(i) Kashgar-Hunza-Gilgit;

(ii) Sinkiang-Leh-Kargil-Zojila.

The latter one is entirely under Indian Army control and need not be considered in this paper.

If any threat develops along the former route, it would necessarily have to be met by Pakistan with the active assistance of the local population. The natural hardihood and the superb fighting qualities of the locals of this area, accustomed to living in the cold and at high altitudes, have proved beyond any doubt the superiority of the locals of this area to the men from the plains of India when it comes to fighting in these high altitudes. The heavy Indian losses in this region, and the failure of their numerically superior and better equipped troops supported by artillery and air, to make headway against much smaller and poorly equipped local forces, is a testimony to the latter's fighting qualities and adaptation to the terrain.

The Muslim population of this area is approximately 200,000. It can easily produce a force of at least thirty thousand men. This force without much help from the Pakistan Army, could hold even a major attack launched south during the few summer months when the high passes remain open. The willing assistance of the local population against foreign aggression would be available to Pakistan but not to India.

In addition to the above, this route is flanked by the Black mountain areas, Swat and Chitral States etc. who owe their allegiance to Pakistan and would provide a large number of good fighting men to fight any aggression against Pakistan territory.

It might be argued that an aggressor power could drop thousands of parachutists and maintain them by air supply. This is feasible,

although extremely hazardous in view of the danger of a too fast descent in rarified air. But a parachute landing can only be successful if a land link-up with them can be quickly achieved, or they get the assistance of the local population. This would be practically impossible against Pakistan, but might be achieved against India if Indian control is forcibly imposed upon the population.

Indian forces will depend on a single unmetalled and very precarious road, hundreds of miles long, from India for their maintenance. On the other hand, Pakistan could rely upon a considerable force of locals, who are the world's finest fighters in the geographical and climatic conditions that prevail in these parts.

The above appreciation is based on the hypothetical assumption of an aggression from the North. In point of fact, owing to the political conditions now obtaining in Central Asia, no such threat is likely to materialize in the near future, and even if it did, there is less likelihood of the predominantly Muslim people of Sinkiang launching an attack on territory controlled by Pakistan than if India were in control. In any case, any act of foreign aggression would be a matter for the Security Council to consider and to take appropriate measures to deal with it. It could not at any time be regarded as the sole, or even primary, concern of India, as Pakistan is even more directly interested in the security of this area. Another aspect which deserves consideration is that the population of this area is wholly Muslim and is so opposed to the imposition of Indian rule that even a mention of a proposal to post Indian garrisons in a future contingency would create intense unrest. The actual posting of Indian garrisons would have still more disastrous effects on the peace and tranquillity of the area, as it would give rise to a war of resistance against the Indian forces.

UNCIP, Report, S/1430/Add. I, Annex. 24, pp. 5-10.

117 15 *April* 1949

UNCIP TO GOVERNMENTS OF INDIA AND PAKISTAN

(1) *Cease-Fire Line*

(*a*) The cease-fire line will be the line fixed by the Commission and, except as noted below, traced in yellow on the map annexed, and based upon the factual positions occupied on January 1949 by the forces under the control of the Indian and Pakistan High Commands. Based also upon the same factual considerations, the line between Chakhoit and Tithwal and from Chorwan to the north

of Dras, shall be demarcated as soon as possible by the Military Adviser of the Commission. The cease-fire line shall eliminate all no-man's lands and shall be demarcated on the ground by agreement between the respective local Commanders, assisted by the Commission's Military Observers. The line shall, to the greatest extent possible, follow easily recognizable features on the ground.

(*b*) The Commission's Military Adviser shall decide, without appeal, local adjustments of the cease-fire line in cases where no agreement is reached between the local Commanders.

(*c*) The Commission will have Observers stationed where it deems necessary throughout the State of Jammu and Kashmir.

(*d*) Observers will advise the Commission and/or the Plebiscite Administrator regarding developments in the sparsely populated and mountainous region of the territory of Jammu and Kashmir in the north. Without prejudice to the provisions of point 8 of the Resolution of 5 January 1949, should the Commission and/or the Plebiscite Administrator conclude upon advice from the Observers, or upon reports from the Government of India, that it is necessary for the defence of the area, the Commission and/or the plebiscite Administrator may request the Government of India to post garrisons at specified points.

(2) *Withdrawal of Troops*

(*a*) The Government of Pakistan agrees:

(i) To withdraw its troops from the territory of the State of Jammu and Kashmir in the seven weeks as follows:

(A) During the first three weeks twenty Infantry Battalions, plus the corresponding proportion of Artillery and Supporting Units.

(B) During the following fortnight the remainder of the Pakistan troops, with the exception of eight Infantry Battalions.

(C) By the end of the seventh week, all Pakistan troops, including their ammunition, stores, and material will have left the territory of the State.

(ii) That, having secured the withdrawal of the tribesmen from the territory of the State of Jammu and Kashmir, it shall secure the withdrawal of Pakistan nationals still in the territory of the State and not normally resident therein, who have entered the State for the purpose of fighting.

(*b*) The Government of India agrees:

(i) To withdraw the bulk of its forces from the State of Jammu and Kashmir in stages submitted by the Commission for the agreement of the Government of India. The withdrawal will begin as soon as the Commission shall have notified the Government of India that the

tribesmen, and Pakistan nationals, not normally resident in Jammu and Kashmir territory who have entered the State for the purpose of fighting, have withdrawn, and that the Pakistan troops are being withdrawn from the State of Jammu and Kashmir.

(ii) That the schedule of the withdrawal of Indian forces will be made public by the Commission with the schedule of the withdrawal of Pakistan forces immediately after the acceptance of these terms by both Governments.

(*c*) The operations mentioned in the above paragraphs (*a*) and (*b*) will be carried out under the surveillance of the Commission through its Military Adviser.

(3) *General Provisions*

(*a*) The territory evacuated by the Pakistan troops will be administered by the local authorities under the surveillance of the Commission.

(*b*) Immediately upon the acceptance of these terms, the Commission would enter into consultations with the Government of India regarding the disposal of the Indian and State armed forces, and with the local authorities regarding the disposal of the armed forces in the territory to be evacuated by Pakistan troops, with a view to initiating implementation of point 4 (*a*) and (*b*) of the Commission's Resolution of 5 January 1949.

(*c*) If, before the expiration of the seven weeks contemplated in point (2)(*a*) decisions are reached in the consultations for the initial implementation referred to in (3)(*b*) above, the schedule of withdrawal of the Pakistan Army, as provided for in (2)(*a*) above, may be extended to three months, in order to facilitate the implementation of decisions relating to point 4 (*b*) of the Commission's Resolution of 5 January 1949.

(*d*) All prisoners of war will be released within one month.

(*e*) All land mines will be immediately lifted by the side which sowed them.

(*f*) It will be made publicly known throughout the State of Jammu and Kashmir that peace, law, and order will be safeguarded and that all human and political rights will be guaranteed.

(*g*) These terms are without prejudice to the territorial integrity and the sovereignty of the State of Jammu and Kashmir.

(*h*) Those terms do not prejudice the functions and powers of the Plebiscite Administrator.

(*i*) These terms will become effective and will be published by the Commission immediately upon their acceptance by both Governments.

UNCIP, Report, S/1430/Add. I, Annex 21.

118 26 *April* 1949

CHAIRMAN, UNCIP TO MINISTRY OF EXTERNAL AFFAIRS, INDIA

(1) I have the honour to acknowledge the receipt of your Government's reply to the Commission's proposals of 15 April 1949 regarding the implementation of Part II of the Resolution of 13 August 1948.

(2) The Commission has given serious study to the replies of the Government of India and the Government of Pakistan and has formulated truce terms which I have the honour to transmit to Your Excellency herewith. The terms now submitted to your Government endeavour to reconcile so far as possible the views of both Governments with respect to the present situation and adhere to the framework of the Resolution of 13 August 1948.

(3) The Commission considers it essential that the Governments of India and Pakistan agree on terms which will permit the implementation of the provisions of the truce without further delay, and cannot but express to your Excellency the urgency which it attaches to the withdrawal of armed forces from the State of Jammu and Kashmir. The Commission does not believe that fruitful results would be obtained from further discussions. It is in this spirit that the Commission requests your Government's unreserved acceptance of the enclosed terms.

(4) To aid your Government's consideration of certain points of the truce terms, the Commission sets forth below the following observations.

(*a*) The Government of India will understand that the Commission cannot deal at this stage with the question of disbanding and disarming the Azad Kashmir forces since it does not fall within the purview of Part II of the Resolution of 13 August. Nevertheless the Commission appreciates the significance of the question and is anxious to consider it without delay. While the Commission cannot share the view of the Government of India that a reduction of its forces beyond the strength mentioned in your letter of 17 April 1949 must depend upon the actual disbanding and disarming of the Azad Kashmir forces, it is convinced that an early study of the matter would hasten the preparations for the plebiscite. In an effort to meet your Government's point of view, the Commission has provided for consultations on the disposal of forces in the State, under Point 4 (*a*) and (*b*) of the Resolution of 5 January 1949, by advancing the consideration of this point to the moment at which the Governments of India and Pakistan have signified their acceptance of the enclosed terms. Section (3)(*b*)

contemplates decisions on the question of the Azad Kashmir forces at an early stage in the implementation of the truce.

(*b*) The Government of India has requested that it be allowed to post and maintain garrisons at the strategic points mentioned in its memorandum of 13 April 1949 with respect to the sparsely populated and mountainous region to the north. The Commission believes that to achieve the purposes of the truce, it is essential to restrict the field of military activities as far as possible. Furthermore, the Commission cannot agree to any measures which it fears may disturb conditions in any part of the State and thus be detrimental to the achievement of the common objective of an early plebiscite. Nevertheless, in an effort to meet the position of your Government in this matter, the enclosed terms provide that, without prejudice to the provisions of point 8 of the Resolution of 5 January 1949, should the Commission and/or the Plebiscite Administrator conclude that it is necessary for the defence of the area, the Commission and/or the Plebiscite Administrator may agree to your Government stationing garrisons north of the cease-fire line, as contemplated under Section (1)(*d*).

(*c*) The Commission hopes that your Government will do all in its power to further the objective set forth in Section (3)(*f*). It believes that the announcement of the release of political prisoners and the abrogation of emergency laws relating to civilian movement in the State and other similar measures, would be valuable contributions to the achievement of those conditions which will enable rapid progress in the preparations for the plebiscite.

(5) With respect to point (2)(*b*) the Commission, with due regard to the security of the State, presents the following plan of withdrawal for the bulk of the Indian forces from the territory of the State of Jammu and Kashmir.

(At the request of the Government of India, the schedule of the withdrawal of troops is not reproduced here.)

(6) The Commission requests your Government's reply within one week.

UNCIP, Report, S/1430/Add. I, Annex 22.

119 28 *April* 1949

CHAIRMAN, UNCIP, TO GOVERNMENT OF PAKISTAN

(1) I have the honour to acknowledge the receipt of your Government's reply to the Commission's proposals of 15 April 1949 regarding the implementation of Part II of the Resolution of 13 August 1948.

(2) The Commission has given serious study to the replies of the Government of Pakistan and the Government of India and has formulated truce terms which I have the honour to transmit to your Excellency herewith. The terms now submitted to your Government endeavour to reconcile so far as possible the views of both Governments with respect of the present situation and adhere to the framework of the Resolution of 13 August 1948.

(3) The Commission considers it essential that the Governments of Pakistan and India agree on terms which will permit the implementation of the provisions of the truce without further delay and cannot but express to your Excellency the urgency which it attaches to the withdrawal of armed forces from the State of Jammu and Kashmir. The Commission does not believe that fruitful results would be obtained from further discussions. It is in this spirit that the Commission requests your Government's unreserved acceptance of the enclosed terms.

(4) To aid your Government's consideration of certain points of the truce terms, the Commission sets forth below the following observations:

(*a*) With respect to Section II, it is desired to emphasize to the Government of Pakistan that the schedules of withdrawals of the Pakistan troops and the bulk of the Indian forces will be faithful to the Commission's Resolution of 13 August 1948 and represent a co-ordination of timing which in the view of the Commission will constitute a synchronized action.

(*b*) A period of three months for the withdrawal of Pakistan troops was previously contemplated in view of your Government's suggested re-organization of the Azad Kashmir forces. The Government of India had agreed in principle to a three months withdrawal period for the Pakistan troops on the understanding that there would be a reduction of the Azad Kashmir forces. The Government of Pakistan insisted that the question of the Azad Kashmir forces be considered only in the light of point 4 (*a*) and (*b*) of the Resolution of 5 January 1949 and be acted upon only after the acceptance of the truce. The Commission has based its terms on Part II of the Resolution of 13 August 1948 and has not felt able to modify its proposals of 15 April 1949 in this regard, except as indicated below.

(*c*) Section (3)(*c*) in relation to (3)(*b*) provides for the extension of the period of the withdrawal of Pakistan troops in order to expedite the implementation of decisions which might be taken as a result of the consultations envisaged under point (4)(*b*) of the Commission's Resolution of 5 January 1949, which are to be immediately entered into upon the acceptance of the enclosed terms.

(*d*) Section (3)(*g*) recognizes that the Commission cannot prejudge the sovereignty and integrity of the State as a whole. It should not be construed as envisaging the introduction into the area to be evacuated by Pakistan troops of civil or military officials of the Government of Jammu and Kashmir or of the Government of India for the purpose of administration or control. The Commission does not feel that the presence of this clause in the enclosed terms introduces a controversial subject nor does it in any way affect the agreement already reached by both Governments in their acceptance of the Commission's Resolution of 13 August 1948.

(*e*) The Commission hopes that your Government will do all in its power to further the objective set forth in Section (3)(*f*). It believes that the announcement of the release of political prisoners and the abrogation of emergency laws relating to civilian movement in the State and other similar measures, would be valuable contributions to the achievement of those conditions which will enable rapid progress in the preparations for the plebiscite.

(5) The Commission request your Government's reply within one week.

UNCIP, Report, S/1430/Add. I, Annex 23.

120 18 *May* 1949

GOVERNMENT OF INDIA'S REPLY TO COMMISSION'S TRUCE TERMS

Disbanding and disarming of the so-called 'Azad Kashmir' forces

In my letter No. 253-PASG/49, dated 17 April, I explained that, since the disbanding and disarming of these forces had been repeatedly challenged, the Government of India would have preferred this matter to be dealt with in the truce agreement itself. They desired, however, to meet the Commission's views as far as possible. They had, therefore, expressed the wish that the assurance regarding the disbanding and disarming of these forces contained in the *aide-mémoire* of the conversation of 22 December between the Prime Minister of India on the one hand and Ambassador Colban and Your Excellency on the other, should be made clear beyond any doubt. This is still their position. But neither in the Commission's latest proposals nor in your covering letter is this assurance given, much less placed beyond all doubt. On the other hand, Your Excellency has stated categorically that the Commission cannot at this stage deal with the question of disbanding and disarming the 'Azad Kashmir' forces.

In my letter of 17 April, it had also been suggested that discussions to implement the assurance should begin as soon as possible and decisions should be taken not later than the completion of the withdrawal of Pakistan troops (seven weeks) mentioned in (*a*) of the Commission's proposals communicated to the Government of India on 28 April. Regarding this suggestion, all that is indicated in your Excellency's letter under reply is an early study of the matter for which the Commission 'will enter into consultations with the "local authorities" regarding the disposal of the armed forces in the territory evacuated by Pakistan troops with a view to initiating implementation of point 4(*b*) of the Commission's Resolution of 5 January 1949'.

In (3)(*c*) of the latest proposals, reference is made to what the Commission propose to do if decisions are reached within the period of seven weeks. Nothing is said, however, as to what is to happen if no decisions are reached within this period; presumably the arrangements for the plebiscite will be proceeded with even if the 32 'Azad Kashmir' battalions remain intact after the withdrawal of the Indian and Pakistan troops, an eventuality which could not be reconciled with the agreed objective that the plebiscite should be free and impartial.

Both from the standpoint of the security of the State, which the Commission has agreed is the responsibility of the Government of India, and the freedom and impartiality of the plebiscite, which is an agreed objective, the Government of India are convinced that the disbanding and disarming of 'Azad Kashmir' forces should not be left in a state of uncertainty or be, hereafter, the subject of challenge and dispute as it has been on the part of those who speak for Pakistan. It is therefore, of the utmost importance:

(i) That the agreement of the Government of Pakistan should be obtained now to the disbanding and disarming of these 32 battalions. The Commission has already agreed to large-scale disbanding and disarming and has informed the Government of Pakistan that this is its objective. It should not therefore be difficult, if Pakistan has accepted this objective, to obtain its agreement.

(ii) The discussions regarding the procedure and phasing of the disbandment and disarming should commence immediately after the truce is signed. Decisions on a programme designed to achieve this objective should be taken as soon as possible.

(iii) The phasing of the withdrawal of Indian troops be not divorced from, and should depend on, the progress made with the actual disbanding and disarming of the 'Azad Kashmir' forces.

(2) *Treatment of the sparsely populated and mountainous areas in the North.* The position of the Government of India with regard to the sparsely

populated and mountainous regions in the north was explained to the Commission in the Prime Minister's letter to Mr Korbal on this subject dated 20 August. To quote the relevant sentence, the Government of India expressed their desire that ' after Pakistan troops have withdrawn from the territory, the responsibility for the administration of the evacuated areas should revert to the Government of Jammu and Kashmir and that for defence to the Government of India '. In paragraph 8 of my letter, dated 15 April, it was pointed out that although Pakistan forces, both regular and irregular, may be withdrawn from this area, a large number of men armed by Pakistan would remain and would constitute a threat and a menace to the security of the valley of Kashmir and to the trade with Central Asia of the Jammu and Kashmir State. The persistence with which infiltration is being carried out in this region by forces under the control of Pakistan is convincing proof of the reality of this menace. (Reports of specific incidents have been furnished regularly to the Commission's military adviser and to the military observers but the Government of India are not aware that any action has been taken to check these violations of the ' cease-fire '.) That, under the Commission's proposals, Pakistan forces, both regular and irregular, would be withdrawn from this part of the state cannot by itself eliminate the danger of the ' locals ' who have been armed by Pakistan menacing internal security among law-abiding citizens of the area and indulging in raids into the valley and in armed interference with the State's trade with Central Asia. Individual or even small groups of observers posted by the Commission would find it extremely difficult to detect and could not prevent such incursions. The expanse of the area will render this impossible. The Government of India, therefore, maintain that the principle that Indian troops should garrison important strategic points should be accepted. The points to be so occupied can be the subject of discussion with the Commission. The question of the administration of this area might be left over for the time being.

(3) As regards the other proposals, the Government of India feel that, in view of what has been said in the preceding paragraphs which deal with the major issues, comment at this stage is unnecessary.

(4) Your Excellency's letter of 28 April urges ' unreserved acceptance ' by the Government of India of the terms forwarded with that letter. The Government of India have found themselves unable to accede to this request. They have reached this conclusion with a full sense of their responsibility. Twice, namely in August and in December 1948, they have given proof, to the Commission and to the United Nations, of their desire to reach a peaceful settlement of the Kashmir dispute, by accepting the Commission's Resolution of

13 August, 1948, and the proposals, dated 11 December 1948, which were subsequently embodied by the Commission in its Resolution of 5 January 1949. If they find themselves unable now to accept the Commission's latest proposals as they stand, it is through no lessening of their desire for a peaceful solution of the dispute but because they have come to the conclusion that these proposals do not make adequate provisions for the security of the State, security which, as they have repeatedly made clear to the Commission, they regard as a paramount and ineluctable responsibility. It is now for the Commission to decide whether they will revise their proposals in the light of paras 1 and 2 of this letter.

UNCIP, Report, S/1430/Add. I, Annex 48.

121 30 *May* 1949

GOVERNMENT OF PAKISTAN'S REPLY TO COMMISSION'S TRUCE TERMS

Cease-fire Line (Paragraphs 1(a), (b) and (c))

(1) The Pakistan Government accept the cease-fire line drawn on the map annexed to the Commission's truce terms, and agree that the line between Chakothi and Tithwal, and from Chorwan to the north of Dras should be similarly demarcated by the Military Adviser to the Commission on the basis of the factual position occupied by the forces on both sides on 1 January 1949. They also agree that the Military Adviser to the Commission may decide upon local adjustments of the cease-fire line in cases where no agreement is reached between the local Commanders. It was explained in the Commission's letter dated 16 April 1949 that 'the Military Adviser will base his determinations upon military and factual considerations, other considerations being beyond his competence'. Further, it is understood that the adjustments being local would be of a minor character.

The Pakistan Government have already submitted relevant data to the Military Adviser to the Commission in regard to the undemarcated sectors of the cease-fire line, and they would be glad to furnish any further information that may be required.

The demarcation of the cease-fire line is provided for in Part I of the Commission's Resolution of 13 August 1948 and should not be held up because of any delay in arriving at an agreement with regard to truce arrangements under Part II of the Resolution. The Pakistan Government understand that the Commission is fully alive to the

urgency of this question, and that the demarcation of the cease-fire line will be complete as soon as possible.

Northern Area (Paragraph 1)

(2) The Pakistan Government understand—

(i) that the territory referred to in paragraph 1(*d*) of the truce terms is the area of the State north of the cease-fire line, with the exception of Gilgit Sub-division and Gilgit Agency;

(ii) that the contingency in which the defence of this area might become necessary is hypothetical and highly remote;

(iii) that such a contingency could arise only in the case of aggression by a foreign power, or an incursion by tribesmen from the North-West Frontier of Pakistan, and that the provision of this paragraph would not be invoked for the maintenance of law and order or for dealing with a situation of internal unrest;

(iv) that any report from the Government of India on the subject would be verified independently by the Commission's own observers before the Commission and/or the Plebiscite Administrator arrive at the conclusion that the defence of the area is necessary;

(v) that if the Commission and/or the Plebiscite Administrator conclude that the defence of the area is necessary, it is open to them to take any action that they consider appropriate in the particular circumstances of the case, that a request to the Government of India for posting their troops at specified points is only one of the possible courses of action and that they are not precluded from seeking the advice of the Pakistan Government and the assistance of Pakistan forces should circumstances, in their view, warrant such a course;

(vi) that the Commission does not intend, in actual practice, to take any action under this paragraph, without consultation with the Plebiscite Administrator; and

(vii) that, even if the posting of Indian garrisons at specified points is decided upon, the administration of the area will not be handed over to the Government of India, or to the Maharaja's Government, and that civil or military officials of either of these governments would in no circumstances be introduced into this area for the purpose of administration or control.

(3) The views of the Pakistan Government with regard to this proposal have been stated at great length in their letters dated 23 and 26 April and 6 May 1949, and are summarized below:

(*a*) The proposal to allow in certain contingencies the posting of Indian garrisons at specified points in this area is not in accord with clause (*b*)(*ii*) Part II of the Commission's resolution of 13 August 1948,

which permits the retention of Indian troops only within the lines in existence at the moment of the cease-fire.

(*b*) The proposal also conflicts with the assurance given by the Commission on 31 August 1948 that neither the Government of India nor the Maharaja's Government will be permitted to send any military or civil officials to the evacuated territory. In its letter of 3 September 1948 to the Foreign Minister of Pakistan the Commission explained that the term 'evacuated territory' used in paragraph (*a*)(*iii*) of Part II of the Resolution of 13 August 1948 'refers to those territories in the State of Jammu and Kashmir which are at present under the effective control of the Pakistan High Command'. The area north of the cease-fire line has been as much under the effective control of the Pakistan High Command as the area west of the cease-fire line.

The assurance that no civil or military official of the Government of India or of the Maharaja's Government would be sent to the evacuated territory was conveyed to all the people in the 'evacuated territory', whether north or west of the cease-fire line, and was an important factor in inducing the people of these territories to stop fighting.

(*c*) The proposal appears to be unnecessary in view of the following considerations:

Even hypothetically, the threat envisaged might arise either from tribesmen or from a foreign power. The first contingency should be ruled out in view of the assurance given by the Pakistan Government that they would deal effectively within their own borders with any possibility of tribal incursions.

As regards the second contingency, it has been explained to the commission that on account of the very difficult terrain, and the fact that the mountain passes remain snow-bound for most of the year, neither of the two main trade routes leading into this area from Central Asia could be used for military operations of any magnitude.

Of these two trade routes, much the more important one (Kashgar Hunza-Gilgit) passes through Gilgit Agency and Gilgit Sub-division which are to remain under the control of Pakistan. A threat to this route would therefore have to be dealt with in any case by Pakistan. The second and minor trade route (Yarkand-Leh-Kargil) which has to cross the Karamurum pass (18,240 feet high) traverses territory which is already under Indian control. Any threat to this route could therefore be dealt with effectively by India without the necessity of posting Indian troops in the 'Northern area'.

The local authorities responsible for the administration and security of this area should be capable of meeting any minor threat with the help of their local forces which have successfully withstood the repeated

assaults of the Indian Army. A major threat due to aggression by a foreign power would be a threat to the security of the entire Indo-Pakistan sub-continent, and to the peace of the world and would thus be a matter for the Security Council to consider and to take appropriate measures. The Commission would agree that no authority other than the Security Council is competent to sanction measures to deal with such a situation.

(*d*) In view of its stronger strategic position, and better lines of communication, and the fact that the population of this area is wholly Muslim, Pakistan is more vitally interested in, and is in a much better position than India to safeguard the security of this area. The Muslim population of this area is so opposed to the imposition of Indian rule that the mention of a proposal to post Indian garrisons in certain contingencies is likely to create serious unrest among them. The actual posting of Indian garrisons in any part of this territory would have still more disastrous effects on the peace and tranquillity of the area and, far from ensuring security against foreign attack, it would result in a war of resistance, thus creating conditions facilitating foreign intervention.

(4) In view of the considerations summarized above, the Pakistan Government submit that the proposal contained in paragraph 1(*d*) of the truce terms is not in accord with the Commission's Resolution of 13 August 1948, is unnecessary and, far from assuring peace and tranquillity in this area, is likely to create conditions of unrest and insecurity.

Withdrawal of Troops (Paragraphs 2(a), (b) and (c))

(5) The withdrawal of troops is the central feature of Part II of the Commission's Resolution of 13 August 1948 which calls for the following action:

(i) withdrawal of tribesmen;

(ii) withdrawal of such Pakistan nationals as have entered the State of Jammu and Kashmir for the purpose of fighting;

(iii) withdrawal of Pakistan troops and of the bulk of Indian troops in accordance with a synchronized programme.

(6) The Pakistan Government have carried out successfully the difficult and delicate operation of ensuring the withdrawal of the tribesmen in advance of the truce agreement, although this obligation arises only after the signing of the truce agreement. No better proof could be afforded of the sincere desire of the Pakistan Government to take all steps possible to promote peace and tranquillity in the State and to pave the way, as rapidly as possible, for the holding of an impartial plebiscite. The second obligation mentioned in paragraph 5 (ii) above is also in the process of implementation.

It is understood that the Commission's Military Adviser has called for reports from his observers with regard to the withdrawal of tribesmen and Pakistan nationals who had entered the State for the purpose of fighting, and that on the basis of this investigation the Commission will be in a position, after the signing of the truce agreement, to notify the Government of India of the discharge of these obligations by Pakistan. The commission would then be able to fix a date for the beginning of the withdrawal of the Pakistan troops, and another for that of the bulk of the Indian forces from the State of Jammu and Kashmir.

(7) The only important matter left to be dealt with in the truce agreement is the withdrawal of Pakistan troops and of the bulk of Indian in accordance with a synchronized programme. In its letter of 27 August 1948, the Commission stated that 'synchronization of the withdrawal of the armed forces of the two Governments would be arranged between the respective High Commands and the Commission'. This meant that the Commission would arrange with the Pakistan High Command the synchronization of the withdrawal of the armed forces of the two Governments and also do the same thing with the Indian High Command. Such a procedure is the only practical way of ensuring that the withdrawals of Indian and Pakistan forces proceed in corresponding stages without advantage to either side at any time during the truce period and without temptation to either side to violate the truce either by restarting hostilities or by halting or slowing down the withdrawal.

(8) Under the Commission's truce proposals the Pakistan Government have to withdraw all their forces within seven weeks in accordance with the schedule which has been laid down in paragraph 2(*a*)(i) of the truce terms, and communicated to the Government of India. The Pakistan Government, on the other hand, have not been shown the schedule of withdrawal of the Indian forces and have thus been placed at a disadvantage *vis-à-vis* India which has full information of the withdrawal programme of both the forces. The only positive information given to the Pakistan Government is that the time allowed for the withdrawal of Indian forces is longer than the seven weeks laid down for the complete withdrawal of Pakistan forces. They are not even sure that the schedule of withdrawal of the Indian forces submitted by the Commission for the agreement of the Government of India is firm and not subject to alterations. The Pakistan representatives have been given to understand that there will be no change in the composition of the 'bulk', but that there might be some alterations in the stages of withdrawal, although such changes, if any, would be minor and limited by the Commission's assurance given in the letter under

reply that the schedules of withdrawal of the Pakistan troops and of the bulk of the Indian forces will be faithful to the Commission's Resolution of 13 August 1948 and represent a co-ordination of timing which in the view of the Commission will constitute a synchronized action.

(9) The truce terms relating to the withdrawal of the Pakistan and Indian forces do not appear to the Pakistan Government to fulfil the undertaking given by the Commission that it would arrange with the Pakistan High Command a synchronization of the withdrawal of the two armed forces. In consequence, the Pakistan Government have no information as to the strength and composition of the bulk of the Indian forces to be withdrawn, nor of the time during which these forces will withdraw from the State. They have also no information regarding the stage of withdrawal of the Indian forces corresponding to the stages of the withdrawal of the Pakistan forces or of the position on the Indian side at the end of seven weeks when Pakistan forces will have completely withdrawn from the State. They have also no information as to the strength, composition or location of the Indian forces allowed under paragraph (*b*)(ii) of Part II of the Commission's Resolution of 13 August 1948 to assist the local authorities in the observances of law and order, and have thus been deprived of the opportunity to place their views before the Commission on the subject, *vide* the Commission's letter of 3 September 1948 to the Foreign Minister of Pakistan. The Pakistan Government have not even been told the reasons for which, in spite of repeated requests, they have been denied information on these vital points without which they cannot, in reason, be expected to take a decision. The only fact known to them, namely, that the time allowed for the withdrawal of the bulk of the Indian forces is longer than the time allowed for the withdrawal of the Pakistan Army, appears to them to nullify the provision for a synchronized withdrawal promised by the Commission and to create a disequilibrium of forces after the period of seven weeks allowed for the withdrawal of the Pakistan Army.

Disposal of the Indian and State forces and of Azad Kashmir forces (Paragraph 3(b) and (c))

(10) The Pakistan Government understand that the discussions envisaged in paragraphs (3)(*b*) and (*c*) are with a view to initiating implementation of points 4 (*a*) and (*b*) of the Commission's Resolution of 5 January 1949 under which decisions regarding the final disposal of Indian and State forces on the one hand, and of Azad Kashmir forces on the other, are to be taken by the Commission and the Plebiscite Administrator. It is understood that it is the Commission's intention to

associate the Plebiscite Administrator with these discussions from the outset even though he may not have been formally appointed to office by them. Further it is understood that the Plebiscite Administrator would reach the Indo-Pakistan sub-continent at a very early date, and that his formal appointment will be made as soon as possible.

(11) Paragraph (3)(*c*) of the truce terms provides that if decisions are reached in the consultations envisaged in paragraph (3)(*b*) of the Commission's truce proposals, the schedule of withdrawal of the Pakistan Army may be extended to three months in order to facilitate the implementation of decisions relating to point (4)(*b*) of the Commission's resolution of 5 January 1949. It is understood that the Pakistan Army would be expected during this extended time only to reorganize the Azad Kashmir forces so as to facilitate the implementation of decision relating to point (4)(*b*) of the Commission's Resolution of 5 January 1949 and not actually to implement those decisions within that period of time. In other words, the actual implementation of the decisions will start only after Parts I and II of the Commission's Resolution of 13 August 1948 have been fully implemented.

(12) In the view of the Pakistan Government it is essential that the Plebiscite Administrator be associated with the discussions under paragraphs (2)(*b*) and (*c*) of the Commission's truce terms since such discussions relate to the provisions of paragraph (4)(*a*) and (*b*) of the Commission's Resolution of 5 January 1949. The decision reached in these discussions will have a vital bearing on the freedom of the plebiscite, and it is therefore of the utmost importance that the Plebiscite Administrator should participate in these discussions. The Pakistan Government strongly urge that the Plebiscite Administrator should be appointed at as early a date as possible.

General provisions (*Paragraphs* (3)(*f*) *and* (*g*))

(13) It is understood that the Commission is fully alive to the importance of taking concrete steps, such as the release of political prisoners and the abrogation of emergency laws to implement the declaration under paragraph (3) of the truce terms. The Pakistan Government trust that the Commission will do everything possible for the restoration of human and political liberty in the State in actual practice. Unless the public declaration envisaged in paragraph (3)(*f*) is followed immediately by concrete action, the psychological effect on the people of the State would be of a highly undesirable character.

The Pakistan Government are unable to appreciate how the introduction of paragraph (3)(*g*) in the Commission's truce terms could be regarded as an implementation of Part II of the Commission's Resolution of 13 August 1948 which makes no mention at all of the

subject-matter of this paragraph. It is suggested that this paragraph which unnecessarily introduces a highly controversial matter should be omitted from the truce terms.

Conclusion

(14) The Pakistan Government are sincerely desirous of advancing to the plebiscite stage as early as possible and to this end they wish to assure the Commission of their wholehearted co-operation in the tasks devolving upon the Commission and the Plebiscite Administrator. In pursuance of this policy they are anxious that the truce agreement leading to the withdrawal of the armed forces should be concluded at as early a date as possible. Since this is an essential preliminary to the holding of a plebiscite they have, as the Commission is aware, carried out an important part of their obligations in effecting the withdrawal of tribesmen and almost all Pakistan nationals who had entered the State for the purpose of fighting. They are also ready to withdraw all Pakistan troops from the State of Jammu and Kashmir under the terms of the Commission's Resolution of 13 August 1948 as elucidated to the Pakistan Government. The Commission will, no doubt, appreciate that without knowing the schedule of withdrawal of the Indian forces on the basis of which the synchronized withdrawal of the two armed forces could be arranged, the Pakistan Government are not in a position to take a decision on the Commissioner's truce terms, the central feature of which is the withdrawal programme of the two armed forces. They trust that they would soon be put in a position in which they can take such a decision.

The submissions made in this letter, in particular that relating to the early appointment of the Plebiscite Administrator have been made with a desire to facilitate the task of the Commission. The Pakistan Government trust that these submissions will meet with the approval of the Commission.

UNCIP, Report, S/1430/Add. I, Annex 49.

122 27 *July* 1949

AGREEMENT BETWEEN MILITARY REPRESENTATIVES OF INDIA AND PAKISTAN

I *Introduction*

A. The military representatives of India and Pakistan met together in Karachi from 18 July to 27 July 1949 under the auspices of the Truce Sub-committee of the United Nations Commission for India and Pakistan.

II *Agreement*

A. *Considering:*

(1) That the United Nations Commission for India and Pakistan, in its letter dated 2 July 1949, invited the Governments of India and Pakistan to send fully authorized military representatives to meet jointly in Karachi under the auspices of the Commission's Truce Sub-Committee to establish a cease-fire line in the State of Jammu and Kashmir, mutually agreed upon by the Governments of India and Pakistan;

(2) That the United Nations Commission for India and Pakistan in its letter stated that 'The meetings will be for military purposes; political issues will not be considered', and that 'They will be conducted without prejudice to negotiations concerning the Truce Agreement'.

(3) That in the same letter the United Nations Commission for India and Pakistan further stated that 'The cease-fire line is a complement of the suspension of hostilities, which falls within the provisions of Part I of the Resolution of 13 August 1948, and can be considered separately from the questions relating to Part II of the same Resolution'.

(4) That the Governments of India and Pakistan, in their letters dated 7 July 1949 to the Chairman of the Commission, accepted the Commission's invitation to the military conference in Karachi.

B. *The Delegations of India and Pakistan, duly authorized, have reached the following agreement:*

(1) Under the provisions of Part I of the Resolution of 13 August 1948, and as a complement of the suspension of hostilities in the State of Jammu and Kashmir on 1 January 1949, a cease-fire line is established.

(2) The cease-fire line runs from Manawar in the south, north to Keran and from Keran east to the glacier area, as follows:

(*a*) The line from Manawar to the south bank of the Jhelum River at Urusa (inclusive to India) is the line now defined by the factual positions about which there is agreement between both parties. Where there has hitherto not been agreement, the line shall be as follows:

(i) In Patrana area: Koel (inclusive to Pakistan) north along the Khuwala Kas Nullah up to Point 2276 (inclusive to India) thence to Kirni (inclusive to India).

(ii) Khambha Pir Satwan, Point 3150 and Point 3606 are inclusive to India, thence the line runs to the factual position at Bagla Gaia, thence to the factual position at Point 3300.

(iii) In the area south of Uri the positions of Pir Kanthi and Ledi Gaii are inclusive to Pakistan.

(*b*) From the north bank of the Jhelum River the line runs from a point opposite the village of Urusa (NI 972109), thence north following the Ballaseth Da Nar Nullah (inclusive to Pakistan), up to NI 973140, thence northeast to Chhota Kazinag (Point 10657, inclusive to India), thence to NM 010180, thence to NM 037210, thence to Point 11825 (NM 025354, inclusive to Pakistan), thence to Tutmari Gaii (to be shared by both sides posts to be established 500 yards, on either side of the Gali), thence to the northwest through the first 'R' of Burji Nar to north of Gabdori, thence straight west to just north of Point 9870, thence along the black line north of Bijiidhar to north of Batarasi, thence to just south of Sudpura, thence due north to the Kathakazinag Nullah, thence along the Nullah to its junction with the Grangnar Nullah, thence along the latter Nullah to Kajnwala Pathra (inclusive to India), thence across the Danna ridge (following the factual positions) to Richmar Gali (inclusive to India), thence north to Thanda Katha Nullah, thence north to the Kishanganga River. The line then follows the Kishanganga River up to a point situated between Jargi and Tarban, thence (all inclusive to Pakistan) to Bankoran, thence northeast to Khori, thence to the hill feature 8930 (in square 9053), thence straight north to Point 10164 (in square 9057), thence to Point 10323 (in square 9161), thence northeast straight to Guthur, thence to Bhutpathra, thence to NL 980707, thence following the Bugina Nullah to the junction with the Kishanganga River at Point 4739. Thereafter the line follows the Kishanganga River to Keran and onwards to Point 4996 (NL 975818).

(*c*) From Point 4996 the line follows (all inclusive to Pakistan) the Jamgar Nullah eastward to Point 12124, to Katware, to Point 6678, thence to the northeast to Sarian (Point 11279), to Point 11837, to point 13090, to Point 12641, thence east again to Point 11142, thence to Dhakki, thence to Point 11415, thence to Point 10301, thence to Point 7507, thence to Point 10685, thence to Point 8388, thence southeast to Point 11812. Thence the line runs (all inclusive to India) to Point 13220, thence across the River to the east to Point 13449 (Duhmat), thence to Point 14586 (Anzbari), thence to Point 13554, thence to Milestone 45 on the Burzil Nullah, thence to the east to Zianka1 (Point 12909), thence to the southeast to Point 1114, thence to Point 12216, thence to Point 12867, thence to the east to Point 11264, thence to Karo (Point 14985), thence to Point 14014, thence to Point 12089, thence following the track to Point 12879. From there the line runs to Point 13647 (Mkarobai Gali, to be shared by both sides). The cease-fire line runs thence through Retagah Chhish (Point 15316), thence through Point 15889, thence through Point 17392, thence through Point 16458, thence to Marpo La (to be shared by both

sides), thence through Point 17561, thence through Point 17352, thence through Point 18400, thence through Point 16760, thence to (inclusive to India) Dalunang.

(*d*) From Dalunang eastwards the cease-fire line will follow the general line Point 15495, Ishman, Manus, Gangam, Gunderman, Point 13620, Junkar (Point 17628), Marmak, Natsara, Shangruth (Point 17531), Chorbat La (Point 15700), Chalunka (on the Shyok River), Khor, thence north to the glaciers. This portion of the cease-fire line shall be demarcated in detail on the basis of the factual position as of 27 July 1949 by the local commanders, assisted by United Nations Military Observers.

C. The cease-fire lines described above shall be drawn on a one inch map (where available) and then be verified mutually on the ground by local commanders on each side with the assistance of the United Nations Military Observers, so as to eliminate any no-man's land. In the event that the local commanders are unable to reach agreement, the matter shall be referred to the Commission's Military Adviser, whose decision shall be final. After this verification, the Military Adviser will issue to each High Command a map on which will be marked the definitive cease-fire line.

D. No troops shall be stationed or operate in the area of the Burzil Nullah from south of Minimarg to the cease-fire line. This area is bounded on the west by the Ridge leading northeast from Dedgai Kal to Point 13071, to Point 9447, to Point 13466, to Point 13463, and on the east by the Ridge running from Point 12470, to Point 11608, to Point 13004, to Point 13976, to Point 13450. Pakistan may, however, post troops on the western of the above ridges to cover the approaches to Khambri Bai pass.

E. In any dispositions that may be adopted in consequence of the present agreement troops will remain at least 500 yards from the cease-fire line except where the Kishanganga River constitutes the line. Points which have been shown as inclusive to one party may be occupied by that party, but the troops of the other party shall remain at a distance of 500 yards.

F. Both sides shall be free to adjust their defensive positions behind the cease-fire line as determined in paragraphs A through E, inclusive, subject to no wire or mines being used when new bunkers and defences are constructed. There shall be no increase of forces or strengthening of defences in areas where no major adjustments are involved by the determination of the cease-fire line.

G. The action permitted by paragraph F above shall not be accompanied or accomplished by the introduction of additional military potential by either side into the State of Jammu and Kashmir.

H. Except as modified by paragraphs II A to II G, inclusive, above, the military agreements between the two High Commands relating to the cease-fire of 1 January 1949 shall continue to remain operative.

I. The United Nations Commission for India and Pakistan will station Observers where it deems necessary.

J. The Delegation shall refer this agreement to their respective Governments for ratification. The documents of ratification shall be deposited with the United Nations Commission for India and Pakistan not later than 31 July 1949.

K. A period of 30 days from the date of ratification shall be allowed to each side to vacate the areas at present occupied by them beyond the cease-fire line as now determined. Before the expiration of this 30-day period there shall be no forward movement into areas to be taken over by either side pursuant to this agreement, except by mutual agreement between local commanders.

UNCIP, Report, S/1430/Add. I, Annex 26.

123 9 *August* 1949

CHAIRMAN, UNCIP TO GOVERNMENT(S) OF INDIA (AND PAKISTAN)

The United Nations Commission for India and Pakistan has taken note of your Government's reply dated 18 May (30 May) to the Commission's truce proposals of 28 April 1949. The Commission has likewise taken cognizance of your letters dated 17 and 19 June on the same subject. (This sentence is omitted in the letter to Pakistan.) The Commission has also received a reply to the truce proposals from the Government of Pakistan (India).

(2) The Commission notes that neither Government has given its unreserved acceptance to the proposals and that they still hold divergent views on the problem. While the Commission remains convinced of the readiness of both Governments to fulfill the commitments they have already made, it appears that further separate negotiations to bring about agreement can hardly be expected to render the desired result within a reasonable time.

(3) The Commission invited the two Governments to a joint military meeting in Karachi for agreement on a cease-fire line. The successful result of that meeting and the spirit of co-operation and mutual understanding shown by the Delegations of Pakistan and India lead the Commission to hope that similar meetings for the

purpose of agreeing on the implementation of the truce could prove equally successful.

(4) After having ascertained informally that both Governments favour in principle such a procedure I therefore have the honour, on behalf of the Commission, to propose joint meetings at Ministerial level of representatives of your Government with representatives of the Government of India (Pakistan) under the auspices of the Commission for the implementation of Part II of the Commission's Resolution of 13 August 1948.

(5) The Commission would propose that these meetings should begin in New Delhi, and according to circumstances, be continued in Karachi.

(6) In informal conversations both Governments have suggested that the Commission submit a provisional agenda for these meetings. Further, the Chairman of the Commission was requested by Your Excellency to recommend to the Commission that it communicate to your Government the substance of the points of view of the Government of India (Pakistan) on the implementation of the truce. The Government of India (Pakistan) made a similar request.

(7) In accordance with the wish thus expressed by both Governments the Commission has drafted the annexed provisional agenda. It is understood that both parties will be free to propose modifications of this agenda at the opening session.

Provisional Agenda

(1) Adoption of the agenda.

(2) Withdrawal of Pakistan armed forces from the State of Jammu and Kashmir. (Resolution of 13 August 1948, Part II, (*a*)(1)).

(3) Withdrawal of tribesmen and all Pakistan nationals not normally resident in the State of Jammu and Kashmir who have entered the State for the purpose of fighting. (Resolution of 13 August 1948, Part II, (*a*)(2)).

(4) Withdrawal of the bulk of the Indian armed forces from the State of Jammu and Kashmir. (Resolution of 13 August 1948, Part II, (*b*)(1)(2)).

(5) Related questions.

UNCIP, Report, S/1430/Add. I, Annex 27.

124 19 *August* 1949

CHAIRMAN, UNCIP TO INDIAN AND PAKISTANI MINISTERS OF EXTERNAL AFFAIRS

(1) I have the honour to acknowledge receipt of your letter dated 18 August (16 August) in which Your Excellency informed the Commission of the Indian (Pakistan) Government's view with regard to the agenda for the proposed joint meetings in Delhi.

(2) The Commission has also received a letter on the same subject from the Government of Pakistan (India), a copy of which is enclosed with this letter.

(3) In comparing the two communications and keeping in mind the background of the question, the Commission concludes that the proposed joint meetings would not lead to any positive results.

(4) Under these conditions, and taking into account your Government's preoccupation concerning the consequence of a possible failure of such meetings, the Commission feels obliged to abandon the idea of the proposed joint meetings. I had the honour to inform Your Excellency to that effect by telegram last evening.

(5) The Commission is now considering the situation which has arisen as a result of the position adopted by the two Governments concerning the implementation of the Truce Agreement.

(6) A similar communication is being sent to the Government of Pakistan (India).

UNCIP, Report, S/1430/Add. I, Annex 34.

125 26 *August* 1949

MEMORANDUM OF UNCIP (EXTRACT)

...(4) The implementation of Part II of the Commission's Resolution of 13 August 1948 remains unaccomplished. The Commission strongly feels that early and definitive action in this regard is desirable, and has no doubt that both Governments share this view. . .

(5) The Commission has therefore, in the light of existing circumstances decided to ask both Governments whether they will agree to the course of action outlined below for the conclusion of the Truce:

(i) The two Governments agree

(*a*) That they will submit to arbitration the differences existing between them concerning all questions raised by them regarding the implementation of Part II of the Resolution of 13 August 1948, the

arbitrator to decide these questions according to equity, and his decision to be binding on both parties;

(*b*) That the arbitration will terminate once the Truce terms are decided upon;

(*c*) That Fleet Admiral Chester W. Nimitz will be the arbitrator;

(*d*) That the procedure for the arbitration will be worked out subsequently;

(*e*) Since the procedure of arbitration will be limited to the conclusion of a truce the Commission will continue in the exercise of its functions. Upon an arbitral decision the Commission will undertake the tasks assigned to it under the Truce and the Resolution of 5 January 1949.

(ii) With reference to paragraph (i)(*d*) above, the Commission considers that it would be inappropriate, in advance of approval by the parties of the proposed course of action and of the person of the Arbitrator, to seek to define the exact procedure to be followed.

UNCIP, Report, S/1430/Add. I, Annex 35.

126 9 *September* 1949

SECRETARY-GENERAL, GOVERNMENT OF INDIA TO CHAIRMAN, UNCIP

As requested in the concluding paragraph of the memorandum that you gave me on the 30th August on behalf of the United Nations Commission for India and Pakistan, I am communicating to you, in writing, the views of my Government on the suggestion for arbitration described in paragraph (5) of the memorandum.

(2) According to sub-paragraph (i)(*a*) of paragraph (5), the 'two Governments are requested to agree that they will submit to arbitration the differences existing between them concerning all questions raised by them regarding the implementation of Part II of the Resolution of 13 August, 1948, the arbitrator to decide these questions according to equity, and his decisions to be binding on both parties'. In the course of the conversation that I had with Your Excellency and Ambassador Colban on the 30th August, I asked two questions:

(i) Whether the Commission would state to the arbitrator the points submitted to arbitration;

(ii) Whether the Commission would furnish to the arbitrator a clear account of the circumstances leading up to the present position and the Commission's own conclusions on points like the disbanding

and disarming of the 'Azad Kashmir' forces on which it had already reached a conclusion.

In answer to the first question, Your Excellency said that the Commission would prefer both parties to accept the wording of 5(i)(*a*) and to present, to the arbitrator, the specific points on which they seek his decision. It would then be for the arbitrator to decide whether the issues raised by each party were germane to the truce or not. About the second question, Your Excellency explained that the Commission was now approaching the problem from an entirely new angle and entirely afresh. Therefore, it did not wish to go into the past. Each party must state its own view, in their historical context, on the points that may be referred to arbitration.

(3) The effect of the explanation given by Your Excellency in answer to my first question would be that the arbitrator would be free to determine the points on which he should arbitrate. So far as the Government of India are aware, this procedure is novel and without precedent, and could hardly be justified.

(4) As regards the answer to the second question, the Government of India can only express their surprise and disappointment at the attitude of the Commission. Apart from either party setting out its own version of past events, it would have been just and proper if the Commission, which has dealt with the matter during all these months, gave an impartial and authoritative account of the facts which are within its knowledge and of the assurance given to us. The truce proposals, embodied in Part II of the Commission's Resolution of 13th August, cannot be divorced, either from the events and discussions that preceded the acceptance, by the Government of India, of that Resolution or the events and negotiations that have followed since. The presence of Pakistan troops in the territory of Jammu and Kashmir, which the Commission described as constituting ' a material change in the situation since it was respresented by the Government of Pakistan before the Security Council ', is only one instance of Pakistan's aggression in the State of Jammu and Kashmir which, by reason of its accession to India, accession the legality of which the Commission has not questioned and is in fact and law beyond question, is part of India. The aggression began with the invasion of the State by tribesmen and other Pakistan nationals whom Pakistan aided and abetted. It has continued ever since, not only by reason of the entry of Pakistan regular forces into Jammu and Kashmir but by the waging of war by Pakistan against Indian and State forces, the enlargement and organization of the so-called 'Azad Kashmir' forces, under the operational command of the Pakistan Army, and the penetration of Pakistan troops into the thinly populated and mountainous territory

in the north of the State. Pakistan's spirit of aggression has been further repeatedly manifested in the refusal even to discuss the disbanding and disarming of the Azad forces, whose strength constitutes a menace, as was pointed out to Dr Lozano during his conversations with the Prime Minister last December, to the security of the portion of the State now under Indian control and an obstacle to the holding of a free and impartial plebiscite. The same conclusion can be drawn from Pakistan's claim, put forward in the correspondence with the Commission regarding the conference which the Commission recently decided to abandon, that the sparsely populated and mountainous region in the north of the State should be treated in exactly the same manner as the so-called 'Azad Kashmir' area referred to in (*a*)(3) of Part II of the Commission's Resolution of 13th August. The Commission will note that this latest claim of Pakistan renders nugatory the assurance given by the Commission in Mr Korbel's letter of 25th August, 1948, to the Prime Minister that the problem of administration or defence in this large area 'could be considered in the implementation of the Resolution'.

(5) The Government of India have repeatedly affirmed, before the Commission and elsewhere, that no settlement of the dispute over Jammu and Kashmir could be either just or lasting which did not take into account the moral element inherent in an act of aggression. This is as true of a settlement of the dispute over the truce terms as of the overall dispute about the future of the State. The throwing open of the whole of this issue to debate before the arbitrator would in the absence of an objective statement by the Commission of all relevant facts, inevitably prolong the proceedings and thus indefinitely postpone 'that early and definitive action' to implement Part II of the Resolution of 13th August, 1948, which the Commission and the Government of India desire.

(6) In the Government of India's view, the attitude of the Government of Pakistan towards the large-scale disbanding and disarming of the 'Azad Kashmir' forces is a fatal obstacle to the bringing about of the peaceful conditions required for a plebiscite. According to our understanding, Pakistan's contention is that, since no reference is made to such disbanding and disarming in Part II of the Resolution of 13th August, this matter cannot even be discussed in considering the implementation of Part II of the Resolution of 13th August. But the Government of Pakistan forget that before they agreed to accept that Resolution, this matter was discussed between us and the Commission and we were given a specific assurance on behalf of the Commission that large-scale disbanding and disarming of 'Azad' forces would take place. When discussing the proposals presented by the

Commission to the representatives of India and Pakistan in Paris on 11th December, 1948, with Dr Lozano on the 20th and 22nd December, 1948, the Prime Minister drew attention to the fact that the 'Azad Kashmir' forces which had been armed and equipped by Pakistan and were under the operational command of the Pakistan Army ran into tens of thousands, that their presence in the territory referred to in (*a*)(3) of Part II of the Resolution of 13th August, even after demobilization, would be a constant threat to the territory under the control of Indian and State forces, a deterrent to the return of many refugees, and thus, an obstacle to the free expression of opinion regarding the future of the State by a substantial number of persons normally resident in the area concerned. For the purpose of ensuring the security of the State, the Government of India have, in all their discussions with the Commission about the truce, insisted upon the inter-dependence of the phasing of the withdrawal of their forces from the State under (*b*)(1) of Part II of the Resolution of 13th August and the adoption of measures to implement the Commission's intention 'that there should be large-scale disarming of these "the Azad" forces'. Such disbanding and disarming is also essential to the holding of a free and impartial plebiscite for reasons which were explained to Dr Lozano by the Prime Minister in the course of their conversations held on the 20th and 22nd December, 1948. Dr Lozano recognized the force of the Prime Minister's argument on this point and disclosed to us that the intention of the Commission was that there should be a large-scale disbanding and disarming of the 'Azad Kashmir' forces. To allow an assurance of this kind to be reopened even to the extent of placing this disbanding and disarming on the same level with the geographical disposition of the Indian and State forces left in the State, will be to resile from a position reached between us and the Commission. If the arbitrator is free to decide that there should be no disbanding and disarming of these forces, there could be no fair and impartial plebiscite. If, while accepting the need for such disbanding and disarming, the arbitrator is free to postpone consideration of the matter until after the bulk of Indian forces in the State of Jammu and Kashmir has been withdrawn, the security of the state will be in great jeopardy during the period that intervenes between the withdrawal of the bulk of the Indian forces and the adoption of measures for the large-scale disbanding and disarming of the 'Azad Kashmir' forces. As has been frequently explained to the Commission, the Government of India cannot possibly take this risk which would be incompatible with their paramount responsibility to protect the portion of the State under their control against a repetition of the horrors of the invasion of the State in October 1947.

Since the assurance about the disbanding and disarming of the 'Azad Kashmir' forces was given on behalf of the Commission to the Government of India, it is understood that the number of these forces has grown considerably. A new situation has thus been created of greater peril to the State and their disbandment has become even more necessary. For all practical purposes, the 'Azad Kashmir' forces are a part of the regular Pakistan Army, trained by that Army and under its operational control. A withdrawing aggressor cannot, in reason, prefer any claim for leaving behind him 32 battalions or more, trained and equipped by him and ready for battle.

(7) The Government of India are convinced, therefore, that this outstanding issue of the large-scale disbanding and disarming of the 'Azad Kashmir' forces is not a matter for arbitration but for affirmative and immediate decision. Once ways and means for the large-scale disbanding and disarming of the Azad forces have been agreed upon, the Government of India anticipate no difficulty in reaching agreement with the Commission as provided for in (*b*)(1) of Part II of the Resolution of 13th August, 1948, about the phasing of the withdrawal of their forces from the States. Nor would they raise any objection to the Pakistan Government being informed of the programme of the withdrawal of Indian forces once the question of the disbanding and disarming of the Azad forces has been disposed of and Pakistan has begun to withdraw its forces.

(8) To sum up, my Government cannot reasonably be expected to accept a suggestion for arbitration which leaves it to the arbitrator to determine the points on which he should arbitrate and which does not provide for the submission to him, by the Commission, of its own appreciation of the events leading up to the present situation or of the observance by him of the assurance which it was given. The Government of India's main objection, however, to the present suggestion for arbitration is that, as explained in paragraphs (6) and (7) of this letter, the principal issue is one which cannot be solved by arbitration. It follows that they cannot accept the suggestion incorporated in (5)(i)(*a*) of the memorandum that you left with me on 30th August. Since that suggestion is not acceptable, it is unnecessary to express any views on the other suggestions in this paragraph which are subsidiary.

(9) While unable to agree to the course of action outlined in paragraph (5) of the memorandum, my Government wish to make it clear that they are not opposed to arbitration in principle. Arbitration is under Article 33(1) of the Charter of the United Nations one of the methods of achieving a peaceful solution of a dispute which is likely to endanger the maintenance of international peace and security. India has subscribed to the Charter and is a firm believer in the

principles embodied therein. The reference to arbitration should, however, be on a precise and defined issue which, if settled by this method, will have the effect of creating conditions for ending a dispute that threatens international peace and security. In any case, India does not wish this or any other dispute to be settled by the sword. She will always be ready to consider any method of solution that would lead to a peaceful settlement of the entire dispute.

(10) In conclusion, I am to explain that the Government of India still hold that the people of Jammu and Kashmir should decide their future of their own free-will. They firmly stand by that offer, and will be ready to leave the question of the continued accession of Jammu and Kashmir States to India to the people of the State, to be decided through the democratic method of a free and impartial plebiscite, provided that the conditions necessary for making the plebiscite really 'free and impartial' are created. This, as they have endeavoured to explain on this and on previous occasions, will be impossible, if the Commission's assurance in this behalf are not implemented.

UNCIP, Report, S/1430/Add. I, Annex 36.

127 1 *October* 1949

MINISTER FOR KASHMIR AFFAIRS, PAKISTAN, TO CHAIRMAN, UNCIP

I have the honour to refer to the documents released by the Commission on 23 September 1949, concerning the Commission's proposal for arbitration and the statement released to the press by the Commission on 25 September 1949, reviewing its activities in the Indo-Pakistan sub-continent.

(2) The Government of Pakistan note the Commission's statement in paragraph 6 of its letter dated 10 September 1949 to the Secretary-General of the Government of India to the effect that 'in suggesting arbitration as a means of reaching a prompt and effective implementation of the Truce, the Commission has never intended that the commitments entered into for a peaceful solution of the dispute should be disregarded. The objective of a free and impartial plebiscite and the principles relating to the conditions which must be created in order that it be truly free and impartial, remain unquestioned'.

The Government of Pakistan are of the same opinion, and regard a free and impartial plebiscite to determine whether the State of Jammu and Kashmir should accede to Pakistan or to India the only

basis for a peaceful solution of the Kashmir dispute. This objective can be achieved only if both parties to the dispute faithfully implement their obligations under the Commission's Resolutions of 13 August 1948 and 5 January 1949, which after having been accepted by the Governments of India and Pakistan constitute an international agreement. The Pakistan Government reaffirm once again their desire and determination to implement their obligation under both these Resolutions and trust that the Commission and the Security Council would call upon the Government of India to do the same.

(3) The Commission has already been fully apprised of the point of view of the Government of Pakistan on the various issues which have stood in the way of a Truce Agreement. I find it nevertheless necessary to make certain observations on some of the statements made in Sir Girja Shankar Bajpai's letters dated 21 August and 8 and 15 September 1949. The Pakistan Government note with regret that the Government of India have thought fit to repeat allegations and insinuations against the Pakistan Government which were found to be baseless and unfounded in the course of the prolonged debates in the Security Council from January to April 1948. It is even more regrettable that in dealing with issues such as those relating to the A. K. Forces and the Northern Areas of Jammu and Kashmir, the Government of India have tried to go back upon the position taken up by them in the past before the Commission, and to place in jeopardy the whole structure of a peaceful settlement worked out with such assiduous care and effort by the Security Council and the Commission.

(4) In his letter dated 8 September 1949, Sir Girja Shankar Bajpai has accused Pakistan of aggression against the State of Jammu and Kashmir on the basis of India's contention that the State had acceded to India and was a part of India. The Commission is well aware of the history of the dispute in Kashmir which from the very beginning has centred round the question whether the State should accede to Pakistan or to India. The overwhelming majority of the people of the State desired to accede to Pakistan in view of the geographical, cultural and economic unity of the State with Pakistan, and demonstrated this desire in no uncertain terms, immediately on the establishment of Pakistan. Although the Hindu Maharajah entered into a Standstill Agreement with Pakistan on 15 August 1947, in respect of all subjects hitherto dealt with by the British Government of India, he sought by force and fraud to bring about the accession of the State to India. In pursuance of this design a campaign of terror and intimidation was started in August 1947, on the model of the happenings in East Punjab and East Punjab States such as Patiala and Kapurthala. This led to a revolt in the State, and fighting broke out on a large

scale between the people of the State and Maharajah's forces in September 1947. Events followed with extreme rapidity. Towards the end of October a contingent of tribesmen came to the assistance of their brethren in the State. The Maharajah's authority collapsed and he fled from the capital. The Maharajah who had been conspiring with India asked for its military assistance. The Government of India, without making any reference to Pakistan which, under the Standstill Agreement was responsible, *inter alia*, for the Defence and External Affairs of the Jammu and Kashmir State, flew in large forces to occupy and subjugate the State, thus entering upon a course of aggression against the people of Jammu and Kashmir which is still continuing and which can only end with the complete withdrawal of the Indian armed forces from the State. As a part of this conspiracy the Maharajah executed the so-called instrument of accession which although totally devoid of all legal and moral validity is continually used by India to bolster up its claim to the inclusion of Kashmir in India and to mask its aggression against the people of the State.

(5) In the correspondence referred to above Sir Girja Shankar Bajpai has raised once again the question of the legality of the so-called accession of the State of Jammu and Kashmir to India which he maintains 'the Commission has not questioned', and which in the view of the Government of India 'is in fact and law beyond question'. There is no basis whatsoever for either of these assumptions. As explained in greater detail in our answer to questions 10, 11 and 12 of the Commission's questionnaire, dated 4 August 1948, the State of Jammu and Kashmir had executed a Standstill Agreement with Pakistan on 15 August 1947, which debarred the State from entering into any kind of negotiation or agreement with any other country.

Secondly, the Maharajah of Jammu and Kashmir had no authority left to execute an instrument of accession on 26 October 1947, because his people had successfully revolted, had overthrown his Government, had compelled him to flee from the capital.

Thirdly, the act of accession was brought about by violence and fraud and as such it was invalid *ab initio* and,

Fourthly, the Maharajah's offer of accession was accepted by the Governor-General of India on the condition that as soon as law and order had been restored, the question of the accession of the State would be decided 'by a reference to the people'. The Indian Constitution Act does not recognize a conditional accession. The action of the Maharajah and of the Government of India has, therefore, no validity in law.

Sir Girja Shankar Bajpai's observation that the legality of the State's accession to India has not been questioned by the Commission

is misleading and wrong. According to both the Security Council and the Commission the question in dispute in regard to the State of Jammu and Kashmir is whether the State should accede to India or to Pakistan. In the preamble to its Resolution dated 21 April 1948, the Security Council noted ' with satisfaction that both India and Pakistan desire that the question of the accession of Jammu and Kashmir to India or Pakistan should be decided through the democratic method of a free and impartial plebiscite '. Clause 1 of the Commission's Resolution of 5 January 1949, reiterates the same conclusion and states that ' The question of the accession of the State of Jammu and Kashmir to India or Pakistan will be decided through the democratic method of a free and impartial plebiscite '. The accession of the State to India or to Pakistan is thus an open question which has yet to be decided and not a settled fact. Sir Girja Shankar Bajpai's contention that the State has acceded to and is a part of India begs the very question which is in dispute. The Commission is also aware of the manner in which the Government of India have sought to evade the obligations flowing from their acceptance of the Commission's Resolution of 5 January 1949, by inviting the Maharajah to nominate four members to the Indian Constituent Assembly. Reference is invited to my letter dated 11 June 1949.

(6) I regret having had to traverse again before the Commission the ground relating to some of the events preceding the settlement, but the many mis-statements made in the recent correspondence addressed by the Government of India to the Commission have left me no choice in the matter. The events preceding the settlement were fully taken into account by the Commission in formulating its Resolutions of 13 August 1948 and 5 January 1949, and their recital at this stage can serve no useful purpose. The only relevant issue at present is the implementation of the terms of the settlement embodied in the Commission's Resolutions.

(7) It is hardly necessary for me to comment in detail on the various statements made on behalf of the Government of India concerning the question of the A.K. Forces. The Pakistan Government's stand regarding this matter is well known to the Commission, and I am glad to observe that it has been vindicated by the Commission's own statement of 25 September 1949. There are, however, two points to which I might draw the Commission's attention. The omission of any reference to the Azad Kashmir Forces in the Commission's Resolution of 13 August 1948 was deliberate and the reasons therefore were fully explained by the Commission to both Governments. At the meeting held in New Delhi on 17 August 1948 Mr Korbel, the Chairman of the Commission, informed the Prime Minister of India that according

to the provisions of the Commission's Resolution 'limited Government of India forces would remain and that on the other side only the Azad people would remain in their present positions' (*vide* the summary record of the meeting which appears at annexure 12 of the Commission's Interim Report, dated 9 November 1948). The Pakistan Government were informed on 19 September 1948, that 'the Resolution does not contemplate the disarmament and disbandment of the A.K. Forces'. This position was not questioned by the Indian representatives and no demand was put forward by the Government of India before their acceptance of the Commission's Resolutions of 13 August 1948 and 5 January 1949, for the disarmament or disbanding of the A. K. Forces during the truce period. Indeed even as late as 18 February 1949, the Government of India recognized that this question could arise only at the plebiscite stage. This is evident from paragraph 3 of Sir Girja Shankar Bajpai's letter dated 18 February 1949, which reads as follows:

'The disarming of Azad forces is really a matter of chronology. First there must be a cease-fire and, after that, a truce, as envisaged in Parts I and II of the Commission's Resolution of 13 August 1948. After that, the condition precedent to arrangements for the holding of a plebiscite is the creation of conditions in which Kashmir nations can return to the area now in the occupation of Azad Kashmir forces. So far as non-Muslims are concerned, such a movement will *not* take place until large-scale disarming of these forces has been carried out. We tried to make this clear to the Commission through Dr Lozano in the course of our discussions last December and I have emphasized this point in our recent meetings.'

In his letter dated 21 August 1948, Sir Girja Shankar Bajpai has tried to confuse the issue by quoting only the first two sentences of the passage quoted above and leaving out the next two really relevant sentences.

From the correspondence between the Government of India and the Commission, which has only now become available to us, it appears that it was only when the Commission formulated its truce proposals in April 1949, that the Government of India deviated from their original position and contended that the withdrawal of the bulk of the Indian forces under Part II of the Commission's Resolution of 13 August 1948 should be conditional upon the disbandment and disarming of the Azad Kashmir forces. The Pakistan Government hold that this contention is totally unwarranted, and is an attempt at introducing a new condition into the settlement arrived at between India and Pakistan for the peaceful resolution of the Kashmir dispute.

(8) In his letter dated 8 September 1949, Sir Girja Shankar Bajpai has also tried to raise the bogey of a threat to the security of the Jammu and Kashmir State from the Azad Kashmir forces during the truce period. These fears are wholly unwarranted. The Commission's Resolutions of 13 August 1948 and 5 January 1949 are a carefully devised plan for the withdrawal and disposal of all armed forces in the State of Jammu and Kashmir in well defined stages after taking into account all relevant considerations, including those relating to the security of the State. The Government of India, after having accepted this plan, is now attempting to upset it in order to retain their forces in the State and to delay and obstruct the plebiscite which is the object of the whole plan. The Pakistan Government wish to reiterate their belief that the presence of Indian forces in the State of Jammu and Kashmir is the greatest obstacle to the restoration of normal life and liberty in the State and to the creation of the conditions in which a really free and impartial plebiscite could take place.

There is also no basis for Sir Girja Shankar Bajpai's statement that the number of the Azad Kashmir forces have 'grown considerably' since 5 January 1949. This is the first time that such an allegation has been made, and I wish to state categorically that it is wholly unfounded.

(9) As regards the Northern Areas, the claim of the Government of India to post Indian garrisons in this area is not in accord with clause (*b*)(2) of Part II of the Commission's Resolution of 13 August 1948 which permits the retention of Indian troops only 'within the lines in existence at the moment of the cease-fire'. The cease-fire line has since been fixed and the 'Northern Areas' do not fall on the Indian side of the line.

This claim also conflicts with the assurance given by the Commission on 31 August 1948 that neither the Government of India nor the Maharaja's Government will be permitted to send any military or civil officials to the 'evacuated territory'. In its letter dated 3 September 1948, to the Foreign Minister of Pakistan, the Commission explained that the term 'evacuated territory' used in paragraph (*a*)(3) of Part II of the Resolution of 13 August 1948 'refers to those territories in the State of Jammu and Kashmir which are at present under the effective control of the Pakistan High Command'. The area north of the cease-fire line has been as much under the effective control of the Pakistan High Command as the area west of the cease-fire line.

The assurance that no civil or military official of the Government of India or of the Maharaja's Government would be allowed to cross into the evacuated territory 'for the purpose of administration or control' was reiterated in paragraph (4)(*d*) of the Commission's letter dated 28 April 1949, to the Government of Pakistan.

It is thus clear from the analysis made above that the claim of the Government of India for administrative and military control of Northern Areas is in direct conflict with the provisions of the Commission's Resolution of 13 August 1948, and is, therefore, untenable.

(10) I should further point out that the Government of India abandoned this untenable claim long before the settlement between India and Pakistan regarding Kashmir was reached. As stated by the Commission in paragraph 80 of its Interim Report dated 9 November 1948, Sir Girja Shankar Bajpai informed the Commission that India's acceptance of the 13 August Resolution was not conditional upon acceptance by the Commission of the contents of Prime Minister of India's letter dated 20 August 1948 laying claim to administrative and military control over the ' Northern Areas '. A claim of this nature which is inconsistent and incompatible with the settlement and which the Government of India had themselves dropped before the settlement was reached cannot be entertained at this stage.

(11) I would not like to conclude without expressing the Pakistan Government's appreciation of the patience and determination shown by the Commission in the performance of its duties and expressing the hope that the Commission would persist in its efforts to secure prompt and effective implementation of its Resolutions of 13 August 1948 and 5 January 1949.

UNCIP, Report, S/1430/Add. I, Annex 42.

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SECRETARY-GENERAL, GOVERNMENT OF INDIA, TO CHAIRMAN, UNCIP

Under cover of his letter dated 12 October 1949, Mr Colban sent us a copy of a letter, dated 1 October 1949, from the Minister for Kashmir Affairs, Government of Pakistan, to the Chairman of the Commission concerning released documents on Arbitration. The Government of India regret that, owing to the absence from India of the Prime Minister it was not possible for them to send to the Commission their comments on Mr Gurmani's letter earlier. They are now being submitted to the Commission with the request that they should be given due weight by the Commission and, if Mr Gurmani's letter is published, that this letter should also be given simultaneous and full publicity.

(2) Mr Gurmani's letter can be most conveniently dealt with under two broad heads—

A. The validity of the accession to India of the State of Jammu and Kashmir, and the events leading up to that accession.

B. The position of the Government of India in regard to

(*a*) the disbandment and disarming of the Azad Kashmir forces, and

(*b*) the treatment of the sparsely populated mountainous regions in the north of the State.

A. Accession of Jammu and Kashmir to India

(3) The Pakistan Minister for Kashmir Affairs has stated:

(i) That the Standstill Agreement between Pakistan and the State debarred the latter from entering into an agreement with India.

(ii) That the Maharaja of Jammu and Kashmir had no authority left to execute an instrument of accession.

(iii) That the act of accession was brought about by violence and fraud and was, therefore, invalid *ab initio*.

(iv) That the acceptance by India of the Maharaja's offer of accession was conditional and, therefore, invalid in law.

The reply of the Government of India to these contentions is set out below.

(i) The Standstill Agreement between Pakistan and the State debarred the latter from entering into an agreement with India

(4) Prior to the enactment of the Indian Independence Act of 1947, the Indian States were under the suzerainty of the British Crown and, as part of this relationship the Crown was responsible for the conduct of their external relations and defence. These rights and responsibilities which, in the language of the Government of India Act, 1935, were described as 'the functions of the Crown in its relation with Indian States', were exercised by the Crown Representative in India. Side by side with these functions of the Crown, the States had a number of agreements and administrative arrangements with the Central and Provincial Governments in India relating to matters of common concern like customs, transit and communications, coinage, currency and exchange regulations, posts and telegraphs, extradition, civil supplies and the like. A measure of co-ordination between these two distinct sets of functions and responsibilities was secured by the appointment of one and the same person to the post of Governor-General of India and 'His Majesty's representative for the exercise of the functions of the Crown in its relations with Indian States'. With the enactment of the Indian Independence Act of 1947, the suzerainty of His Majesty over the Indian States lapsed, and it was provided that along with it, the treaties and engagements

in force on the date of the passing of the Act between His Majesty and the Indian States should lapse. States were thus released from the rights and obligations of Paramountcy which the British Crown possessed. This did not, however, dispose of the agreements relating to matters of common concern and administrative arrangements which the States had with the Central and Provincial Governments in India. To deal with these arrangements, there was a proviso to sub-section (1) of Section 7 of the Indian Independence Act of 1947, which said that ' notwithstanding anything contained in paragraph (*b*) of this sub-section, effect shall, as nearly as may be, continue to be given to the provisions of any such agreement as it therein referred to which relate to customs, transit and communications, posts and telegraphs, or other like matters until the provisions in question are denounced by the Ruler of the Indian State on the one hand or by the Dominion or provinces or other parts thereof concerned on the other hand, or are superseded by subsequent agreements'.

The State of Jammu and Kashmir had a number of agreements with the pre-partition Government of India and the pre-partition Provincial Government of the Punjab. By virtue of the proviso to sub-section (1) of Section 7 of the Indian Independence Act, 1947, quoted above, these agreements automatically continued till they were either denounced by either party or replaced by subsequent agreements. On August 12, 1947, the Prime Minister of Jammu and Kashmir State telegraphed to the Pakistan Government that ' the Jammu and Kashmir Government would welcome Standstill Agreements with Pakistan on all matters on which these exist at present moment with the outgoing British Indian Government. It is suggested that existing arrangements should continue pending the settlement of details and formal execution of fresh agreements'. On 16 August 1947, the Government of Pakistan replied: 'Your telegram of the 12th. The Government of Pakistan agree to have a Standstill Agreement with the Government of Jammu and Kashmir for the continuance of existing arrangements pending settlement of details and formal execution of fresh agreements.' The agreements referred to in the telegram of the Jammu and Kashmir Government were agreements about matters like customs, communications, posts and telegraphs, civil supplies and the like. There was no question whatsoever of these agreements covering foreign relations or defence.

(5) Paragraph 15 of Document III which was presented to the Security Council by Sir Zafrullah Khan with his letter of January 15, 1948, as a reply to India's complaint to the Security Council, states that 'on 15 August 1947, the Jammu and Kashmir State, like other States, was free to accede or not to accede to either Dominion. It entered into a Standstill Agreement with Pakistan under which *inter alia* the administration of posts and telegraphs services was entrusted to Pakistan'. Again, in his speech to the Security Council on January 17, 1948, Sir Zafrullah Khan said: 'I have explained yesterday to the Security Council what the Standstill Agreements mean. Kashmir had arrived at a Standstill Agreement with Pakistan with regard to her communications, supplies and post office and telegraphic arrangements'. It is inconceivable that, if the Government of Pakistan had considered defence and foreign relations to be covered by this Standstill Agreement, they would have failed to urge this when the Kashmir dispute was debated at length before the Security Council from January to April 1948. In any case, the constitutional position explained earlier in this letter should dispose of the new claim that the Standstill Agreement between the State and Pakistan debarred the State from lawfully acceding to India.

(6) It is not irrelevant, in this connection, to mention that on the date on which the Government of Jammu and Kashmir State approached the Pakistan Government with the request that the two enter into Standstill Agreements, a similar request was addressed to the Government of India. The Government of India invited the State to send an authorized representative to Delhi to discuss the matter. Owing to changes in the personnel of the State Government and, subsequently, the invasion of the State, this request could not be complied with. That the Jammu and Kashmir State should have simultaneously asked both Pakistan and India to enter into Standstill Agreements which involved control of the State's foreign relations and defence has only to be mentioned to be dismissed as impossible.

(ii) & (iii) The Maharaja had no authority left to execute an Instrument of Accession and the accession was brought about by violence and fraud

(7) As regards (ii) and (iii) a brief recapitulation of some of the events before accession provides a sufficient answer. To take first, the charge (by no means new) that the accession was obtained by violence and fraud. On the transfer of power to India and Pakistan the State of Jammu and Kashmir became free to accede to either country. The State executed a Standstill Agreement with Pakistan as an interim measure to continue the arrangements on administrative matters which already

existed. In violation of this Agreement Pakistan first imposed what amounted to an economic blockade on the State. Subsequently, it aided and abetted an invasion of the territory of the State. The invaders consisted of tribesmen, members of regular Pakistan forces whose presence had to be explained on some such excuse as their being 'on leave', and a number of inhabitants of the western part of the State, e.g., Poonch. In their march through the valley of Kashmir, the marauders spared nobody. If Mr Gurmani's argument that the Standstill Agreement into which Kashmir entered with Pakistan covered defence and external relations is correct, all that India need have done was to accept the request for a similar agreement made by the State Government to the Government of India on the same date that the request for such an agreement was addressed to Pakistan. By doing so, India would have had no need to resort, as alleged by the Pakistan Minister, to force and fraud to obtain Kashmir's accession subsequently. As already stated, however, there is no substance in the argument that the Standstill Agreement included the subjects of external relations and defence. India sent forces into Kashmir at short notice and solely for the purpose of protecting the State against an extension of the destructive activities of the invaders, extension which would have created a situation between India and Pakistan that could only have resulted in war. If any party used force to secure the accession of Jammu and Kashmir it was Pakistan; if any party practised fraud to secure that accession, again it was Pakistan. It is difficult to describe, by any other word, the arguments that Pakistan has used to explain away its share in the invasion of the State which led to the present dispute.

(8) The contention that the Maharaja of Jammu and Kashmir has no authority to execute an Instrument of Accession and that this accession was invalid *ab initio* has, in its legal and constitutional aspect, been dealt with under A. (paragraphs (4), (5) and (6) *supra*). It is difficult to understand why the Maharaja, faced with invasion, had no authority to turn to a friendly neighbour for aid which accession would make lawful. That this request for accession had the support of Sheikh Abdullah, leader of the most representative popular party in the State, and that the people of the State offered such resistance as lay in their power to the invaders should be sufficient evidence of the support which the demand for accession had, not only from the Ruler but from the majority of the inhabitants of the State.

(9) It seems worthwhile to comment also on Mr Gurmani's assertion made in paragraph (4) of his letter that ' the overwhelming majority of the people of the State desire to accede to Pakistan '. The free will of the people has yet to be ascertained. It is not without significance, however, that when the invaders came near Srinagar in October 1947, the local population rose almost to a man to resist them, even though it was practically unarmed. If even a fraction of this population had been in sympathy with the invaders, it could have rendered impossible, by damaging the airport, the landing of the Indian forces that went to their rescue.

(10) As regards the contention in (iv), namely that the accession of the State to India was invalid because its acceptance was conditional, the Commission's attention is drawn to the following passage from the statement of Shri Gopalaswami Ayyangar made to the Security Council:

' The Instrument of Accession is a document complete in itself. To the best of my memory the Instrument, in the case of Kashmir, does not contain any condition. It does not state that the accession is provisional. The commitment which the Government of India made for themselves on the question of ascertaining the wishes of the people was contained in a letter accompanying the accepted Instrument of Accession. The Government of India is certainly bound by its commitment, but it would be wrong to call the accession itself a provisional accession.'

The accession became complete and operative on the 26th October, 1947, the date on which the relevant document was signed. Under Section 2 of the Independence of India Act, any Indian State was at liberty to accede to either Dominion or to remain independent. If a State did accede to a Dominion, it could not legally withdraw from that accession except with the permission of the Dominion to which it had acceded. The effect of the Government of India's declaration that if the vote of the people went against accession to India, India would release Kashmir from the accession was not to modify in any way the legal position but only to clarify India's declared policy that it would, in the matter of accession, be ultimately guided by the freely declared will of the people of the State.

(11) The Pakistan Minister has also sought to deduce from the preamble to the resolution of the Security Council, dated 21st April, 1948, that the words ' that the Council noted with satisfaction that both India and Pakistan desire that the

question of the accession of Jammu and Kashmir to India or Pakistan should be decided through the democratic method of a free and impartial plebiscite ' signify that ' the accession of this State to India or Pakistan was an open question '. As has already been explained above, this view is legally untenable. According to the Government of India's understanding, neither the Council nor the Commission has questioned the legality of the accession of the Jammu and Kashmir State to India. In the opinion of the Government of India, the words quoted from the preamble do no more than express approval of the method of plebiscite as a democratic way of settling the question whether or not the State should continue its accession to India or, in the alternative, should accede to Pakistan.

(12) Before leaving the subject of accession, the Pakistan Minister's complaint that ' the Government of India have sought to evade the obligations flowing from their acceptance of the Commission's resolution of January 5, 1949, by inviting the Maharaja to nominate four members to the Indian Constituent Assembly' might also be dealt with. Until the people of the State decide otherwise, the State, in the opinion of the Government of India, remains legally acceded to India. While the constitution of India, which, *inter alia*, provides for the relations of acceding States to the Government of India was under consideration, it would have been unfair to the Government and people of the State of Jammu and Kashmir to deny them the opportunity of participating in the discussion of that constitution. Such participation was not intended to and does not, in fact, alter the Government of India's determination to abide, in the matter of accession, by the freely declared will of the people of Jammu and Kashmir. Should that will be against the State continuing to be part of India, if and when it comes to be expressed in a constitutional way under conditions of peace and impartiality, the representation of the State in the Indian Parliament would automatically cease and the provisions of the Constitution of India that govern the relations of the State of Jammu and Kashmir with the Union of India will also cease to operate.

B. (a) Disbandment and disarming of the Azad Kashmir forces

(13) To the Pakistan Minister ' it appears that it was only when the Commission formulated its truce proposals in April, 1949, that the Government of India deviated from their original position and contended that the withdrawal of the bulk of the Indian forces under Part II of the Commission's Resolution of 13th August, 1948, should be conditional upon

the disbandment and disarming of the Azad Kashmir forces'. The Commission should, in the light of their various discussions with representatives of the Government of India and their correspondence with that Government, be aware of the correct position. It is untrue to suggest, as Mr Gurmani has done, that the Government of India have made an attempt to introduce a new condition into the settlement arrived at between 'India and Pakistan for the peaceful resolution of the Kashmir dispute'. The Government of India's view of the Commission's two resolutions of 13th August, 1948, and 5th January, 1949, respectively is set out clearly in the related correspondence and records of discussions between the Commission or its representatives and the Government of India. In accepting the Resolution of 13th August, 1948, the paramount obligation of the Government of India to ensure the security of the State was emphasized in unequivocal terms. The request made to Dr Lozano in December, 1948, by the Prime Minister for the disbandment and disarming of the Azad Kashmir forces was prompted as much by the need of security for the State as by the additional consideration arising out of the Resolution of 5th January, then under discussion in draft form, that the proposed plebiscite should be held under conditions in which those who had left the so-called Azad Kashmir territory should be able to return to that area to exercise their vote freely and without fear. Neither condition could be satisfied if the Azad Kashmir forces, whose number, according to Pakistan's own admission, made in February 1949, had swollen to 32 battalions, and whose effectiveness as a fighting force must have greatly increased as a result of their having been brought under the operational control of the Pakistan Army, were to remain untouched. India's insistence that the phasing of the withdrawal of its own forces must be linked with the adoption of practical steps to effect the large-scale disbanding and disarming of the Azad Kashmir forces was not, as suggested by the Pakistan Minister, an attempt to modify the Resolution of 13th August, 1948, but an inevitable consequence of the change in the strength and quality of these forces and, therefore, fully consistent with the understanding on which the Government of India accepted the Resolution, viz., that they would be free to take suitable measures to discharge, effectively, their obligation to maintain the security of the State.

(14) The Pakistan Minister's interpretation of paragraph (3) of my letter dated 18th February, 1949, is supported neither

by the quotations made by him from that letter nor by the position consistently taken up by the Government of India in this matter. All that the words quoted by the Minister intended to convey was that, after the cease-fire, and before the plebiscite could actually be held, conditions must be created in which Kashmir nationals could return to the area now in the occupation of 'Azad Kashmir' forces. The period, after the cease-fire, up to and including the period covering the plebiscite, during which there were no hostilities, could only be described by the word 'truce'. Consistently with the Commission's agreement that there should be large-scale disbandment and disarming of the 'Azad Kashmir' forces before Kashmir nationals who had left the so-called Azad Kashmir area could return to that area, such disbandment and disarming had to begin well in advance of the plebiscite. From the standpoint of the security of the State, effective measures for such disbandment and disarming had to be devised and adequate arrangements made for their implementation before any large-scale withdrawal of Indian forces from the State could start. The quotation from my letter dated 18th February, 1949, as amplified by the Pakistan Minister, conveys this meaning and is not rationally susceptible of any other interpretation. The suggestion that I sought 'to confuse the issue by quoting only the first two sentences of the passage' has no basis in logic or fact.

B.(b) The Northern areas

(15) The Pakistan Minister for Kashmir has argued, in effect, that both as regards administration and defence, it was the Commission's intention that the sparsely populated and mountainous regions in the north of the State should be treated on the same footing as the so-called Azad Kashmir area, referred to in the Commission's resolution of 13th August, 1948. Mr Korbel's letter of 25th August, 1948, in reply to the Prime Minister's letter of 20th August, 1948, on the subject of these areas should be sufficient to negative this extraordinary interpretation. Had the Commission intended, as urged by Mr Gurmani, 'that neither the Government of India nor the Maharaja's Government will be permitted to send any military or civil officials to the evacuated territory' into the sparsely populated and mountainous northern regions, the Commission would have said so instead of stating, as Mr Korbel did, 'that the question raised in your letter (the Prime Minister's letter, dated 20th August, 1948) could be considered in the implementation of the resolution'.

(16) Both as regards the disbandment and the disarming of the 'Azad Kashmir' forces and the question of the northern areas, the Pakistan Minister for Kashmir Affairs has only reaffirmed the view of the Government of Pakistan that the resolution of 13th August, 1948, was intended by the Commission to apply, not to the conditions prevalent in August, 1948, but to the situation of today. That the refusal of the Government of India to accept this view can legitimately be regarded as evidence of their desire to evade any of their obligations is wholly unjustified. The Government of India stand by every commitment that they have made; only the fulfilment of those commitments must be related to facts as they are and not sought to be adjusted to false and fanciful arguments.

UNCIP, Report, S/1430/Add. I, Annex 43.

129 3 *December* 1949

THIRD REPORT OF UNCIP (EXTRACT)

VII. *Recommendations*

(1) That the Security Council should ask the two Governments to take all necessary precautions to secure that their agreements regarding the cease-fire be faithfully observed; also that the two Governments be enjoined to abstain from any measure liable to augment tension in the State of Jammu and Kashmir pending the final settlement of the future of the State.

(2) That the Security Council designate as its representative a single individual whose terms of reference will be defined after the consultations envisaged in point (3), below, and who would proceed to the sub-continent with broad authority from the Council to endeavour to bring the two Governments together on all unresolved issues; the representative designated to take into account the objectives pursued by the resolutions of the Commission already agreed to by both Governments, for the establishment of conditions conducive to the holding of a plebiscite in the State of Jammu and Kashmir whereby the will of the people as to the future of the State may be freely and impartially ascertained.

(3) That the Security Council should consult with representatives of the two Governments in order to arrive at terms of reference for its representative—including consultation regarding the scope of his

authority to settle eventually by arbitration, those issues involved in the demilitarization of the State of Jammu and Kashmir as may remain outstanding which impede the creation of conditions for the holding of the plebiscite.

UNCIP, Report, S/1430, p. 81.

129(*a*) 16 *December* 1949

DECLARATION BY BELGIAN DELEGATION

With reference to the . . . 'Admission of Representatives of the State of Jammu and Kashmir to the Constituent Assembly of India', the Belgian Delegation feels that it is its duty to draw the serious attention of the Security Council to this matter, as it reveals a conception of the problem, the consequences of which are liable to create important difficulties for the peaceful settlement of the Kashmir question. If, before the plebiscite envisaged in the Resolution could take place, the Government of India was to proceed to the organization of a 'Constitutional' life by means of elections or by a consultation of the people in the part of Kashmir under its control, this policy would lead to the gravest consequences.

UNCIP, Report, S/1430, p. 80.

130 16 *December* 1949

MINORITY REPORT OF CZECHOSLOVAK DELEGATION (EXTRACT)

. . . The failure of the Commission's mission is therefore not solely ascribable to the intransigence of the Governments of India and Pakistan, both of whom understandably tried in the course of repeated negotiations to gain the most advantageous position for each other; the reasons must be also looked for in the activities of the Commission *per se,* with a proper light thrown on the substance of the whole problem of Kashmir. . . .

The report of the Commission sets forth the three most important obstacles which balked its efforts to reach agreement:

(*a*) Disposal of Azad Kashmir forces;
(*b*) Withdrawal of regular forces from the State, and
(*c*) The Northern Area.

The reasons for the insolubility of these problems must be sought just in the shortcomings of the resolution of 13 August 1948. In its

Part II, the full implementation of which is the basic condition for any further measures that would ensure a fair and unhampered carrying out of a plebiscite, there is no mention whatever of 'Azad forces', because the Commission did not assume that the cease-fire line would be of such long duration. The 'Azad forces' meanwhile grew by the spring of 1949 into 32 disciplined and fully armed battalions, which according to an evaluation by the military adviser of the Commission represent a 'formidable force'. Owing to this fact, which is at variance with Part I, Section (*b*) of the said resolution forbidding both parties any increasing of their military potential, the situation has materially undergone an absolute change and so a new problem was created as to what within the meaning of the resolution represents a 'bulk' of the Indian army in Kashmir. From this have arisen logically further difficulties concerning the disarming of the 'Azad forces' and the synchronization of the withdrawal of military troops.

Similarly, due to the lack of sagacity on the part of the Commission, the situation was rendered more difficult also for the solution of the other main problem, the 'Northern Area'.

When dealing with its proposal to both Governments, adopted as the resolution of 13 August 1948 first by the Government of India—and subsequently sanctioned in the resolution of 5 January 1949 also by the Pakistan Government—the Commission entirely omitted to concern itself with the situation in the strategically very important territory to the north of Kashmir.

Having ascertained this shortcoming the Government of India submitted a reservation in respect of the resolution, dated 13 August 1948, concerning its right to administer the northern territory, of which, on the basis of the military situation then existing, it maintained that it could not be put on par with the 'Azad territory' to the west of Kashmir. Instead of rectifying the aforesaid shortcoming by a formal rider to the resolution—which in fact the Government of Pakistan sanctioned only five months later—the Commission replied by a letter dated 25 August 1948, in which it acknowledged to the Prime Minister of the Indian Government the receipt of his reservation and stated that 'the question might be examined when the resolution of 13 August 1948 was implemented'.

The obligation of the Commission, which—due to the Commission's own faulty judgement—therefore did not represent any formal part of the resolution of 13 August 1948, the Commission now explains as only a declaration of an intention to study later on the situation in the North, outside the scope of Part II of the said resolution.

From the legal point of view, the Government of Pakistan does not, therefore, consider the Commission's letter of 25 August 1948 as legally

binding on it, because it was only a question of the exchange of correspondence between the Commission and the Indian Government. Moreover, the situation in the ' Northern Area ' had meanwhile undergone a material change, in that the Pakistan army, which was not bound by the resolution of 13 August 1948, conquered many strategically important places during the interval before, by the resolution of 5 January 1949, it was also sanctioned by the Government of Pakistan.

It is only natural that, each from its own standpoint, the Governments of India and Pakistan should hold views diametrically opposed to each other.

The Governments of India and Pakistan evaluate the legal weight of the Commission's letter of 25 August 1948, each from its own standpoint quite contrarily, of course. In this regard it has to be pointed out, that as early as of 3 September 1948, the Government of Pakistan notified to the Commission its definition of evacuated territory ' as referring to the territories in the State of Jammu and Kashmir, which were at that time under the effective control of the Pakistan High Command '. And here—due to the Commission's lack of understanding of the situation—is the core of all subsequent legal contentions affecting the Northern Area, which the Commission has not been able to abridge.

While the Government of India made on 20 August 1948 a clear reservation regarding the position in the Northern Area—two weeks after that, Government of Pakistan, in its aforesaid notification made a claim of great consequence mortgaging practically the political future of vast territories in the State of Jammu and Kashmir where the Pakistan army or forces under its High Command could have gained the upper hand.

The Commission claims that at that time it had no practical means at its disposal to verify the factual situation in the different parts of the State of Jammu and Kashmir. This is, however, exactly the reason why the Commission should have been firm at least on the legal ground and not have taken course to empty promises. The Commission facing later on the materially changed situation in the Northern Area is bound to admit that while the reservation of the Government of India of 20 August 1948 may be legally valid, it is physically impossible to implement it.

The letter of the Pakistan Minister for Kashmir Affairs of 26 April 1949, contending that the definition of 3 September 1948 brought the whole of the Northern Area inside the ' evacuated territory ' is a logical sequel to Pakistan's position of 3 September 1948, and at the same time a reflection of the Commission's shortsightedness.

Whatever are the reasons for not rectifying the oversight in the resolution of 13 August 1948, by a proper formal, legal instrument, it is to a great extent the Commission's own fault that its mediatory efforts to solve this second main problem have not proved successful.

In this connection has to be pointed out another matter of real importance: the legal question of retroactivity of the resolution of 13 August 1948. The Belgian and the Czechoslovak delegations requested the Legal Adviser of the Commission to submit a working paper showing the Commission's position in this regard. The said working paper —through no fault of the Legal Adviser whose efforts should be rather appreciated—amounts to a masterpiece of evasiveness. The Commission itself cannot clarify its own legal instrument.

. . . After the rejection of its proposal of 28 April 1949, to bring about a Truce Agreement, to which both Governments lodged material reservations, the Commission's majority considered on the whole any further efforts in mediation as futile and, from the beginning of June 1949, the USA delegation strove to bring the Commission round to the idea of solving the question of the truce by arbitration.

In its declaration which took the form of a resolution—document S/AC.12/233—the Czechoslovak delegation on the other hand argued, 'It is the conviction of the Czechoslovak delegation that there exists on the part of the Commission a legal and at the same time even a moral duty to send invitations to both Governments to attend a joint political meeting before taking into consideration any other means of solution.'

The Commission was prepared to accept the Czechoslovak proposal but only subject to a successful termination meanwhile of the planned negotiations for the fixing of a definitive line of demarcation, on the realization of which the Czechoslovak delegation insisted with all the weight at its command.

This tying-up with a favourable result of the military negotiations in Karachi the Czechoslovak delegation declined with the basic declaration that 'it is a serious political matter which must be considered on its own political grounds without any junction with military talks in Karachi, whatsoever might be their result'. The majority of the Commission nevertheless adhered to its standpoint that the ultimate decision on the convening of a joint political meeting of both Governments will be made according to the result of the military consultations.

The pessimistic attitude of the Commission toward any negotiations for an agreement on the fixing of a definitive line of demarcation was shown to be entirely unjustified, and after their complete success the Commission approved in its morning session on 29 July 1949—with

only the exception of the USA delegation, which abstained from voting —the Czechoslovak proposal for the calling of a joint political conference of both Governments.

However, the measure of mistrust with which the Commission took this last of its important steps in mediation can be gauged from the fact that on the same day, 29 July in its afternoon session, it also passed —the Czechoslovak delegation abstaining—the proposal of the USA delegation of arbitration proceedings for a Truce Agreement, for which the Governments of India and Pakistan were recommended to accept as arbitrator Admiral-of-the-Fleet Chester W. Nimitz.

The reasons given for the hasty passing of the arbitration proposal of the USA delegation was the much stressed anxiety that the joint political conference might end in failure and that, in order to save time, it was necessary to have a new proposal in readiness.

The Governments of India and Pakistan actually did accept the proposal of a joint political conference which was to make a start on 22 August 1949 in New Delhi, with members of the cabinets of both Governments taking part. However, four days prior to its inauguration the Commission decided in its session on 18 August 1949, to send telegrams to both Governments, saying that the Commission itself was cancelling the joint political conference.

The reason for which this decision was made was the finding of unbridgeable conflicts in the answers of both Governments as to their ideas of the programme of the conference. A detailed explanation in this respect is being set forth in the majority report. What the report omits to mention, however, is that these conflicting points of view were well known previously not only to the Commission itself but also to the two Governments. The Czechoslovak delegation agreed with the view that a possible failure of the joint political meeting might give a worse turn to the situation, but it maintained that the responsibility rests with the Governments of India and Pakistan, which had expressed their willingness in principle to enter into direct negotiations with each other under the chairmanship of the Commission. A prepared conference that had already been widely announced by the international press can be cancelled only by the participating Governments. They would in that way themselves offer proof that mediation is excluded when they cannot even be persuaded to make any start whatever with the discussion of questions in dispute.

These fully reasoned arguments fell rather flat, however, and in spite of the warnings uttered by the Czechoslovak delegation that an infringement of the terms of reference was involved, the Commission forthwith set about preparing the arbitration action it had passed in advance on 29 July 1949.

How out of order it was, however, to cancel on the Commission's own responsibility an already convened joint political conference could be seen at the end of August 1949, on the occasion of the handing over of the arbitration offer to the two Governments. The Pakistani Minister of Foreign Affairs, Sir Zafrullah Khan informed the chairman of the Commission on 29 August 1949 in Karachi—in the presence of the principal secretary to the Commission—that the Pakistan Government was greatly surprised that the Commission had cancelled the conference. Something to the like effect was also said on 30 August 1949, in New Delhi to the chairman of the Commission and its principal secretary by a representative of the Indian Ministry of Foreign Affairs and, two days later, by the Prime Minister of the Indian Government, Pandit Nehru, who manifested great astonishment and expressed disappointment at the decision of the Commission. The reason for their standpoints was the conviction they voiced that parties to a dispute need not have identical views—for that is why disputes are being carried on—but they must sit down round a table and must at least start discussions if any solution is to materialize.

The course of the discussions on the offer of the arbitration of the Truce Agreement—to which the Commission was not even authorized on the basis of its terms of reference made it clear indeed that the Commission was not free from outside influences, although it was to act only according to the mandate of the Security Council in the interest of the United Nations Organization as a whole. The interventions by President Truman and Prime Minister Attlee were only made possible on the basis of precise and timely information emanating from the Commission itself. This reality needs examining, just as it is necessary to subject to investigation the circumstances that and how it should be possible for a secret memorandum of the Commission on the subject of arbitration to get into the hands of the British High Commissioners in New Delhi and Karachi at the same time or earlier than it could be officially presented to the Government of India.

UNCIP, Report, S/1430/Add. 3.

SECTION VI (*c*)

UNO: INDIA AND SOUTH AFRICA

131 26 *August* 1946

MEMORANDUM OF GOVERNMENT OF INDIA (EXTRACT)

I *Franchise*

(1) *Political*

Natal

Indians were prevented from acquiring parliamentary franchise in 1896 by Act No. 8 of 1896 which disqualified from being registered as voters all persons who, not being of European origin, were natives or descendants in the male line of natives of countries which had not at the date of passing of the Act possessed elective representative franchise, unless an order from the Governor-in-Council exempting them from the operation of the Act was obtained. Indians whose names were already on the voters' rolls at the time (1896) were excluded from the operation of this restriction, but their number dwindled down gradually so much so that in 1929 it was only sixteen. (The conditions in India have since changed.)

Under the Asiatic Land Tenure and Indian Representation Act, 1946, Indians will be represented in the Natal Provincial Council by two members. Indian voters are to be registered against the declared wishes of the Indian community on communal roll and not on common roll. The right of franchise is based on education and income or property qualifications, and is extended only to males. The European community whose population is about equal to the Indian community, have 25 members in the Natal Provincial Council and in their case franchise is enjoyed by both men and women and is based on adult suffrage.

Cape Colony

The only discrimination against coloured races including Indians is that while franchise for Europeans is based on adult suffrage and is enjoyed by both men and women, it is based on education and property or income qualifications in the case of Indians and is enjoyed only by males possessing requisite qualifications.

Transvaal

All Asiatic races including Indians were deprived of citizenship rights under Law III of 1885. Consequently Indians have no franchise.

Also, under the Transvaal Constitution Letters Patent 1907, persons who are entitled to vote for the elected Legislative Assembly must be Europeans.

Orange Free State

Settlement of Indians is practically prohibited under the Statute Law of the Orange Free State, Chapter XXXIII. Hence the question of franchise does not arise.

Union of South Africa

Under the South Africa Act, 1909, no person who is not a British subject of European descent is eligible to become a member either of the Senate or of the House of Assembly. The Act provides that the qualifications of parliamentary voters, as existing in the several colonies at the establishment of the Union, shall be the qualifications necessary to entitle persons in the province to vote for the election of members of the House of Assembly. As Indians do not enjoy the parliamentary franchise in any colony except the Cape Colony, they are not entitled to vote for election of members of the House of Assembly except those residing in the Cape Province.

Under the Asiatic Land Tenure and Indian Representation Act, the Indian community in Natal and Transvaal will be represented by three members in the House of Assembly and two in the Senate. These members must be of European descent. Indian voters will be registered on communal roll and not on common roll and their right of franchise is based upon education and income or property qualifications. The European community is represented by more than 150 members in the House of Assembly and about forty senators and in their case franchise is enjoyed both by men and women and is based upon adult suffrage.

(2) *Municipal*

Natal

Indians were deprived of municipal franchise by Boroughs Ordinance of 1924 (No. 19 of 1924) and Township Ordinance of 1925 (No. 3 of 1925) (superseded by No. 11 of 1926) which limited municipal franchise to persons registered as parliamentary voters. The above two Ordinances have been superseded by the Local Government Ordinance of 1942 (No. 21 of 1942) which retains the same position.

Transvaal

Under Section 8(*a*) of Municipal Elections Ordinance of 1927 (No. 4 of 1927), none but white persons is eligible to be registered as a voter.

Orange Free State

Settlement of Asiatics is prohibited and those few who are already settled are not qualified to vote by reason of their race.

II *Immigration and Inter-Provincial Migration*

Immigration into the Union or any Province thereof is governed by the Immigrants Regulation Act of 1913 (No. 22 of 1913). It does not specifically prohibit entry of Indians into the Union but provides, *inter alia* that ' any persons or class of persons deemed by the Minister (of the Interior) on economic grounds or on account of standard or habits of life to be unsuited to the requirements of the Union ' shall be a prohibited immigrant. By an executive order issued by the Minister (General Smuts at the time) declaring all Indians to be unsuitable on the prescribed grounds, Indians are treated as prohibited immigrants under this clause. The Act also provides for a literacy test in any European language and those who fail in the test are described as prohibited immigrants. This is in fact, an effective weapon which can be applied to any body whose entry into the Union is not considered desirable.

As regards the resident Indian community in the Union the Act restricts their movement from one province to another of the Union. In the Transvaal and the Orange Free State, no Indians who are not already lawfully settled there, are permitted to enter for permanent residence. The law pertaining to the Orange Free State is the Statute Law of the State (Chapter XXXIII) which prevents any Asiatic from remaining in the Colony for more than two months. As regards the Transvaal, the laws detailed below restrict entry of Asiatics into the Colony and those who were already lawfully resident in the Colony till 1908 are required to register themselves.

(1) Section 19 of Indemnity and Peace Preservation Ordinance, 1902 (No. 38 of 1902).

(2) Asiatic Land Amendment Act, 1907 (No. 2 of 1907).

(3) Asiatic Registration Amendment Act, 1908 (No. 36 of 1908).

III *Acquisition and Occupation of Land*

Natal

Under the Boroughs Ordinance of 1924 (No. 19 of 1924) and Townships Ordinance of 1926 (No. 11 of 1926) respectively the Provincial Governments were empowered to insert in the conditions of sale of any available land a clause prohibiting and restricting the ownership or occupation thereof to persons of any particular race. This power has been used to the disadvantage of Indians and the municipalities and

townships have, under the powers, inserted an anti-Asiatic clause in their sale deeds executed subsequent to 1924. The clause usually reads as follows:

'This transfer is passed subject to the condition that the transferee, his heirs, executors, administrators or assigns shall not sell, lease or allow occupation of the aforesaid property to any Asiatic or person of Asiatic descent.'

The Borough Ordinance of 1924 and Township Ordinance of 1926 have been superseded by Local Government Ordinance of 1924 (No. 21 of 1942) which retains the same position.

Until 1943 there was no statutory disability with regard to acquisition and ownership of landed property by Indians in Natal. Under the Trading and Occupation of Land (Transvaal and Natal) Restriction Act commonly known as the Pegging Act, in Durban Indians could not purchase and occupy property that was not occupied by Asiatics on the 22 March 1943 without a permit from the Minister. The Pegging Act was superseded by the Asiatic Land Tenure and Indian Representation Act of 1946, which places similar restrictions on the acquisition and occupation of land by Asiatics in Natal, except in exempted areas, which have been so proclaimed in the schedule to the Act, or are to be proclaimed by the Governor-General in Council on the advice of the Land Tenure Advisory Board, or, after a period of five years, by resolution of Parliament. In non-exempted areas the terms of the restrictions under this Act are that no Asiatics can, except under the authority of a permit, enter into any agreement with a non-Asiatic to acquire fixed property in the province of Natal, and no Asiatic can occupy and no person can allow any Asiatic to occupy any such land or premises in Natal which was not lawfully occupied on 21 January 1946, by an Asiatic except under the authority of a permit.

Transvaal

The first law that discriminated against Indians was Law 3 of 1885 which provided *inter alia* that Asiatics may not be owners of fixed property except in localities assigned to them for purposes of residence. It also empowered the Government to assign special localities for this purpose.

The Municipal Amending Ordinance of 1905 is another segregatory measure which permits the alienation to Asiatics of land in areas to be set aside for their exclusive occupation by municipalities.

The next legislation in this connection which affected Indians was Act No. 35 of 1908 commonly known as the Gold Law. This Act as amended up to date provides that coloured persons (this term includes

Indians) may not acquire any right under the Act (which relates to prospecting and mining rights) or reside on or otherwise occupy any land or ground in respect whereof any other person holds any right, and forbids transfers of any such rights to coloured persons. It also prohibits coloured persons from residing on or occupying any proclaimed land in any mining district.

In 1919 the Gold Law of 1908 was amended to prohibit Asiatic companies from holding any fixed property by the Asiatic (Land and Trading) Amendment Act, 1919 (No. 37 of 1919). It also prohibited foreign companies (companies registered or incorporated in a foreign country under the laws of that country) from acquiring any fixed property.

Various acts noted below have subsequently been passed which amend the Gold Law of 1908 and further restrict the rights of Indians.

The Transvaal Asiatic Land Tenure Act, 1932 (No. 35 of 1932).

The Transvaal Asiatic Land Tenure Amendment Act, 1935 (No. 35 of 1935).

The Transvaal Asiatic Land Tenure Amendment Act, 1936 (No. 30 of 1936).

The Transvaal Asiatic Land Tenure Amendment Act, 1937 (No. 32 of 1937).

The Asiatics (Transvaal Land and Trading) Act of 1939 which was renewed in 1941 and again in 1943 placed further restrictions in the way of trading licences of Asiatics by compelling an Asiatic to obtain a permit from the Minister of the Interior before applying for a licence to carry on a business of trade or removing his business to other premises. A permit was also required to be obtained before land or premises not in Asiatic occupation on 30 April 1939 could be let to or occupied by the Asiatic.

This Act has now been repealed by the Asiatic Land Tenure and Indian Representation Act, 1946, which retains the position so far as occupation of land is concerned.

Orange Free State

Under Section 7 of Statute Law of the State (Chapter XXXIII), Asiatics are prohibited from owning an fixed property.

IV *Trade*

Natal

In this province the issue of trade licences in municipal areas is governed by Act No. 18 of 1897, which provides for the appointment of a licensing official by the town council or town board to issue annual licences in the borough or township, as the case may be, to

wholesale or retail dealers. A licensing officer has absolute discretion to issue or refuse licences applied for; and his decision is not liable to review, reversal or alternation by any Court of Law except in the case of applications for renewal of licences which according to Act 22 of 1909, are appealable to the Supreme Court or Circuit Court. This Act was further supplemented by the Boroughs Ordinance of 1924 and the Townships Ordinance of 1926 under which town councils have full powers with regard to regulating, inspecting and supervising the carrying on of trades etc. Under the by-laws framed by the council for this purpose trading licences can be refused if the licensing officer is not satisfied :

(*a*) That the locality of the premises is one in which it desirable that the trade or business contemplated should be carried on by the applicant or at all;

(*b*) That the premises are in every respect suitable for the purpose of such trade or business whether as to structure, size, character, sanitation, ventilation, safety from fire, adequacy of fire appliance or emergency exits;

(*c*) That the applicant is a fit and proper person to hold such a licence or carry on such a business.

Similarly in rural areas under Ordinance 4 of 1923 as amended by Ordinance 14 of 1935, rural licensing boards (whose members must be parliamentary voters), consider applications for licences to trade. The board may attach conditions to the licence and may refuse it on the ground that to grant it would depreciate surrounding property.

It is a notorious fact that licensing laws have been operated so as to refuse the grant or removal of licences to Indians.

Transvaal

Outside the proclaimed mining areas there is no legal racial discrimination against Indians except under the Asiatic (Land and Trading) Act (28 of 1939), the provisions of which are referred to under III above. But the Licences Control Ordinance, 1931 gives complete discretion to municipalities to grant or refuse a certificate of fitness which it is necessary to obtain before a trading licence is issued. As the European community of which the municipalities are composed (Indians have no franchise) is hostile towards the Indian community, the latter is generally made to suffer and no new licences are granted.

As regards the proclaimed mining areas the Gold Law of 1908 does not permit a coloured person to acquire any rights under that law or to reside or otherwise occupy any land or ground except in a bazaar location, mining compound or any such other place as the Mining Commissioner may permit. Also Act No. 37 of 1919 practically

prohibits the issue to Asiatics of certificates which are necessary to be obtained before trading licences are granted. The Act, however, safeguards the interests of those who occupied any land for business purposes or carried on business up to 1 May 1930.

Orange Free State.

Asiatics are prohibited by law to settle in the State for the purpose of carrying on any commercial business or farming, either directly or indirectly.

V *Education*

A policy of segregation is followed in the matter of education and Indian and other non-white races are not allowed to be admitted to schools and colleges intended for white children. There is also racial differentiation in the allotment of the rate of subsidy granted by the Union Government. For European pupils, the rate is £16 7*s.* 6*d.*, subject to certain conditions and for Indian and coloured pupils, it is only £5 5*s.* per pupil.

In Natal, non-European teachers in Government employ are subject to racial discrimination in the matter of pension benefits. Till 1930 all the teachers in Government employ were governed by Ordinance No. 7 of 1913 which did not discriminate between European and non-European but in 1930 and 1931 two sets of ordinance were passed by the Provincial Council, one for non-European teachers, which apart from being a discriminatory legislation, provided higher benefits for European teachers.

VI *Marriage*

In the Transvaal, Law 3 of 1897 prohibits marriages between white and coloured persons.

VII *Travel*

Indian upper class passengers are required to travel in separate compartments reserved for Asiatics and Coloured people. In certain towns in Natal and the Transvaal Indians are only allowed to occupy certain seats on public transport vehicles reserved for non-Europeans.

VIII *Industry, Professions and other Occupations*

The Mines and Works Amendment Act (25 of 1926) known as Colour Bar Act empowers the Governor-General to make regulations about the grant of certificates of competency to certain classes of skilled workers (e.g. mechanical engineers and engine drivers) only to Europeans, Cape Coloureds, Cape Malayas and Mauritius Creoles. Indians have been excluded.

The Apprenticeship Act of 1944 (37 of 1944) sets up a National Apprenticeship Board and Apprenticeship Committees to advise the Minister regarding apprenticeship. The Minister may prescribe whatever qualifications he considers necessary for apprentices which varies from trade in which unapprenticed minors may not be employed without the consent of the Registrar of Apprenticeship, in consultation with the Apprenticeship Committees. This Act in practice excludes all non-Europeans from apprenticeship.

Owing to the prevalent colour bar attitude of the European clientele Indians are deterred from seeking apprenticeship with solicitors, chemists, architects, accountants and surveyors.

The Marketing Act of 1937 (26 of 1937) provides for meeting of producers in any area to which it is proposed to apply a 'scheme for the marketing of produce'. No person other than a European shall be entitled to vote on the resolutions approving the scheme. This deprives the Indian market gardeners of Natal of any say in the method of disposing of their produce.

IX *Pensions*

Till recently Indians were excluded from the benefits of the Old Age Pensions Act of 1928 (22 of 1928) and the Blind Persons Act of 1936 (2 of 1936) which applied only to Europeans and Coloured persons. In 1944 these Acts were made applicable to Indians also. But Europeans are provided higher benefits than Indians under these Acts.

X *Employment in Public Services*

Although there is no statutory bar to the employment of Indians in public services in actual practice Indians are almost completely debarred from employment except in a menial or subordinate service capacity. There are however Indian teachers in schools etc. exclusively intended for Indians. Indian interpreters are also employed in some law courts.

XI *Local Government*

Natal

The Durban Corporation Extended Powers Ordinance of 1924 (14 of 1924) empowers the Town Council of Durban to prohibit the use by Europeans for dwelling purposes of places or premises similarly used by Asiatics or Natives.

The Durban Extended Powers Ordinance of 1940 (16 of 1940) empowers the municipality of Durban *inter alia* to set aside tea and eating rooms for the sole use of Europeans, Asiatics or Natives.

Transvaal

The Johannesburg Municipal Ordinance of 1906 [II (Private) 1906] constitutes Johannesburg Municipality and empowers it, *inter-alia*, to establish bazaars, for the exclusive occupations of Asiatics, in which plots may be leased for any term, not exceeding 33 years. It may make by-laws for licensing for this purposes, on grounds of public interest etc.

XII *Arms and Ammunition*

Union

Arms and Ammunition Act, 1937 (28 of 1937) provides that no licence to possess or deal in arms may be issued to any person other than a European or a European company, and no arms may be supplied to a dealer who is not licensed to possess them.

XIII *Miscellaneous*

Land bank loans available to European farmers are not available to Indians. This is not a statutory discrimination but in actual practice this is the position.

In some places there are separate hospitals for Indians and Africans. In Government offices such as posts and telegraphs offices and railway booking offices there are separate counters for non-Europeans. Indians are not admitted to certain public libraries.

India, Department of Commonwealth Relations, *Question of Treatment of Indians in the Union of South Africa before the United Nations*, 1947, pp. 12-15.

132 8 *December* 1946

RESOLUTION OF GENERAL ASSEMBLY

The General Assembly

Having taken note of the application made by the Government of India regarding the treatment of Indians in the Union of South Africa, and having considered the matter:

(1) *States* that, because of that treatment, friendly relations between the two member states have been impaired, and unless a satisfactory settlement is reached, these relations are likely to be further impaired;

(2) *Is of the Opinion* that the treatment of Indians in the Union should be in conformity with the international obligations under the agreements concluded between the two Governments and the relevant Provisions of the Charter;

(3) *Therefore Requests* the two Governments to report at the next session of the General Assembly the measures adopted to this effect.

India, Department of Commonwealth Relations, *Question of Treatment of Indians in the Union of South Africa before the United Nations*, 1947, p. 96.

132(*a*) *September* 1947

INDIAN MEMORANDUM

On 8 December 1946 the General Assembly of the United Nations adopted the following resolution:

The General Assembly

Having taken note of the application made by the Government of India regarding the treatment of Indians in the Union of South Africa, and having considered the matter:

(i) *States* that, because of that treatment, friendly relations between the two member states have been impaired, and, unless a satisfactory settlement is reached, these relations are likely to be further impaired;

(ii) *Is of the Opinion* that the treatment of Indians in the Union should be in conformity with the international obligations under the agreements concluded between the two Governments and the relevant Provisions of the Charter;

(iii) *Therefore Requests* the two Governments to report at the next session of the General Assembly the measures adopted to this effect.

(2) *Attitude of the Government of India towards the Implementation of the Resolution.*—A copy of the resolution was transmitted to Pandit Jawaharlal Nehru by the Acting Secretary-General with his letter of 22 January 1947, with the request to bring it to the attention of the Government of India. The Government of India had already been considering how best they could proceed to implement the resolution so far as they themselves were concerned. They felt that having regard to the circumstances in which the matter had been referred to the United Nations General Assembly and to the resolution adopted by the Assembly, they should wait for an authoritative indication of the intentions of the Union Government in respect of the resolution.

(3) *Field-Marshal Smuts's Statement on the United Nations Resolution.*—Field-Marshal Smuts returned to South Africa about the middle of December, 1946. In his first public statement which he made in the course of a broadcast on 18 December 1946, he attributed the resolution of the General Assembly to ignorance and a

'solid wall of prejudice' against the colour policies of South Africa. According to him the Assembly had taken the decision on this question under the influence of a 'flood of emotion' and 'mischievous propaganda'. He accused the Assembly of having been unfair to the Union and of having denied it the most elementary and fundamental right of access to the International Court. He, however, did not give any indication of the action he proposed to take in regard to the resolution of the United Nations on the question of the treatment of Indians in South Africa. Referring to this resolution and the Assembly's resolution on South-West Africa, Field-Marshal Smuts contented himself by saying that the Union public should bear in mind that their importance and far-reaching implications called for mature consideration and for avoiding hasty action.

(4) On 20 December 1946, Field-Marshal Smuts made a speech at Pretoria in which, in addition to the points made in his broadcast speech, he denounced the United Nations as a body dominated by coloured peoples. He further denounced the idea of human equality and said that this simply did not work in South Africa or anywhere in the world. Field-Marshal Smuts declared that he did not regard what had happened at the United Nations as final and decisive.

(5) *Statement by Minister of the Interior.*—A clear statement of the Union Government's attitude towards the resolution of the General Assembly came from Senator Clarkson, Minister of the Interior who in a statement issued on 27 December, 1946, said that the South African Government adhered to the policy formulated by Field-Marshal Smuts during the debate on the Asiatic Land Tenure and Indian Representation Bill in 1946. 'There can be no retracing the steps that have been taken,' said Senator Clarkson. He, however, admitted that in respect of the provision of amenities to Indians which had been promised to them the Union Government had been neglectful. He expressed the hope that these promises would now be implemented.

(6) *Debate in Union Parliament on the United Nations Resolution.*—On 21 January 1947, Dr Malan, the Leader of the Opposition, moved the following resolution before the Union House of Assembly:

'That in view of the resolution adopted recently by the United Nations organization relating to the incorporation of South-West Africa, the charge against the Union in respect of its Indian legislation and the policy of race and colour discrimination generally, and in view of the serious implications of such resolutions for South African and more particularly for the White race and its future, this House is of opinion that:

(i) the Union should give no effect to the request that South-West Africa should be placed under the trusteeship of the United Nations

organization and/or that the Union should accept any responsibility towards the Trusteeship council of the United Nations organization with regard to the manner in which the Union as mandatory is governing that territory;

(ii) the Union should by virtue of its rights and powers as mandatory, grant to South-West Africa the status, with the rights and powers, equal to that which its various provinces are entitled to, including reasonable representation in the Senate and the House of Assembly;

(iii) the Government should give no effect to the demand by the United Nations organization that the Union should confer with the Government of India regarding South Africa's own measures relating to the Indian question and be under an obligation to report thereon, except so far as such negotiations have the express and exclusive object of having the Indian population of South Africa removed to India or elsewhere;

(iv) the Government should take the necessary steps to withdraw the group representation of Indians in Parliament and in the Natal Provincial Council granted recently, as it is now apparent that such representation is both undesired and futile;

(v) a Joint Committee of both Houses of Parliament should be appointed to devise a comprehensive policy for the Union in respect of the colour problem generally and more particularly in respect of the native, coloured and Asiatic population group in their relations to the white race, as well as their relations to each other, such policy to be based upon the principle of separation of European and non-Europeans politically, residentially and as far as practicable, also industrially, and to be constructive and equitable in respect of the specific interests of each separate population group.'

Speaking during the debate on this motion Field-Marshal Smuts made it clear that his Government had no intention of repealing or modifying the Asiatic Land Tenure and Indian Representation Act, 1946. He regarded that Act as something 'which is going to be an anchor to South Africa and to Natal in particular' and must consequently stand. Elucidating his stand at the United Nations General Assembly on the question of domestic jurisdiction, Field-Marshal Smuts stated:

'In some cases we consulted our Allies and their advisers in order to ensure that we did not take any steps which could prejudice our case because we were not the only people who were interested in this discussion. Honourable members will realize that the question of domestic jurisdiction does not affect South Africa only; it affects every state—America, Great Britain. They have the greatest interest

in that question and they were also consulted with regard to our course of action.'

He said that he was faced 'by a position where ignorance and prejudice and emotions really made the position impossible' and that 'every consideration was overwhelmed by passions and emotional motives'.

Speaking on the Union's attitude on South-West Africa in the course of the same debate he said:

'I know that we are not standing alone. On a count of votes, on numbers it may seem as though we have suffered defeat, but I know—and I know what I am talking about—that we have friends and strong friends, and if it comes to the worst, we shall find that. We are not standing alone.'

Eventually the following resolution was adopted by the Union House of Assembly in place of the one moved by Dr Malan:

'That this House approves of the way the Prime Minister and his colleagues in the Union Delegation to the recent United Nations Organization Conference at New York defended the interests of South Africa both in the matter of South-West Africa and of the complaint of the Indian Government against the Union and expresses its appreciation of their services. It also expresses its approval of the policy outlined by the Prime Minister in regard to the non-European communities in the Union, as it feels convinced that a conciliatory but firm forward policy is best calculated to conduce to the peaceful and co-operative progress of South Africa as a whole and to the goodwill of world opinion generally.'

(7) On 30 January 1947 the following resolution was moved by Senator Basner, the Native Representative in the Union Senate:

'Whereas the social, economic and political structure of South Africa is incompatible with the fundamental principles of the San Francisco Charter and repugnant to the majority of nations in the United Nations Organization;

'Whereas it is necessary, in view of the disturbed and changing conditions and conflicting ideologies in the world, in order to avoid atomic warfare and the possible destruction of humanity to strengthen the United Nations Organization;

'Whereas it is impossible for South Africa to withdraw from the United Nations Organization without inviting sanctions and incurring the hostility of the United Nations; and

'Whereas it is impossible without the co-operation of all races in South Africa and without rapidly increasing the national economy of South Africa, to make the necessary changes in the structure of South Africa;

'This House is of opinion that the Government should summon a national convention of representatives of all races in the Union to arrive at a common understanding and to plan a commonly accepted constitution for the future development of South Africa and submit the findings of this convention to the next session of the United Nations by a South African delegation of all races and ask the United Nations for political and material aid to raise the educational and living standards of all citizens in South Africa to a degree in which all the citizens in South Africa will be satisfied and which will avoid racial strife within the Union and without her borders.'

The Government opposed this resolution, and during the debate, Field-Marshal Smuts reiterated the stand taken by him on Dr Malan's resolution before the Union House of Assembly. Senator Basner's resolution was lost and in its place the following resolution was passed by the Senate:

'Resolved that this House reaffirms its belief in the United Nations Organization based on the principle of the San Francisco Charter and, whilst recognizing the necessity, in the interests of the Union of South Africa, for the progress and development of all races in this country, and whilst expressing its determination to continue on the path of improving the conditions for all races generally, is of opinion that no good purpose could be served by the convening of a national convention, as the existing machinery for dealing with these matters is sufficient for the purpose.'

(8) *Increase of Anti-Asiatic Feeling—Boycott of Indians.*—One of the direct results of the resolution adopted by the United Nations General Assembly was the intensification of anti-Asiatic feeling in the Union. A movement was set afoot amongst Europeans to boycott Indian traders and to refuse employment to Indians in European concerns. During its early stages the movement was confined mainly to the Transvaal but subsequently it affected certain areas of Natal also. In many places Boycott Committees were formed with members of the United Party and of the Boycott Committees in equal numbers. A meeting of Europeans convened at Pietersburg on 10 February, 1947, is reported to have resolved to boycott Indian traders and it was proposed that Europeans entering Indian stores and European girls working in Indian establishments should be 'tarred and feathered'. Meetings were organized in many other towns of the Transvaal and retaliatory action was proposed against European customers and employees of Indian stores. At mass meetings organized in support of the movement large funds were raised for the purpose of the boycott. At these meetings the Controller was also urged to allot larger quotas of goods for European concerns with correspondingly smaller quotas

for Indian traders. Action Committees and Vigilance Committees were formed. The natural result of this movement was to subject Indians lawfully carrying on business to the great hardship of economic boycott. In many cases the boycott was accompanied by physical force and several instances of these were reported in the press. In one case a European farmer who had voted against the Indian boycott at a meeting was waylaid and man-handled and he preferred a charge at the police station.

(9) *Government's Attitude to the Boycott.*—The boycott movement was, no doubt, unofficial in character but it had the active support of members of the Union Parliament from both parties. Responsible commercial and political organizations condemned the boycott and urged the Government to take counter-measures. Many liberal-minded Europeans also condemned the boycott as a movement with dangerous potentialities. In spite of these and of numerous instances of the European boycotters having taken the law into their own hands and of the special responsibilities cast upon them by the General Assembly's resolution, the Government of the Union of South Africa remained peculiarly passive. In reply to a question in the Union Parliament, the Minister of Economic Development said that the boycott of Indian traders in South Africa was not a matter with which the Government was concerned. Nor was any disapproval of the boycott of Indians voiced by Government spokesmen in the course of the debate on the subject in the Union House of Assembly on 14 April 1947.

(10) *Government's Proposal for Indian Advisory Board.*—Meanwhile certain proposals were made by the Government in the hope that these would soothe Indian opinion in South Africa. On 5 February 1947, the Prime Minister, Field-Marshal Smuts, announced to a deputation of the Natal Municipal Association the proposal to establish an Indian Advisory Board on the lines of the Coloured Advisory Council. The functions of the Board were intended to be to watch Indian interests and to advise the Government on all matters relating to the welfare of the Indian community. A mixed composition of Indians and Europeans was proposed for the Board. The Indian community, however, emphatically and unanimously expressed itself against this proposal and refused to take part in any such communal body with restricted and advisory functions only. In their view the result of the Indian Advisory Board would be to further the segregation policy of the Union Government and that it would, like the Advisory Council for the coloured people in the Cape Province, prove to be a failure. Eventually Field-Marshal Smuts in his reply to a deputation of the Natal Indian Organization announced that he would not

proceed with the formation of the Indian Advisory Board, if the Indian community was opposed to it.

(11) *Proposal for Municipal Franchise to Indians defeated by Europeans.*—The question of municipal franchise in Natal for Indians was also the subject matter of public discussions during the early part of the period covered by this report. On 12 February 1947, at a meeting of the Natal Municipal Association, the Administrator of Natal outlined his proposals (contained in a draft Ordinance) for giving Indians municipal franchise on a separate roll and allotting them one or two seats on the Natal town and city councils. The Association passed a resolution asking the Administrator to defer any such legislation and to hold a general poll of municipal voters on the acceptability or otherwise of the proposals. As provided for by law, the Durban City Council demanded a referendum on this question. In the referendum held on 28 February 1947, the proposals of the Administrator were rejected by 15,066 to 1,639 votes, 37 per cent of the electorate voting. The results of the referendum held in other municipalities also went against the proposals of the Administrator. The referendum was, of course, confined to Europeans only.

(12) It was reported on 1 April 1947, that the Natal Municipal Association was drafting an Ordinance for the provision of Indian Advisory Boards to deal with housing and public health services for the Indian community, without giving the latter any kind of representation in the municipal councils. The Durban City Council accepted this proposal but the Indian community rejected it outright. Their views were well expressed by Mr A. I. Kajee, a moderate leader of the Indian community, who in commenting on the draft Ordinance, said:

'Communal franchise, or, worse still, a third class citizenship based on Advisory Boards, as now contemplated, can only make the Indian's position more ignoble and add to the miseries of his condition.'

On 17 July 1947, Field-Marshal Smuts informed the press in Durban, with reference to the Ordinance, that public opinion was not yet ripe for giving Indians municipal representation. He said 'They had been offered communal franchise and they had not accepted it; the Europeans would not seem to make up their minds on the question. Time might provide a solution.'

(13) Thus the position in regard to this important civic right for Indians remains today the same as it was when the General Assembly passed the resolution of 8 December 1946. The Proposals of the Administrator of Natal, which in themselves were not satisfactory to Indians, foundered on the rock of racial prejudice and the

subsequent proposals were so discriminatory and segregatory in character that they were wholly unacceptable to Indians.

(14) *Continuation of Passive Resistance Movement.*—Meanwhile the Indian community has continued its campaign of passive resistance to the Asiatic Land Tenure and Indian Representation Act. Since the passage of the United Nations resolution nearly 200 persons have courted imprisonment, making a total of 1,752 including about 250 women and 6 Europeans (including three women).

(15) *How the Expectation of the Government of India Regarding Action by the South African Government remained Unfulfilled.*—As stated in paragraph (2) of the memorandum it was the expectation of the Government of India that the Government of the Union of South Africa would take some action to give effect to the resolution of the General Assembly. In answer to a question in the Indian Legislative Assembly on 5 February 1947, Pandit Jawaharlal Nehru, Minister for External Affairs and Commonwealth Relations, said that the Indian Government had taken no specific steps in regard to the struggle of Indians in South Africa since the decision of the United Nations General Assembly. In accordance with that decision he said it was natural to expect that the South African Government would take some action to remove the grievances of the Indians in South Africa. Any such action, Pandit Jawaharlal Nehru went on, would be welcomed by the Government of India and would have their co-operation in so far as that was necessary. No move was, however, made by the Union Government and as time passed it became more and more clear that they were unlikely to make any attempt to implement the resolution of the United Nations General Assembly.

(16) Speaking in the Indian Legislative Assembly on 14 March 1947, Pandit Jawaharlal Nehru made the following statement:

'I should like to mention that we propose to do everything in our power in accordance with the resolution of the United Nations General Assembly to find a solution for the problem of Indians in South Africa. Much has happened in South Africa since the resolution was passed, which has not been agreeable to Indian ears and which has irritated Indian public opinion. Nevertheless, we have remained silent because we do not wish to create any difficulties, so far as we can, in the way of a proper solution. That proper solution obviously can only be on the lines of the United Nations Charter. . . . We have waited for the last four months and more since the passage of this resolution by the General Assembly of the United Nations for the South African Government to take the initiative because it was for them to take the initiative. . . . Still I want to say to this House and to others who may hear that we are prepared to consider this question

and to make every effort subject of course to the fundamental principles I have stated and by which we stand. We are not going to stand on any question of prestige in regard to talking about or discussion of the matter with anybody and at any time.'

(17) *Efforts of Indian Government Towards Implementation of the Resolution — the Smuts-Nehru Correspondence.* — In pursuance of the statement quoted above the Government of India decided to address the Union Government on the question of implementation of the resolution. In a personal letter to Field-Marshal Smuts, dated 24 April 1947, Pandit Nehru expressed the Government of India's readiness to enter into any discussions the Government of the Union of South Africa might see fit to initiate for implementing the resolution of the General Assembly and assured the Union Government of the Government of India's co-operation. This was the beginning of a correspondence between the two Governments, the full text of which is appended to this Memorandum as an Annex (omitted from this volume).

(18) *Result of the Correspondence.*—The Union Government desired the return of the High Commissioner to South Africa for consultation. The Government of India preferred a Round Table Conference of representatives of both Governments, but were willing to send back their High Commissioner to South Africa for discussions, provided the Union Government accepted the United Nations resolution as the basis of such discussions. The Union Government declined to do so. The net result of the correspondence between Pandit Jawaharlal Nehru and Field-Marshal Smuts was that no common basis for discussion could be agreed upon and the effort made by the Indian Government proved infructuous. The position today, therefore, is the same as, if not worse than, it was at the time of the passage of the resolution of the United Nations General Assembly.

(19) In the view of the Government of India the Union Government had completely ignored the resolution of the United Nations General Assembly. Not only did they take no action to implement the resolution but by refusing to agree to the Government of India's request to accept the terms of the resolution as a basis of discussion they have clearly indicated that they have no desire to take any steps to remove the discriminatory treatment against Indians and other Asiatics imposed by legislation and administrative measures. Spokesmen of the Union Government, including Field-Marshal Smuts, have in their statement impugned the judgment and impartiality of the United Nations, denounced its composition and subjected it to ridicule. The Government of India request that the United Nations should take note of these facts and decide upon appropriate steps to ensure implementation of the resolution and respect for the

provision of the Charter relating to fundamental freedoms without distinction as to race, language or religion.

Question of Treatment of Indians in the Union of South Africa before the United Nations, India, Department of Commonwealth Relations, 1948, pp. 1-7.

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RESOLUTION RECOMMENDED BY FIRST COMMITTEE

(1) Whereas in resolution 44(1) dated 8 December 1946 the General Assembly, taking note of an application made by the Government of India regarding the treatment of Indians in the Union of South Africa, observed that because of that treatment, friendly relations between the two Member States had been impaired, and unless a satisfactory agreement was reached, their relations were likely to be further impaired;

(2) Whereas after a careful consideration of the matter, the General Assembly was of the opinion that the treatment of Indians in the Union of South Africa should be in conformity with the international obligations under the agreements concluded between the two Governments and the relevant provisions of the Charter; and

(3) Whereas the General Assembly requested the two Governments to report at the next session of the General Assembly the measures adopted to that effect;

(4) The General Assembly,

Having considered the reports submitted by the Government of India and the Government of the Union of South Africa pursuant to the aforesaid resolution;

Reaffirms its resolution dated 8 December 1946;

Requests the two governments to enter into discussions at a Round Table Conference on the basis of that resolution without any further delay and to invite the Government of Pakistan to take part in such discussions;

(5) Requests that the result of such discussions be reported by the Governments of the Union of South Africa and India to the Secretary-General of the United Nations, who shall from time to time make inquiries from them and submit a report on the action taken on this resolution by the two Governments to this Assembly at its next session.

Text supplied by the Ministry of External Affairs, New Delhi.

134 20 *November* 1947

SPEECH: SOUTH AFRICAN DELEGATE

Mr Lawrence (Union of South Africa): The matter now before this General Assembly has been the subject of most careful consideration by the First Committee. Despite its difficulties and its complexities, it has on the whole been debated at Lake Success in a spirit of calmness and of moderation. The discussions took place in an atmosphere which was influenced by an obvious and genuine desire, on the part of representatives, to bring about a friendly reconciliation between two member states of the United Nations.

We have now reached the final stages of this discussion. And it is necessary that I should explain, as briefly as the importance to my country of these matters will permit, our attitude on some of the major issues which have been raised. But I hope that nothing I now say will be construed as being out of keeping with that spirit of conciliation.

Permit me to make one preliminary observation. The consideration of racial problems is, today, only too apt to excite emotional reactions. In most of us, if not in all of us, it excites a strong emotion of idealism; in some, an emotion of disappointment at the apparent remoteness of conditions we desire to attain. Realizing this, I appreciate all the more the fact that, so far, we have succeeded very well in discussing these matters with the restraint which is essential, if we are to approach them with the equanimity of reason and a sober regard for the facts and for the things that are wise and practicable. It is only in that way that we can hope to avoid decisions which may give us emotional satisfaction, but which will retard, rather than accelerate, the results we want to achieve, because they do not take sufficient account of the present inescapable realities of the world we are trying to improve for all who live in it.

Having said that, permit me to pass to the first point I wish to make. I must ask the representatives here to bear with me, if that point is once again the jurisdiction of this General Assembly. I do not wish to deal with it at any length, but merely to reiterate the position which has consistently been adopted by my Government, namely, that the matter under discussion is, in terms of Article 2, paragraph (7), of the Charter, a matter essentially within the domestic jurisdiction of the Union of South Africa, and therefore beyond the competence of this General Assembly. I do not wish to repeat the arguments we have advanced on more than one occasion. By this time, the representatives are, no doubt, fully acquainted with them. I must, however, ask your indulgence to refer to one contention that has been made.

It is that this General Assembly has already decided the matter and that we cannot, therefore, raise it again. As to this, I need only submit that this General Assembly cannot, by its own resolution, give itself a jurisdiction which the Charter excludes, for the simple reason that this General Assembly cannot, by resolution, no matter how often that resolution is affirmed and reaffirmed, rewrite a single Article of the Charter. The Charter is above this General Assembly; this General Assembly is not above the Charter. Neither would it in any sense, I would submit, derogate from the prestige of this General Assembly to correct an error. The prestige of this Organization would be damaged a great deal more by clinging to its mistakes, or possible mistakes, than by recognizing and correcting any ambiguity in any resolution it has passed.

Some representatives seem to be concerned as to what the position would be if the Court should hold that the General Assembly has no jurisdiction. I can only say that such a finding would not result in any deterioration of the conditions of Indians in the Union of South Africa, nor would it preclude talks between the two governments, having as their object the restoration of friendly relations between them. Our policy of uplift would be continued. Our claim that this is an essentially domestic matter is not a shield for neglect or maltreatment. If the Court should agree with our view, the Government of the Union of South Africa would naturally continue its efforts towards the betterment of the conditions of the Indian population.

An accusation which has been brought against the Union of South Africa is that we have broken the so-called Agreements of 1927 and 1932. I shall not enter into a discussion once again as to whether these Agreements were binding treaties in the international sense. This issue is, of course, relevant to the question of jurisdiction. That is why we raised it, and not because we wished to take shelter behind the absence of international binding legal obligations. We have not failed, we contend, to carry out the policies announced in those two agreements.

But permit me to make clear that the repatriation of the bulk of the Indian population to India was a basic and essential feature of the whole arrangement of the Cape Town Agreement. That factor seems to have been overlooked by some of our critics. The Government of India, for its part, in terms of the Cape Town Agreement, was to encourage repatriation; and was to provide for the absorption of repatriates into the economic life of India. The Government of the Union of South Africa, on its part, undertook the provision of a free passage and a liberal bonus to all who wished to avail themselves of this opportunity of returning to India. That offer still stands. But

this repatriation part of the arrangement has, I regret to say, ended in complete failure.

Notwithstanding this failure of an essential part of the arrangement, my Government has not only continued to honour the uplift clause, but has, by granting a franchise to the Indians in the Union of South Africa, gone considerably further than was ever contemplated by this clause—the uplift clause. Let me remind the representatives of the facts, which, I submit, prove this contention.

For many years, the franchise question was never advanced by the Indians in South Africa, or by the Government of India, as a grievance. In a letter forming part of the Smuts-Gandhi Agreement of 1914, Mr Gandhi himself said specifically: ' My countrymen do not aspire to any political rights.' At the 1926 to 1927 Round Table Conference in Cape Town, Mr Sastri, the representative of the Indian Government, told us, with reference to the Indians in the Union of South Africa: ' Please understand that we are not claiming on their behalf any political privileges. The time may come in the ultimate will of Providence when they may not be excluded from anything that is open to any citizen in South Africa, but political privileges we are not at present contemplating.' At the 1932 Round Table Conference, Mr Sastri amplified this statement. He then said, when addressing the representatives of the Union of South Africa at the Conference: ' If amongst you who seek seats in Parliament, there are a few who represent these people,'—he was referring to the Indian community—' who habitually stand up for them, and consider it their duty to represent their wishes and wants, and fight for them, then that will be the end of the time that the Government of India will stand sponsors for them.'

From Mr Sastri's statement at the 1926 to 1927 Conference, it will be clear that the declaration of policy made at that time did not contemplate political rights for the Indians in the Union of South Africa. Such rights were then expressly disavowed by the Indian representative.

It surely cannot possibly be contended, therefore, that the withholding of such rights would, in any way, have been a departure from the policy then announced. The grant of political rights by the 1946 Act, therefore, goes further than the Declaration of 1927. The fact that the Government of the Union of South Africa has afforded political rights to Indians who were previously disenfranchised is an act which goes further than the terms of the 1927 Declaration.

But, notwithstanding that, the grant of these rights—which, by all the standards of progress known to me, even though they may be on a limited basis, cannot but be regarded as an important step forward for the Indian community—has now been pictured as a further injustice

done to the Indians in the Union of South Africa, an injustice of such magnitude as to form the subject of a charge before the nations of the world.

In this connexion, there is one further point that I wish to make. As I have already said, Mr Sastri, the Indian representative, gave us at the 1932 Conference the assurance that, once there are in our Parliament representatives of the Indians in South Africa, who will consider it their duty to represent their wishes and wants and to fight for them, then that will be the end of the time that the Government of India will stand sponsor for them. By this 1946 Act, we have now given the Indians in the Union of South Africa such representatives. I do not deny that the Indian community would have liked us to go further. But there cannot be the slightest doubt that, elected by Indians, these representatives will fight the cause of the Indians.

Nevertheless, the Indian Government, instead of bearing in mind this assurance by their representative, have seized upon this very Act as the ground upon which they have based their complaint to the United Nations against the Union of South Africa. This Act, in fact, is the gravamen of their indictment against us. In other words, the focal point in which these accusations converge is the 1946 Act. It is this Act which, in anticipation of its acceptance by the Parliament of the Union of South Africa, led to the imposition of sanctions by the Government of India. It is this Act, often described as a ' Ghetto Act ' by its critics and detractors, which induced the Government of India to lodge a complaint with the United Nations against the Union of South Africa. It is this Act, the 1946 Act, which is described as humiliating and degrading, and which my Government is asked to repeal.

The leader of the Indian delegation, in a speech before the 111th meeting of the First Committee last Monday, made her Government's position clear in unequivocal and unambiguous terms. On that occasion, she said: ' So long as the obnoxious principles embodied in the Asiatic Land Tenure and Indian Representation Act are adhered to, it will not be possible for India to have any kind of relations with the Union of South Africa.'

It is this Act of the Legislature of the Union of South Africa, therefore, which is the crux of the matter, the vital and proximate cause of the present dispute between the Government of India and the Government of the Union of South Africa.

What, then, is this Act which the General Assembly is asked to condemn as something abhorrent and as a violation of international agreements and of the principles of the Charter? Permit me to deal briefly with its provisions. These provisions can be divided into three categories.

I have already touched on those provisions which relate to the franchise. By virtue of those provisions, Indians in the Provinces of Natal and of the Transvaal are given the right, for the first time in the history of the Union of South Africa, to vote in parliamentary elections. It is, I will admit—and I readily admit—a limited franchise and right of representation. But, apart from giving Indians the right to vote for representatives in the Parliament of the Union of South Africa, it does permit Indians themselves to sit in the Natal Provincial Legislature—a body corresponding, in some respects, to state parliaments in the United States, Canada, Australia and some of the Latin American States.

Surely, that is an appreciable and commendable advance. And I am consequently entitled to ask a direct and pertinent question: Does the Government of India wish my Government to repeal these provisions of the 1946 Act? They have hitherto asked, without any reservations, for the repeal of the Act as a whole. But if the statute is to be repealed, then this franchise—admittedly a limited franchise, to which objection has been taken by the Indian community in the Provinces of Natal and of the Transvaal—will disappear. Is that, I would ask the leader of the Indian delegation, what her Government really wishes? Would they rather have nothing at all than this progressive step forward?

The next category of provisions contained in the 1946 Act is that which relaxes a number of previously existing restrictions. It must be obvious that the repeal of this Act would have the effect of restoring the previously existing restrictions to the form in which they existed before these relaxations were introduced. I ask again, is it the desire of the Government of India that these provisions of the Act should be repealed?

I come then to the final category of provisions, namely those providing for future controlled acquisition and occupation of land by Indians and Europeans alike. These provisions, I emphasize, relate to the future. What is important is that not a single Indian is removed from any land lawfully occupied by him at the commencement of the Act, wherever that land may be, and no restriction is imposed upon an Indian without the imposition of the same restriction upon a European in a corresponding case. If the restrictions apply to Indians they are of equal application to Europeans. In the result, I would submit that the dignity of Indians is not violated by the Act any more than the dignity of Europeans is violated. The Indians are not segregated by the Act, and are not made to live in ghettos. Such allegations can find no confirmation whatsoever in the provisions of the Act.

The power of the 1946 Act is to preserve the *status quo* and to control, by means of a flexible statutory instrument, acquisitions and occupations in areas which are not open or exempted areas. In opposing this control, the Indians in the Union of South Africa cannot invoke the virtue of consistency. They themselves, both in 1945 and before that in 1942, agreed that juxtapositional residence in Natal should be controlled. In 1945 they agreed to the principle of control of occupation.

I can speak of what happened in 1942 from personal experience. When Minister of the Interior I did all I could to seek a solution of the Natal problem on a non-statutory basis. Through my mediation a committee was formed in 1942 in Natal, known as the Lawrence Committee. That Committee was referred to in documents submitted to the General Assembly last year. Permit me to quote from the terms of reference of the Lawrence Committee. They read as follows: ' The Natal Indian Association having expressed its willingness to co-operate with the Durban Borough Council in preventing the acquisition by or on behalf of Indians of property in areas within the Borough of Durban which are wholly or predominantly occupied for residential purposes of Europeans, it is therefore agreed that committees will be appointed by the Durban Borough Council and by the Natal Indian Association, respectively, which will co-operate, by general consultation and otherwise, in respect of matters having a bearing on this problem which both committees accept as appropriate for consideration in this way.'

There surely was a recognition by the spokesmen of Indians in the Union of South Africa that control or acquisition of property was advisable in certain areas. And it was advisable not only in the interests of Europeans but also in those of the Indian community. If this were not so, presumably the Indian spokesmen would not have committed themselves to the terms of reference I have quoted. How, therefore, I would ask, can it now be contended that such control, which is authorized by the 1946 Act in respect of both Indians and Europeans in Natal, is derogatory to the dignity of and an act of humiliation towards the Indian community in the Union of South Africa? How can it be said that that Act is a violation of international agreements and fundamental principles of the Charter? Yet that is the charge which has been made against my country.

I come now to deal with the final accusation made against my Government, the accusation, namely, that it has simply disregarded, ignored, and in fact flouted the resolution passed last year. My Government's attitude toward last year's resolution is well known. Although it is its view that this resolution exceeded the jurisdiction of the General

Assembly, it has not allowed that view to stand in the way of voluntary co-operation on its part towards the achievement of the objectives of that resolution.

Unfriendly relations with India, and with any other country, my Government would naturally wish to terminate as speedily as possible, irrespective of any resolution adopted by this Assembly. My Government has been and still is anxious to negotiate a settlement, but it has been faced not only with the serious obstacle of unilateral sanctions, but also with an unrelenting attitude on the part of the Government of India, which insists upon the admission by my Government, as a prerequisite to discussions, that my Government has failed to carry out agreements and has violated the Charter.

In the First Committee the leader of the Indian delegation said that there is no foundation for the statement that the Union of South Africa was expected to enter the conference chamber as a self-confessed, condemned party, or in sackcloth and ashes. What are the facts? From the Nehru-Smuts correspondence it will be evident to the representatives that when my Government was required to accept the implementation of last year's resolution as a basis for discussion, it inquired of the Indian Government whether that meant that it was being asked to make the admissions to which I have referred. Mr Nehru at no time intimated that this was not what the Indian Government understood by the term 'implementation of last year's resolution'. If we had misinterpreted the requirement by the Indian Government, we should have been only too glad to know that we were wrong. But we were never given the slightest indication that we were wrong.

The Indian delegation also takes the stand now that last year's resolution is the only possible basis for discussion; they will accept no other. That point they made perfectly clear in the First Committee. The suggestion made by the representative of Colombia in the First Committee, that the good offices of a sub-committee should be invoked in order to find a basis of discussion, they have turned down in no uncertain terms, because they say that they are not prepared to discuss any basis other than that of last year's resolution.

What does that mean? I again ask the leader of the Indian delegation to say that this attitude does not mean that the Government of the Union of South Africa must admit, for the purposes of the desired discussions, that it has broken agreements, or that it has violated the Charter. The attitude of my Government is clear. We cannot make any such admissions, and we cannot reasonably be expected to make them, but we are quite prepared to go to the conference table without prejudice to the views at present held by either Government. I ask this morning: Is the Indian Government prepared to do likewise?

Whether or not we have broken agreements or violated the Charter is one of the matters which could appropriately be discussed at the conference table. It is not a matter for admissions on either side before we come to the conference table.

In addition, there is the question of sanctions. The Indian delegation has contended that these are not really sanctions but are merely a termination of trade relations. Let us not split hairs. By whatever name one calls them, however one describes or circumscribes them, the fact remains that they constitute unilateral pressure by way of a trade embargo imposed for the specific purpose of forcing the Government of the Union of South Africa to submit to the demands of the Indian Government. They are unfriendly measures. The Indian Government has even gone so far as to confiscate parcels sent from the Union of South Africa to private individuals in India.

Under these circumstances, it is surely asking a great deal to expect my Government to enter into what should be friendly discussions while these unfriendly measures are continued. It is in the light of all these considerations that I ask the representatives to examine the Indian proposal now before them (document A/492).

This proposal gives no indication that these acts or pressures will be discontinued. Furthermore it prescribes last year's resolution as the basis for round-table discussions. This can only mean that if the Indian resolution is adopted, the Indian Government will construe this as an endorsement by this General Assembly that my Government must make the admissions to which I have referred.

If these fears are well founded, this proposed resolution will achieve nothing. Indeed, it would be very much better if no resolution at all were passed rather than this proposed resolution. With no resolution at all this year—that is, with nothing which could be construed as an endorsement by this General Assembly of the requirements of the Indian Government—there is nothing to prevent us from coming to terms upon which discussions could be initiated. With a resolution which could be taken to confirm the unrelenting attitude of the Indian Government as to the admissions to be made by my Government, I am very much afraid that that possibility will disappear altogether.

For these reasons, my delegation must oppose the Indian resolution. I also strongly urge that those delegations who sincerely desire the resumption of friendly relations between the two governments should similarly vote against the Indian resolution, and that they should support and vote for the constructive, helpful and positive approach contained in the joint resolution submitted by the delegations of Belgium, Brazil, Cuba, Denmark and Norway. Surely it is the statesmanlike course to seek a solution along the lines indicated in the terms

of that joint resolution containing, as it does, all the traditional methods of conciliation including, if necessary, recourse to the International Court of Justice.

My delegation, while reserving the position of the Government of the Union of South Africa on the question of jurisdiction, intends, as an earnest proof of goodwill and in appreciation of the conciliatory efforts of the governments which have submitted the joint resolution, to vote in favour of that resolution.

ORPGA, Second Session, Vol. II, pp. 1113-22.

135 20 *November* 1947

SPEECH : MRS VIJAYALAKSHMI PANDIT

Mrs Pandit (India) : I had hoped that after the long debates that we have heard on this question, both last year and in the Committee this year, it would not have been necessary for me at any rate to speak from this rostrum and take up the time of the representatives again. But, unfortunately, certain matters have been raised which demand a reply, and I am forced to stand before the General Assembly once again in order to clarify the position of India.

I have not been able to understand why, at this late stage, certain questions have again been laid open before this General Assembly. They were all referred to time and again last year, and each one was answered and we, in our ignorance, thought that the decision of the General Assembly last year had finally closed a matter which could not be anything but painful to all the parties concerned. Here, again, we have the same questions raised, only phrased differently.

The leader of the delegation of the Union of South Africa again today began his speech by emphasizing the fact that, although Indians were given the opportunity of going back, of repatriation, they did not accept. I want to know why there is this insistence on the repatriation of Indians. How does it apply to the question before the General Assembly which we are called upon to decide? The Indians in the Union of South Africa have as much right to stay in that country and enjoy all civic and political rights as anyone else. I wonder, would the European population of the Union of South Africa be prepared to return to Europe if they were given a bonus and free passage? Should that question be brought up here in order to influence our decision on the very vital problem that faces the General Assembly?

It is said that the 1946 Act did not make an innovation, and that the principle of segregation was already introduced in the Pegging Act of 1943. This was a temporary measure and was passed in the teeth of Indian opposition in the Union of South Africa and protests by India. The Government of the Union of South Africa declared that the Act was to remain on the statute books only until the Government of the Union of South Africa had, after consideration, decided upon a permanent policy regarding the problem that had arisen. They appointed a commission, the Third Broome Commission, to go into the entire question.

That Commission did not recommend segregation. Its only recommendation was that the Government of the Union of South Africa should call a round-table conference at which both countries should discuss the problem. But, in disregard of this recommendation of its own Commission, the Government of the Union of South Africa passed the Asiatic Act which gave permanent sanction to the policy of residential and economic segregation.

I should like for just one brief moment to quote what the Prime Minister, Field-Marshal Smuts, said in the House of Assembly debates at that time regarding this Act. He said:

'At the same time I want to emphasize that this is a standstill measure. Great issues are at stake. The difficulties in front of us are very great and the Government is fully conscious of those difficulties.

'We have the greatest respect for India and the people of India. We have the greatest respect for their war effort and we are determined to preserve good feeling and friendliness towards India, especially in the circumstances of today. Therefore, we are not out for laying down large-scale and long-range policies. We think that the situation calls for very careful consideration, and we shall have to go over this whole ground most circumspectly.

'All that we propose here is to deal immediately with a situation with which we are faced at Durban and to put on the statute book this standstill measure which will peg the position as it is today. We look upon it as an interim measure, a temporary measure. It is only for three years. There is no idea whatsoever of laying down any large-scale policy which we shall have to consider in due time and after a careful weighing of the pros and cons. So far, we are simply busy with a temporary measure and that is why we have laid down this limitation of three years. During those years we intend to have a proper inquiry, a judicial inquiry into the whole situation. Undoubtedly, the situation in Natal does call for a very careful inquiry.'

Yet, after this careful inquiry had been gone into, the recommendations of the Commission, which they themselves had appointed, were

rejected and the whole matter was proceeded with as if the Commission had never been appointed at all.

The question of the trade embargo has been repeated. I was under the impression that I had dealt very fully with this matter in the First Committee. The trade embargo, I should like to repeat, was a protest against the passing of the Pegging Act, and it came about after repeated warnings to the Government of the Union of South Africa.

The representative of the Union of South Africa quoted me, but he did not complete the quotation. With the permission of the representatives, therefore, I shall quote myself. I said in the First Committee:

'So long as the obnoxious principles embodied in the Asiatic Land Tenure and Indian Representation Act are adhered to, it will not be possible for India to have any kind of relations with South Africa. If the Union Government'—and this is what was left out—'would suspend, even administratively, the operation of this Act, the Indian Government would, I am sure, be happy to suspend their decision regarding the breaking of trade relations with South Africa.'

I wish to repeat again the words of our Prime Minister to Field-Marshal Smuts, which I read the other day in the First Committee:

'The new India desires nothing more ardently than to work in a spirit of co-operation for the peace and prosperity of the world with all like-minded nations.'

However, we can only accept a settlement which is consistent with the dignity of the cause we represent, and of which the question of Indians in the Union of South Africa is only a symbol.

The leader of the delegation of the Union of South Africa has asked me a question. He wants India to reply and to state whether it desires the repeal of the franchise with regard to those portions of the Act which he terms as progressive. India's reply is: Yes, it desires the repeal of that Act. It has no use for that franchise, which does not give the Indians any right at all, either to be on the same voters' roll or to send its own representatives to Parliament. We look upon it as a sham franchise and we are perfectly willing that that franchise should be repealed now and at once.

The subject before us does not really need any elaborate discussion. Every point of view has been dealt with more than once. Let me, therefore, state the real issue involved in this resolution of the First Committee which affects not only the Indians in the Union of South Africa, but all the peoples of Asia and Africa. For us, it is not the mere assertion of certain rights and privileges. We look upon it primarily as a challenge to our dignity and self-respect. It is for this reason that we resisted in committee every attempt to divert the debate to a consideration of the legal aspects of the issue between the Union of South Africa and India.

The resolution before us was adopted, as the representatives here will remember, after a detailed examination of every aspect of the case. It has emerged in a mild and inoffensive form and merely seeks to bring together the parties concerned, to enable them to arrive at an honourable settlement. It was with this objective that we accepted the Mexican amendment, even though we ourselves did not regard the paragraph in our resolution, objected to by some of the representatives, as anything more than a statement of fact.

The resolution, as it now stands, reaffirms the resolution of last year and requests the two governments concerned to initiate, without delay, discussions between themselves and Pakistan at a round-table conference on that basis. The idea of a round-table conference has been accepted by everyone, including the representative of South Africa. All of us agreed that an attempt toward a settlement must be made and made as early as possible. It is necessary, precisely for this reason, for the General Assembly to make it clear on what basis the discussions at the round-table conference should take place. Without a common basis, it is certain that the conference cannot make any progress toward a successful conclusion.

For this reason alone, it is necessary that we must insist on the resolution being accepted as the basis for discussion. The resolution of 8 December 1946, to which I referred, stands today, and its reaffirmation is, I respectfully submit, no more than a statement of fact which cannot be ignored or denied. We owe it to ourselves and to our Organization to declare our firm adherence to the decision taken by us last year.

On the other hand, failure to reaffirm it, especially as the two governments concerned in this dispute have not so far come together, must be regarded as a departure from the stand taken by the General Assembly last year. We cannot do so without undermining the prestige and influence of this General Assembly, especially among the underprivileged who, last year, looked to the United Nations with hope and encouragement.

May I say a word at this stage to the members of the British Commonwealth, to request them to reflect very seriously over the certain consequences all over Asia and Africa of voting down a resolution of this character. The Charter will lose its meaning for millions of people throughout the world, and the foundations of the United Nations will be weakened by a denial of the very principles which we are so fond of quoting from this rostrum.

We have seen throughout this session, in one committee after another, frustration and deadlock because of the resistance—not always by the same group or section—to the principles of the Charter. In more than

one instance in the General Assembly this year, some of the big Powers have decided against the reaffirmation of resolutions passed in the General Assembly last year, although they have known well enough their inability to challenge these resolutions. Yet these same Powers complain bitterly about a different version of the same phenomenon, namely, the reluctance of certain members of the Security Council to yield to the decision of the majority within the Security Council. It seems necessary to me to sound a note of warning that in whatever form this practice occurs, it is a disquieting development which, if not discouraged in time, will threaten the foundations of the United Nations.

Today we are faced with a new resolution which is a combination of the resolutions of Belgium, Brazil, and Denmark on the one hand, and Cuba and Norway on the other. This joint draft resolution, if I may be permitted to say so, is in substance only an invitation to the Union of South Africa to stand by, not to go to a conference and to compel a reference to the International Court of Justice, thus putting the whole matter indefinitely into cold storage.

Every political question has a legal aspect. Can it be argued that for that reason it should go to the International Court of Justice? The Korean question, the 'Little Assembly' proposal, the Palestine question—all these should go to the International Court of Justice if that argument were accepted. Would the representative of the United States accept such a proposal? Because the International Court of Justice has only one case before it, I do not see that we are compelled to work up another just to provide something for it to do.

I regret, therefore, that my delegation cannot accept the joint resolution before the General Assembly. We stand by our resolution as amended by Mexico and as passed by the First Committee. I would beg the representatives to give their firm adherence to that resolution because only in that way will they be acting in accordance and in conformity with the very Charter that we have quoted and misquoted times without number.

Some of the noblest sentiments ever uttered by man are enshrined in the United Nations Charter. Yet when it comes to implementing these sentiments, we seek escape by demanding fresh definitions of self-evident thoughts. We write a Charter to promote human rights, and then proceed to ask for a committee to define them, for a court of justice to interpret them. That way lies disaster.

What the world needs is not more charters, not more committees to define and courts of justice to interpret, but a willing implementation of the principles of the Charter by all governments.

My appeal to the members of the British Commonwealth is even more valid in relation to the United States. This great country was the

pioneer in defying and breaking away from colonial domination. The declarations of many of its greatest men in days when it had not attained world leadership are even now a source of inspiration to peoples who cherish freedom and equality. We, in India, in framing our new constitution, have borrowed much that is of abiding value from the principles of the United States Constitution.

Today, the United States, alone of all the nations of the world, is in a position to feed, clothe and rehabilitate those who are in need. The United States has stretched out its hands to aid the distressed millions of people in Europe in order to enable them once again to make their contribution to the progress and prosperity of the world.

But man does not live by bread alone; the spirit, too, must be fed. There are millions of people in the world whose spirit has been starved by the denial of elementary human rights, whose hunger for food and material needs, great as it is, is not greater than their yearning for a place of honour and equality in the world. To them, also, the United States owes an obligation.

We have reached the end of our task. The time for decision has come. I earnestly hope that our vote today will help in resolving this most vital human problem, not by evading fundamental issues, not by weakening our principles, but by giving us a clear and definite lead.

The world is facing imminent peril on account of mounting racial antagonisms. It looks to the United Nations for leadership based on a recognition of the maintenance of standards and values. We are on trial today. Let us not fail ourselves.

ORPGA, Second Session, Vol. II, pp. 1134-9.

136 28 *September* 1948

SPEECH: SOUTH AFRICAN DELEGATION (EXTRACT)

. . . He emphasized that the Assembly had no authority whatsoever except that which it derived from the Charter. The very first precept entrenched in Article 2 of the Charter was that ' the Organization is based on the principle of the sovereign equality of all its Members'. The use of the word ' sovereign ' was not without purpose or meaning; it postulated a due regard for the national sovereignties of all Member States. The authority of the Assembly was of necessity a derogation from those sovereignties, and it could not be extended beyond the clear terms of the Charter. If that authority were exceeded, it would follow that any consequent sanction of the Assembly would be null and void, and without legal effect.

It was the sincere conviction of the South African delegation that in concerning itself with the complaint of the Government of India the General Assembly had in fact, on two previous occasions, exceeded its powers under the Charter. It followed that its action on the previous occasions had been invalid. The General Assembly could not enlarge its jurisdiction under the Charter by disregarding its provisions or by a succession of unauthorized acts which infringed the national sovereignty of Member States.

Mr Louw reiterated the protest made by the South African Government on both the former occasions. He did not think that the General Assembly's prestige would suffer if it admitted that it had been mistaken. To admit an error was not, by any standard, a proof of weakness; it was rather a stamp of strength and dignity and honesty of purpose. To discard a jurisdiction which was wrongly assumed, to the serious detriment of racial relations in South Africa, would enhance rather than diminish the prestige of the United Nations. It would give a reassuring demonstration that the General Assembly was prepared, on mature consideration, to abandon a course which, if consistently pursued, would only lead to the disturbance of friendly relations between nations. . . .

The South African delegation considered that a decision to place an item on the agenda was in fact tantamount to a decision that consideration of the item in question was within the competence of the General Assembly. It believed, however, that there was some difference of opinion on that point and that there were those who maintained that the question of competence could be more appropriately dealt with and decided upon by the First Committee before it proceeded to examine whether the allegations of the complaining party were well founded or not. If there was no doubt that the Union of South Africa would be permitted to raise the matter of competency in the First Committee before the substance of the Indian complaint was dealt with, then it would not be necessary to go into it in further detail at the present stage or to press for a vote on the issue. The South African delegation would then be prepared to agree that the General Assembly should merely refer the item to the First Committee, which would consider all its aspects, including the matter of competency.

In order to clear up the uncertainty which appeared to exist in regard to the matter—whether or not the inclusion of an item on the agenda settled the question of competency—and in order to enable the South African delegation to determine its line of action, Mr Louw asked the President to give a ruling indicating the correct procedure. . . .

ORPGA, Third Session, Part First, pp. 222-4.

137 28 *September* 1948

STATEMENTS : PRESIDENT OF ASSEMBLY AND INDIAN AND SOUTH AFRICAN DELEGATES

The President stated that if item 43 was placed on the agenda, it would be referred to the First Committee, and that the representative of the Union of South Africa could then, as he had stated he intended to do, raise the question of the competence of the General Assembly. In that case, in accordance with rule 110 of the rules of procedure, the motion regarding competence would be put to the vote immediately, before a vote was taken on the proposal in question.

Mr Louw (Union of South Africa) said that he was satisfied with the proposed procedure.

Sir Benegal Narsinga Rau (India) wished to make the position of India perfectly clear, in order that there might be no misunderstanding at any future stage.

He recalled that the subject had first been proposed for discussion by the Indian delegation in 1946 and that Field-Marshal Smuts had then raised the same objections as Mr Louw, which he had subsequently withdrawn. The subject was thereafter thoroughly discussed by the General Assembly, and a resolution was passed by a two-thirds majority.

In 1947 the subject came under discussion once again, and the General Assembly voted upon another resolution (A/492) but it did not obtain the necessary two-thirds majority required by Article 18 of the Charter, so that it did not have the force of a decision.

India now asked, in effect, that the discussion should be resumed and a decision reached.

On two previous occasions the General Assembly had actually discussed the subject, and it was difficult to see why it should no longer be competent to do so, since nothing had happened to change the situation, and the same question, the same Organization and the same Charter were concerned.

In reply to the objections raised by the representative of the Union of South Africa, Sir Benegal read Articles 10 and 14 of the Charter and pointed out that it was on the basis of those Articles that India had proposed the question of the treatment of Indians in South Africa for discussion by the General Assembly. He questioned the applicability in the present case of Article 2, paragraph 7, which had been invoked by the South African representative. That paragraph stated : ' Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic

jurisdiction of any State. . . .' The word 'intervention' had a well-known technical meaning in international law: it meant dictatorial interference. If the General Assembly were to discuss the subject and were to make certain suggestions which might help the governments concerned to arrive at a settlement of the problem, such action could not be called intervention, and certainly not dictatorial interference.

Moreover, the Charter did not define the term 'domestic jurisdiction'. The concept of domestic jurisdiction varied as history and thought developed. In international law, for example, while it had been said a few years previously that the manner in which a state treated its own nationals was a matter for its own unfettered discretion, there was at present a growing sensitivity of the collective conscience of mankind and the idea of human rights was on the march. That was the case particularly in Asia. The treatment that would be accorded in Asia and elsewhere to the peoples who had once been in the van of civilization, who formed the majority of the population of the world at the present time and who were proud of the independence they had regained, could not fail to have a very important bearing on world security.

The Government of India thought that the General Assembly should take a decision on the question without further delay and it urged that its request should be granted.

Mr Louw (Union of South Africa) pointed out that the representative of India had not given full weight to the first words of Article 2, paragraph 7, which referred to the entire contents of the Charter, including the Articles 10 and 14 on which India staked its case. However, in spite of the Indian representative's legalistic quibblings in defining the word 'intervention', the text of the Charter still stood.

In associating the peoples of Asia, among them the peoples of Pakistan and Saudi Arabia, with him in his protest, the Indian representative had shown to what lengths interference in the domestic affairs of other States was being carried.

It was decided, in the absence of any proposal to delete item 43, to adopt the General Committee's recommendation to include the item on the agenda of the General Assembly.

The General Committee's recommendation that the item should be allocated to the First Committee was also adopted.

ORPGA, Third Session, pp. 225-7.

138 14 *May* 1949

SPEECHES: INDIAN DELEGATION AND SOUTH AFRICAN DELEGATION

Mr Setalvad (India) did not wish to go into the details of the question before the Assembly, since it had already been debated at length in the First Committee and in the General Assembly, and earlier statements on the merits of the case had not been disputed. The question of competence had also been fully debated in the Committee, which had pronounced itself by a large majority in support of the competence of the United Nations in the matter.

On the substance of the question, Mr Setalvad wished to point out that the matter concerned not merely India but every Member State, since it involved the enforcement of the true principles and purposes of the Charter and respect for human rights and fundamental freedoms.

The question concerned the discriminatory treatment practised against persons of Indian origin who were nationals of the Union of South Africa, allegedly on the grounds of their race and colour. Such discrimination, which it was one of the basic purposes of the Charter to eradicate, must inevitably lead to dissatisfaction and an impairment of the relations between the two countries concerned. If it were allowed to persist, and if no solution were found for it, then in the long run the unity and success of the United Nations, which included representatives of all the countries of different races, creeds and colours, would be affected; moreover, it would become a potential threat to the peace of the world. It should not be forgotten that discrimination against Asians was practised on the grounds of race and colour. In Asia and in other parts of the world there was a growing feeling that such discrimination must be wiped out.

Two draft resolutions had emerged from the discussions in the First Committee. The Indian draft resolution, which had been adopted as draft resolution A of the First Committee, embodied the proposal that a commission of three should study the situation arising out of the treatment of Indians in the Union of South Africa and should make recommendations to the Assembly for the solution of the problem; that, in the view of the Indian delegation, was a practical proposal consonant with the importance of the great moral and political issues involved in the question. It had become apparent, however, that although the Indian draft resolution had been approved by the First Committee, it would not secure a two-thirds majority in the Assembly. The other draft resolution, which had been submitted by France and Mexico, had been adopted in the First Committee by an overwhelming majority; it appeared as draft resolution B in the Committee's report.

The Indian delegation had been most anxious that a practical approach should be sought to the solution of the problem. As in the past, it continued to believe that if a body representing the United Nations were to study the question and make appropriate recommendations, the difficulties would be solved more easily. The terms of reference contained in its draft resolution had therefore been framed in a general manner and in language which would cause no embarrassment to the governments concerned.

India's main purpose, however, was to ensure that a speedy solution should be found to the problem; such a solution would be facilitated by the largest possible measure of agreement. In that matter, as in all others, India was moved by a spirit of conciliation. Consequently, if the majority of the members of the Assembly felt that a solution would be more speedily arrived at by the adoption of draft resolution B, the Indian delegation would not press for the adoption of the draft resolution which it had sponsored.

Mr Louw (Union of South Africa) expressed his Government's appreciation of the manner in which the debate on the question had been conducted in the Assembly and in the First Committee. With a few regrettable exceptions, the tone of the debate in the third session had been considerably different from that of the debate in 1946 and again in 1947. Mr Louw expressed particular appreciation of the attitude taken by the representative of the Philippines, who had evinced a desire to attempt to terminate what was generally called a dispute between two nations but which was not in fact a dispute in the usually accepted sense of the term.

The representative of India had just declared his intention of not pressing for a vote on draft resolution A. It could be assumed, as the representative of France had pointed out, that in view of the small majority the draft resolution had received in the First Committee, it could not hope to obtain the necessary two-thirds majority. That was also a welcome sign of progress in the matter.

It was noteworthy that the Committee had presented two draft resolutions to the General Assembly on the question at issue, differing considerably both as to content and as to purpose. That would seem to indicate that the First Committee had been of two minds on the matter and had then decided to make two recommendations, which seemed to be a sensible procedure. Draft resolution B, sponsored by France and Mexico, marked a tremendous advance compared with the draft resolutions which had been submitted in the past on the question; nevertheless it did entail interference in the domestic affairs of a Member State in view of the fact that the persons to whom that draft resolution referred were citizens of the Union of South Africa.

In the circumstances, and in view of the fact that it was impossible to foresee when such charges might be made again in the future and that the matter was of vital importance to the Union of South Africa, Mr Louw found it necessary to submit once again his Government's position, namely, that it considered the matter to be essentially within the domestic jurisdiction of the Union of South Africa and that it was consequently a matter in which the United Nations did not have the right to intervene.

In the First Committee, Mr Louw had not participated in the discussion on the merits of the case because he had not wished his participation in such a debate to be interpreted as an admission of the competence of the United Nations in that matter. He intended to follow the same procedure in the Assembly, and would confine his remarks to the matter of competence, which his delegation regarded as a matter of the very greatest importance not only to the Union of South Africa but also to the United Nations as a whole.

Mr Louw recalled that in the First Committee he had made a very full statement which had been the result of considerable research, particularly into the discussions at San Francisco when the United Nations had been founded.

In the First Committee the Indian representative had declared that the question of competence, or the question of interference in the domestic affairs of the Union of South Africa, had been settled at the session of the General Assembly in 1946 and again in 1947. The Union of South Africa had never believed that the United Nations was competent in the matter. It considered that on both occasions the General Assembly had assumed a competence which it did not in fact possess. On those occasions, however, the question of jurisdiction had been confused with the merits of the complaint and had not been dealt with separately.

Some reference had been made to the Chilean complaint which had been brought before the General Assembly earlier in the session; in the First Committee reference had been made to the Mindszenty case. Mr Louw wished to point out that in both those cases, the question of the interpretation of Article 2, paragraph 7, of the Charter had not been dealt with as a separate issue, but had been confused with the question of substance. In the Mindszenty case it had been confused with the question of peace treaties containing provisions relating to fundamental human rights; in the case of the Chilean complaint it had been merged with the issue of diplomatic immunity. It was obvious, therefore, that the question of competence had never been treated as an entirely separate issue. Since it had always been confused with other issues, it had been impossible to obtain a clear

decision as to the exact meaning of Article 2, paragraph 7, of the Charter.

Mr Louw pointed out that whereas in the past the complaint of the Indian Government had related only to Indians in the Union of South Africa, it had been expanded, and the current complaint before the General Assembly dealt with Asians and other non-whites. That was evidence of the lengths to which it was sought to carry interference in the domestic affairs of sovereign states.

If that principle were adopted and followed by the United Nations, it would be impossible to foresee the extent of future interference by the United Nations in the domestic affairs of a state in relation to the citizens of that state. The Union of South Africa was not the only country in which there were minorities; in the Union of South Africa the minority problem was the white problem.

In Mr Louw's opinion the key to the matter lay in the interpretation of Article 2, paragraph 7, of the Charter. In that connexion it might be helpful to study the record of the discussion in the First Committee. Article 2, paragraph 1 read as follows: 'The Organization is based on the principle of the sovereign equality of all its Members'. The word 'sovereign' had been used deliberately by the founders of the Organization, in order to ensure that the United Nations would be based on that principle. Mr Louw considered that Article 2, paragraph 7, was the cornerstone of the United Nations. It was the safeguard of the principle of national sovereignty, and that principle was further strengthened by the provision that the United Nations should not intervene in the domestic affairs of any state.

During the debates there had been frequent reference to fundamental human rights; it had been asserted that Article 2, paragraph 7, could not possibly have been devised to exclude fundamental human rights from the competence of the United Nations. Article 2, paragraph 7, began with the words: 'Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any State'; Mr Louw considered that the first six words had not been included in vain, but that they had a specific meaning. They had been inserted in order that some other provision of the Charter should not be adduced as a pretext for intervening in the internal affairs of a Member State.

Since there was a difference of opinion on the correct interpretation of Article 2, paragraph 7, the correct procedure would be to examine the records of the San Francisco Conference to determine the intentions of the founders of the United Nations. Mr Louw had studied those records and he thought it would be wise in the future for all Members

occasionally to refer to them and thus discover what had been the wishes of those who had drafted the Charter.

From a perusal of those records, it appeared that the representative of Australia, Mr Evatt, had headed a strong fight to safeguard sovereign autonomy. It had been claimed that fundamental human rights represented an exception to Article 2, paragraph 7. Mr Louw reminded the Assembly that at San Francisco such a proposal had been made, and had been defeated. The Assembly could take pride in the fact that its President had led the fight to safeguard the rights of smaller nations.

Mr Louw had been incorrectly quoted with reference to his comment in the First Committee regarding the veto. He had in fact said that Mr Evatt had warned the smaller nations to be careful, saying that they did not possess such an anchor, and that, if they did not have the safeguard of Article 2, paragraph 7, to protect their sovereign autonomy, there would be interference in their domestic affairs, and that the smaller nations would be in a less privileged position than the great Powers which had the power of the veto to protect themselves, should a matter come to the Security Council.

It was clear that at San Francisco fears had been expressed that the principle of domestic jurisdiction might be infringed in other ways. At the current session and in the previous years it had been claimed that a dispute had arisen between the Governments of India and the Union of South Africa which might lead to friction and that the General Assembly was therefore entitled to intervene. It had been generally felt at San Francisco, however, that such a situation should not be regarded as a reason for interference. The representative of Australia, Mr Evatt, had proposed at that conference the insertion of the words ' enforcement measures under ' in Article 2, paragraph 7, because he had feared there might be intervention at a stage where it was unnecessary. The United Kingdom representative had declared that the principle of domestic jurisdiction should not be infringed until and unless a question in dispute seemed likely to lead to war. The United States representative had also indicated that precautions should be taken to safeguard the principle of sovereignty. Mr Dulles had pointed to the new and basic principle of non-interference in domestic affairs contained in Article 2, paragraph 7, adding that just as there were directives forbidding Member nations from doing certain things, so also there were principles stating that the world Organization should refrain from doing certain things. That was a very important and cogent pronouncement.

The representative of the Union of South Africa felt it unnecessary to clarify further the intentions of the founders of the United Nations,

but it was clear that the Organization was gradually moving away from the principles which had motivated its founders.

Certain arguments had been advanced in an attempt to circumvent Article 2, paragraph 7, namely, that treaty obligations provided an exception to the operation of that paragraph. At San Francisco, Mr Dulles, dealing with the matter of international treaties, had argued that that was a matter to which the rules of international law applied by virtue of the fact that states were signatories to a treaty. He had then raised the question whether that would mean that any subject dealt with by a treaty was no longer a matter of domestic jurisdiction and had concluded that, if that were so, the whole purpose of the limitation contained in Article 2, paragraph 7, would be destroyed because, since the Charter dealt with all aspects of the social life of states, those matters would no longer fall within the domestic jurisdiction of states.

It had been alleged that an agreement had existed between the Government of India and the Union of South Africa—the so-called Cape Town agreement. The Union of South Africa had given proof that there had never been any agreement between itself and India in the international sense of the term. The Indian Government, taking an interest in people of its own racial origin, had wished to come to some arrangement with the Government of the Union of South Africa, and as a result of talks that had taken place in Cape Town, the two governments had arranged that those Indians wishing to be repatriated to India could go. That arrangement had come to an end within a year or so for two reasons. Indians who had gone to India had returned to the Union of South Africa under the three-month arrangement, because they had found themselves better off there. The majority of them had returned. Those who had not, had written to their friends in the Union of South Africa advising them to stay there. The contention of the Government of the Union of South Africa was that so far as India was concerned there had not been the necessary co-operation and that the whole agreement had therefore been terminated.

From the beginning, the two governments had agreed that the aforesaid measures were merely an arrangement, nothing more. Not until the matter had been brought before the General Assembly in 1946 had the Indian Government claimed that treaty obligations were involved. The arrangement, however, had come to an end long before the expiration of the time envisaged for its duration.

In 1932, the leader of an Indian delegation which had been sent to the Union of South Africa to discuss the question of a colonization scheme, had made it very clear that there was no agreement in the

sense in which it was being interpreted at the third session of the General Assembly.

Thus no agreement had ever existed, and the arrangement to which Mr Louw had referred had never been regarded as an agreement either by the Government of the Union of South Africa or the Government of India. The Viceroy of India had declared in 1925, before the so-called agreement had been concluded, that it was obvious that the position of the Union Government must be respected and that no claim could be sustained by India for a right to interfere in the domestic affairs of that state. The Viceroy had later confirmed the fact that considerable care had been taken to avoid conveying any impression of interference in domestic affairs.

In regard to the suggestion that fundamental human rights provided an exception to Article 2, paragraph 7, Mr Louw thought it extremely important for members to know exactly what was meant when they spoke of the fundamental human rights referred to in the Charter.

Both in the First Committee and in the General Assembly, some of the representatives had suggested that if the claims of the Union of South Africa to domestic jurisdiction were conceded, the human rights provisions of the Charter would be inoperative. That difficulty had been expressed in the Committee by the United States representative. He had said that, while full effect must be given to Article 2, paragraph 7, it could not be assumed that that paragraph was intended to render the numerous references to human rights and fundamental freedoms in the Charter entirely meaningless. He had further said that the United States delegation was opposed to any effort to erase the human rights clauses from the Charter by a process of interpretation. Mr Louw emphasized that the delegation of the Union of South Africa did not propose to do anything of the kind. It wished to uphold the Charter, not to destroy it. Nor did it want to see the Charter amended by a process of interpretation which was taking the United Nations further and further away from the intentions of its founders at San Francisco. It did contend, however, that there was a very clear distinction between the pursuit of the objectives of the Charter by general measures and procedures, and the prosecution of a specific charge against a particular state.

The Charter laid down general objectives of an economic, social, cultural and humanitarian nature. Wherever there were references in the Charter to human rights and fundamental freedoms, there were also references in precisely the same terms to economic and social matters. In fact, economic and social objectives were referred to more often than human rights and fundamental freedoms. It had often been pointed out in the course of debates that human rights and

fundamental freedoms were mentioned seven times in the Charter. Economic and social matters, however, were referred to no less than nine times. The Union of South Africa did not propose to render those references meaningless, but it was important to realize that what was accepted in relation to human rights and fundamental freedoms must inevitably be accepted also in regard to economic, social and cultural matters, such as standards of living, full employment and health.

The question was whether the Charter authorized the United Nations to entertain specific charges in regard to each of those matters against particular countries, or whether the achievement of those objectives should be sought along the lines of general measures, of guidance and encouragement, and of assistance where assistance was asked for. The delegation of the Union of South Africa had no hesitation in saying that the terms of the Charter made it clear that only such general measures were contemplated. It was significant that Article 1, paragraph 3 referred only in general terms to the achievement of international co-operation in promoting and encouraging respect for human rights and fundamental freedoms. Article 56 also, which had been invoked in the charge against the Union of South Africa, referred to joint and separate action in co-operation with the United Nations. It was clear that the Charter provided for a general co-operative effort, and not action, in whatever form, directed against a particular state. Such action had not been intended by the founders of the Charter, as appeared from the nature of the procedures expressly established by the Charter for the attainment of the above-mentioned objectives. Those procedures were of a general nature calculated to stimulate economic, social and cultural improvement, and had never been intended to serve as a means of direct interference in the domestic affairs of Member States. Indeed, it was to obviate that possibility that a resolution on the matter had been adopted at a plenary meeting of the San Francisco Conference.

Articles 55 and 56 had been very fully discussed at the San Francisco Conference. The argument had been used against the Union of South Africa that the word 'pledge' in Article 56 meant an engagement. Representatives at San Francisco had clearly been afraid that the Article might involve interference in the domestic affairs of Member States. The United States representative had been among the first to express misgivings concerning Article 56. He had said that the wording was not altogether satisfactory, and had reserved the position of his delegation. Then the representative of Australia had again taken the lead. He had assured the Committee that there could be no grounds for fearing that the principle of domestic jurisdiction would be

endangered. The records showed that there had been considerable discussion. The matter had been sent to a sub-committee, where it had again been discussed at length. That sub-committee had come to a decision, which had been endorsed by the committee and finally by the plenary meeting of the conference. Mr Louw recalled that the Rapporteur, Mr Alfaro, in presenting his report to the conference, had said that the Organization was ' enlisting the co-operation of the Members of the Organization in seeking the achievement of positive goals '. Those goals, he had said, included ' higher standards of living, full employment, conditions of economic and social progress and development, and the universal respect for an observance of human rights and fundamental freedoms '.

The report also contained the following statement: 'Commission II has also agreed to include in its records the statement that nothing contained in this Chapter (IX) of the Charter can be construed as giving authority to the Organization to intervene in the domestic affairs of Member States.'

That was the reply of the Union of South Africa to the argument that any charge relating to a violation of fundamental freedoms and human rights could be regarded as an exception to the provisions of Article 2, paragraph 7 of the Charter. As long as that statement stood in the records of the San Francisco Conference, it constituted an injunction to the Assembly not to interfere in the domestic affairs of any particular state in connexion with any alleged contraventions of fundamental liberties.

The Union of South Africa had never yet denied the objectives of the Charter in respect of human rights and fundamental freedoms. It had signed the Charter and accepted it. But the Charter which it had signed was the Charter as interpreted by those who had founded the United Nations. The Union of South Africa was prepared to carry out to the full those provisions of the Charter which dealt with certain objectives in regard to human rights and fundamental freedoms, as interpreted and intended by the founders of the United Nations.

Extravagant charges had been made against the Union of South Africa to the effect that it denied certain of its citizens fundamental rights and freedoms. The Union indignantly denied that charge, as it had done on two previous occasions. The basic human rights and freedoms which had always been recognized in international law had not been denied to any of its citizens, of whatever race, colour or religion. The Government of the Union of South Africa was not prepared, however, to go beyond the provisions of the Charter. Its citizens enjoyed human liberties and fundamental freedoms perhaps to a greater degree than citizens of many other countries.

Various proposals had been put forward. Since the representative of India had indicated that he did not intend to press for a vote on the draft resolution sponsored by his Government, Mr Louw would not deal with it. There was an alternative draft resolution which had been sponsored by the delegations of France and Mexico; it was drafted in a very different spirit from that which had characterized previous proposals. Inasmuch, however, as even that draft resolution entailed recognition of the right of the United Nations to intervene in a domestic matter between two states, the delegation of the Union of South Africa would not be able to vote for it.

The representative of France, and other representatives, had said that the object of the draft resolution was to bring the two parties together. Certain representatives might deny that there were strings attached to the proposal, but the inclusion of the words ' purposes and principles of the Charter of the United Nations and the Universal Declaration of Human Rights '—particularly the latter words—could and would be interpreted, not only in the Union of South Africa but perhaps also in India, as a suggestion that in the past the Union of South Africa had not observed the principles of the Charter and had violated fundamental freedoms. If there were a real desire to put an end to the matter, that purpose would not be achieved by putting anything in a proposal which was likely to be given another interpretation. Previous complaints against South Africa, in 1946 and 1947, had accused that country of violating the Charter and fundamental freedoms, and it was obvious that the insertion of those words was likely to be given that interpretation; to that extent, it would impede the intention of those who were anxious to see the matter settled.

In 1946 the Assembly had adopted resolution 44 (I). The French representative had said that there was nothing in that resolution to which exception could have been taken. Mr Louw could not agree with him. Paragraph 2 of the resolution said that it was the opinion of the Assembly ' that the treatment of Indians in the Union should be in conformity with the international obligations under the agreements concluded between the two governments and the relevant provisions of the Charter '. Mr Louw had shown that there had been no agreement, but the resolution contained a clear charge that the Union Government had not acted in conformity with its international obligations and with the relevant provisions of the Charter.

After the adoption of that resolution, Pandit Nehru, Prime Minister of India, had written a letter to Field-Marshal Smuts, then Prime Minister of the Union of South Africa, suggesting that they might meet and discuss matters in the light of the resolution. Field-Marshal Smuts had replied that unilateral action was still being taken by India against

the Union of South Africa, and that there was a suggestion in the resolution that the Union was regarded as the defendant. Consequently, if they were to discuss the matter, they must start on an equal footing. The correspondence had finally broken down because Pandit Nehru had said that further discussions between the two governments could take place only on the basis of the United Nations resolution. No talks had taken place. Mr Louw submitted that any resolution of the nature of that before the Assembly, however sincere the intentions of its authors, would have the same effect, and would meet with the same fate as the discussions which had been initiated in 1946.

If the General Assembly really wished to end the alleged dispute, it should produce a resolution which was nothing more than an invitation to the two parties to participate in discussions.

Mr Louw further pointed out that there were continual references to a dispute between the Government of India and the Government of the Union of South Africa. As far as the Union was concerned, however, there was no dispute and there never had been any dispute with the Government of India. The Union had passed certain legislation dealing with a section of its own citizens, whereupon the Indian Government had interfered. Sanctions had been applied. The Indian Government had recalled its diplomatic representative, the High Commissioner, and had taken unilateral action against the Union. A Reciprocity Act had been passed which was directed against South Africans. The South African Government, however, had not retaliated; it had taken no sanctions against India. As far as it was concerned, there was no dispute. The Government of India had taken certain action against the Union, which the latter alleged to be in contravention of the Charter.

In the circumstances, the Government of the Union of South Africa felt obliged to scrutinize very carefully the terms of any resolution which was passed by the General Assembly, even though it did not go as far as the previous ones. Even the words 'purposes and principles of the Charter' should not be included, since they implied that the Union had violated those purposes and principles.

The Union had never denied fundamental rights to any section of its community. A large section of the Indian community was prosperous, and many of its members had grown wealthy. They occupied some of the best sections of the City of Durban. They had a monopoly of trade in the country towns and villages and in certain parts of Natal. Certainly there were sections of the Indian community which were less prosperous; some of them were poor; but even the least privileged of them were no worse off than similar sections in any country in the

world. They were certainly better off than considerable numbers of Indians in their own country.

In his letter to the Secretary-General (A/577), the Indian representative had also spoken on behalf of Asians and other non-whites. Mr Louw pointed out that the majority of the natives in the Union of South Africa lived in their own territory, especially reserved for them, where no white man was allowed to own land, or allowed to trade except by permit. Those native territories were among the most fertile in the country. He gave the lie direct to any suggestion that the natives of the Union of South Africa had been relegated to desert and infertile regions.

Natives who had left their own territories and migrated to the towns, particularly in recent years, were in less fortunate circumstances. There had been a huge influx into the towns and, as a result of war conditions and the scarcity of building materials, they were in difficult circumstances, as was also a large section of the European population. The Union of South Africa, however, was not the only country which had a housing problem.

A fact that was not generally known was that one of the great problems in the Union of South Africa was the immigration from the neighbouring territories of huge tribes of natives. They came in thousands across the two or three thousand mile-long frontier to enjoy the better conditions prevailing in the Union, such as old-age pensions, unemployment benefits and other benefits which they did not get elsewhere.

It was the policy of the Government of the Union of South Africa to resettle in their own territories those who still lived under a tribal system, and there to provide them with opportunities for development in accordance with their own customs and traditions. The Union was performing a difficult task, which was not being eased by the uninformed and often malicious criticism uttered in the General Assembly and at Lake Success. That criticism was duly conveyed to those forces in the Union whose aim was to stir up trouble and to create disagreement among the various sections of the non-European population.

The people of the Union of South Africa had their political differences, but they stood solidly united against any attempt by the United Nations to interfere in their affairs. In that respect they were no different from any other nation; they resented interference in their domestic affairs, particularly when they knew that it was unjustified.

Mr Louw read passages from the *Cape Argus* and the *Cape Times*, both anti-government newspapers, supporting the attitude of his delegation with reference to the matter under discussion.

The Indian and Polish representatives had quoted certain selected portions from speeches made by Field-Marshal Smuts; those same delegations, however, had attacked Field-Marshal Smuts when, in 1946, he had taken the same attitude that Mr Louw was taking.

Mr Louw could not fail to note the attempts which were being made to interpret and amend the Charter in a different sense from that intended by the founders of the United Nations. Decisions of the General Assembly were being given the force of law. The Universal Declaration of Human Rights, for instance, which so far was nothing more than a declaration, and not yet a convention, was being wrongly described as part of the Charter. Most alarming of all were the attempts to interfere in the affairs of Member States on various pretexts, and particularly on the pretext that human rights were being violated. All that was leading to a gradual undermining of national sovereignty. There had been unpleasant moments in the debate, although the spirit was better than it had been in the past. The South African delegation would feel that such unpleasantness was effaced if it had the satisfaction of knowing that it had helped to bring the United Nations back to its Charter and to the purposes for which it was founded.

Mr Setalvad (India) wished to reply to the arguments adduced by the representative of the Union of South Africa concerning the competence of the United Nations in the matter before the Assembly.

The question of the treatment of Indians in the Union of South Africa had been brought before the Assembly under Article 10 of the Charter, which entitled that body to discuss all matters within the scope of the Charter, and under Article 14, which entitled it to recommend measures for the adjustment of situations likely to impair friendly relations among nations. It had been argued that, in view of the provisions of Article 2, paragraph 7, the Assembly could not deal with the matter. That argument, however, had been rendered void by various decisions of the General Assembly itself. Thus the Assembly had formulated recommendations on the subject in 1946 and 1947, notwithstanding the objections raised with respect to competence at joint meetings of the First and Sixth Committees and at plenary meetings of the Assembly. It could hardly be suggested, therefore, that the various organs of the United Nations had not given sufficient consideration to the question of competence.

The whole question depended on the construction placed upon the provisions of Article 2, paragraph 7, in particular upon the words ' matters which were essentially within the domestic jurisdiction of any State '. In that connexion the representative of India quoted the opinion expressed by Professor Lauterpacht, Professor of International

Law at the University of Cambridge, at the conference held in September 1947 under the auspices of the International Law Association. Professor Lauterpacht had stated that the effect of Article 2, paragraph 7 of the Charter required to be clarified. He had gone on to say:

'The view has been widely expressed that the effect of that clause is to reduce to a minimum or to render altogether nugatory the protection of human rights on the part of the United Nations. There is no warrant for such a pessimistic interpretation of the Charter. The Charter does not authorize intervention. This means that it does not authorize compulsive legal processes on the part of the Organization. It does not authorize peremptory demands, accompanied by enforcement or threat of enforcement, in case of non-compliance, for this is the accepted meaning of 'intervention'. But Article 2, paragraph 7 does not prevent the General Assembly or the Economic and Social Council from discussing and investigating situations arising from complaints of violations of human rights. It does not preclude a general recommendation addressed to Members of the United Nations at large and covering the subject matter of the complaint. Neither does it rule out a specific recommendation addressed to the State directly concerned and drawing its attention to the propriety of bringing about a situation in conformity with the obligations of the Charter. None of these measures constitute intervention. None of them amounts to legal compulsion.'

Mr Setalvad stressed the fact that that was the opinion of an eminent jurist, not of a politician, and that it was shared by many other jurists, whose views he did not propose to quote. He wished to point out, however, that the General Assembly had itself acted in accordance with that view during the current session, both in the case of Cardinal Mindszenty and in the case of the Soviet wives of foreign nationals. He recalled that when those two questions had been discussed in the General Committee, the Chairman had stated that, if any question were covered by an Article of the Charter, it would no longer be a matter essentially within the domestic jurisdiction of a state. Since the question currently before the Assembly fell within the scope of Articles 55 and 56 of the Charter, it could not be held to be a matter essentially within the domestic jurisdiction of the Union of South Africa.

Furthermore, the matter had been the subject of treaty obligations between India and the Union of South Africa. The details and implications of those obligations had been fully discussed during the two previous sessions of the General Assembly. That was another reason why the question could not be considered as a purely domestic one.

Mr Setalvad recalled that, under Article 14 of the Charter, the Assembly was entitled to make recommendations when relations between two states were likely to be impaired. It could hardly be denied that such a situation existed; indeed, paragraph 1 of resolution 44(I), adopted by the General Assembly on 8 December 1946, opened with the words : ' States that, because of that treatment, friendly relations between the two Member States have been impaired . . . .'

Turning to the draft resolution B of the First Committee, Mr Setalvad expressed surprise that the representative of the Union of South Africa should have felt that the reference therein to the purposes and principles of the Charter and to the Universal Declaration of Human Rights might create difficulties. It could hardly be maintained that a recommendation to the negotiators at a round table conference to take into consideration the purposes and principles of the Charter and the Universal Declaration of Human Rights could be detrimental to the Union of South Africa. There would be little use in such a discussion if it did not take those provisions into consideration. The delegation of India attached paramount importance to the inclusion in the draft resolution of the reference to those provisions. India was willing to seek a solution, but it could seek a solution only if the question of the treatment of Indians in the Union of South Africa were placed in its proper perspective.

Unless the resolution included that directive and referred to those fundamental principles and provisions, the Government of India would find it difficult to participate in a conference where the discussion was not governed by those basic considerations.

*ORPG.*1, Third Session, Part Second, pp. 438-49, 452-4.

139 10 *May* 1949

REVISED DRAFT 114 RESOLUTION BY INDIA IN FIRST COMMITTEE AND IN GENERAL ASSEMBLY

THE GENERAL ASSEMBLY

Having considered the communication made by the Government of India to the Secretary-General of the United Nations, dated 12 July 1948,

Mindful of the preamble of its Charter and of the provisions relating to the promotion of human rights and fundamental freedoms contained in Article 1 (paragraph 3), Article 13 (paragraph 1), Article 55 (sub-para c), Article 56, Article 62 of the Charter,

Having regard to its resolution No. 103(I) of 19 November 1946 against racial persecution and discrimination and resolution No. 217 (III) dated 10 December 1948, proclaiming a Universal Declaration of Human Rights which entitles everyone to all the rights and freedoms set forth in that Declaration without distinction of any kind such as race, colour *et cetera*,

Recalling paragraphs 1 and 2 of its resolution No. 44 (I) of 8 December 1946,

Is of the opinion that the treatment of persons of Indian and Pakistan origin in the Union of South Africa is not in conformity with the relevant provisions of the Charter and the international obligations under the agreements concluded between the two Governments,

Recommends that a Commission, composed of representatives of three members of the United Nations, one nominated by India, one by the Union of South Africa and one to be elected by the two representatives so nominated be appointed

(i) to study the situation arising out of the treatment of persons of Indian and Pakistan origin in South Africa,

(ii) to report to the Fourth Session of the Assembly the result of its study and submit recommendations for the solution of the problem.

(This resolution was not pressed to a vote in the General Assembly)

ORPGA, Third Session, Part Second, First Committee, Annexes, Document A/C.1/461/Rev. 1.

140 16 *May* 1949

RESOLUTION OF GENERAL ASSEMBLY

Treatment of People of Indian Origin in the Union of South Africa

THE GENERAL ASSEMBLY,

Taking note of the application made by the Government of India regarding the treatment of people of Indian origin in the Union of South Africa as well as of considerations put forward by the Government of the Union, and having examined the matter.

Invites the Governments of India, Pakistan, and the Union of South Africa to enter into discussion at a round table conference, taking into consideration the purposes and principles of the Charter of the United Nations and the Declaration of Human Rights.

ORPGA, Third Session, Part Second, Annexes, Document A/880.

SECTION VI(*d*)

UNO: OTHER ISSUES

141 12 *August* 1947

UN SECRETARIAT MEMORANDUM

(The following memorandum reflects the opinion of the Secretary-General with respect to the question of India's status in the United Nations after 15 August when the Indian Independence Act becomes effective. The memorandum was prepared by Dr Ivan Kerno, Assistant Secretary-General for Legal Affairs, and has been approved by Mr Lie.)

Effect of Indian Independence Act, 1947 on Membership and Representation of India in the United Nations

The Indian Independence Act provides that on the fifteenth day of August 1947, two Independent Dominions shall be set up in India to be known respectively as India and Pakistan. Under this act, the new Dominion of India will consist of all the territories of British India except certain designated territories which will constitute Pakistan.

What is the effect of this development on the membership and representation of India in the United Nations?

From the legal standpoint, the Indian Independence Act may be analysed as effecting two separate and distinct changes;

(1) From the viewpoint of international law, the situation is one in which a part of an existing state breaks off and becomes a new state. On this analysis, there is no change in the international status of India; it continues as a state with all treaty rights and obligations, and consequently with all the rights and obligations of membership in the United Nations. The territory which breaks off, Pakistan, will be a new state; it will not have the treaty rights and obligations of the old state, and it will not, of course, have membership in the United Nations.

In international law, the situation is analogous to the separation of the Irish Free State from Great Britain, and of Belgium from the Netherlands. In these cases, the portion which separated was considered a new state; the remaining portion continued as an existing state with all of the rights and duties which it had before.

(2) Apart from the question of separation, the Independence Act has effected a basic constitutional change in India. The existing

State of India has become a Dominion, and consequently, has a new status in the British Commonwealth of Nations, independence in external affairs, and a new form of government. It is clear, however, that this basic constitutional change does not affect the international personality of India, or its status in the United Nations.

The only question it raises is whether new credentials should be requested for the Indian representatives in the organs of the United Nations. Although there is no precedent for this situation in the United Nations, there is some basis in diplomatic practice for requesting new credentials in cases of states which have undergone a change of sovereignty, as from a monarchy to a republic. It would, therefore, seem appropriate for the Secretary-General to suggest to the Government of India that in view of the change in sovereignty, it would be desirable to have new credentials issued to the Indian representatives by the Head of the Government or the Foreign Minister of the new Dominion of India.

UN Department Press Release, PM/473.

142 7 *October* 1948

INDIAN DRAFT RESOLUTION ON ATOMIC ENERGY COMMISSION

(1) Whereas in its resolution 1(I) dated 24 January 1946, the General Assembly established the United Nations *Atomic Energy Commission* and set forth its terms of reference;

(2) Whereas the General Assembly has received from the Security Council and has examined the first, the second and the third reports of the United Nations Atomic Energy Commission, which contain its proposals for the control of atomic energy to the extent necessary to ensure its use only for peaceful purposes and for the elimination from national armaments of atomic weapons, and an analysis of the nature of the *impasse* confronting the Commission and the recommendations resulting therefrom;

(3) Whereas the first and second reports of the Commission show how and to what extent the world must adapt itself if it wants to be protected against the misuse of its new discovery, specify ways and means to eliminate the dangers of diversion, clandestine activities, and the seizure of atomic materials and facilities, and, to these ends, contain specific proposals including principles for the governance of national policies and of the policies to be pursued by the international control agency itself;

(4) Whereas in its third report the Commission states that it has been unable to secure the agreement of the Soviet Union to even those elements of effective control considered essential from the technical point of view, let alone their acceptance of the nature and extent of participation in the world community required of all nations in this field by the first and second reports of the Atomic Energy Commission;

(5) Whereas the Commission has recommended that until there is a change in the situation further negotiations in the Commission be suspended,

The General Assembly, therefore,

(6) Approves and accepts in substance the general findings (part IIC) and recommendations (part III) of the first report and the specific proposals of part II of the second report of the Commission as constituting the necessary basis for establishing an effective system of international control of atomic energy in accordance with the terms of reference of the Commission;

(7) Recognizes the grave dangers to international peace and security resulting from the absence of effective international control of atomic energy;

(8) Notes that there are now indications that the situation which led the Commission to recommend suspension of its work no longer exists;

(9) Calls upon the Commission to resume and continue its work, to proceed with the study of all the matters within its terms of reference, and to prepare for submission to the Security Council, as early as possible, a draft treaty or convention incorporating the Commission's ultimate proposals.

ORPGA, Third Session, Part First, First Committee, Annexes, Document A/C.1/315.

143 4 *November* 1948

SPEECH: MRS PANDIT

Mrs Pandit (India) moved the Indian amendment (A/700) to the Canadian resolution as adopted by the First Committee.

She recalled that, throughout the debate in the First Committee, and again in Sub-Committee A, the Indian delegation had endeavoured to bring the opposing points of view together. India was eager to help in promoting a general settlement which would reduce the fears of the world regarding the misuse of atomic energy and, in order to obtain general support, was prepared even to sacrifice to some

extent what it considered to be its own interests. Mrs Pandit wished to make it quite clear that the amendment was not being moved in any spirit of criticism. There was, in fact, no vital difference of approach. There was only a difference of emphasis.

In connexion with the amendment to paragraph 1 of the resolution, Mrs Pandit drew the Assembly's attention to the Security Council resolution (S/296) which was passed unanimously on 10 March 1947. The relevant part of the resolution read as follows:

'*Recognizes* that any agreement expressed by the members of the Council to the separate portions of the report is preliminary since final acceptance of any part by any nation is conditional upon its acceptance of all parts of the control plan in its final form.'

India, like so many other countries in the world, was an under-developed and under-powered country in whose future economy atomic energy could be expected to play an important role. The difficulty arose in isolating the economic aspect of atomic energy from the economic aspect of other raw materials capable of producing power or, indeed, from the economic aspects of all raw materials which were of value to man. India lacked some of the vital sources of power, for instance, oil. Therefore, the importance of atomic energy as a source of power was all the greater for that country. The Atomic Energy Commission recommended that the source materials of atomic energy should not only be controlled, but that they should be owned by an international agency and should be distributed to the different countries of the world according to their requirements. The proposal for the international control of raw materials for the production of atomic energy could not be separated, as regards their economic aspect, from that of other raw materials capable of generating power.

While India would agree in principle to the international control and distribution of all power-producing materials, such as coal, oil, uranium, thorium and so on, in order to put them to the best use of mankind, it could not agree to an international ownership and distribution of only those materials capable of generating atomic energy while other materials, such as oil, remained under private ownership and without any international control.

It was not India's intention to adopt a 'dog in the manger' policy in respect of its resources of atomic raw materials such as thorium. What India did not use it might be prepared to give to other nations in exchange for raw materials such as oil which India lacked. That stand could be taken without any essential prejudice to the security of the world. In order to ensure security, it was essential for all nations to agree to the full and free inspection of their territories, coupled with control and possibly international ownership of plants separating or

producing the actual fissionable material. Strict control of all such plants by an international agency coupled with the free and full inspection of all territories was sufficient to ensure that desired materials were not smuggled away to the detriment of international security. India would agree to that full and free inspection, and, if it were agreed to by all nations together with the recommendations for the control of the plants producing the actual fissionable materials, then the paramount considerations of security would be fully met without the necessity of the control or international ownership of the raw materials themselves. For that reason the Indian delegation considered that it would be sufficient at the present stage to approve the parts of the report mentioned in the resolution ' in substance ' only and not in all their details.

Regarding paragraph 2 of the Indian amendment, the Indian delegation felt that the recommendation contained in paragraph 4 of the draft resolution of the First Committee was restricted in scope. It was desirable that there should be a more comprehensive and constructive directive by the General Assembly to the Commission. It was in the interests of all nations and mankind generally that the work of the Commission should proceed as speedily as possible to its final conclusion. Notwithstanding the differences of opinion that had arisen, a great deal of useful work could be done towards the preparation of a treaty. When the provisions of the draft treaty were ready, it would be possible to obtain a complete picture. Until that stage was reached, India's adherence could only be in general terms.

The Indian delegation was confident that its point of view would be readily accepted by the General Assembly, and hoped that the amendment, which it considered to be a constructive approach to the solution of a most difficult problem, and which was designed to harmonize opposing points of view, would be considered by the General Assembly in the spirit in which it was put forward.

The President explained that the first point of the amendment would limit the approval of the reports to approval ' in substance '. The second point would strike out paragraph 4 of the draft resolution and substitute the following new paragraph for it:

' *Calls upon* the Atomic Energy Commission to resume and continue its work, to proceed with the study of all the matters within its terms of reference, and to prepare for submission to the Security Council, as early as possible, a draft treaty or convention incorporating the Commission's ultimate proposals.'

ORPGA, Third Session, Part First, pp. 422-4.

144 16 *October* 1947

RÉSUMÉ OF SPEECH OF INDIAN DELEGATE ON ESTABLISHMENT OF INTERIM COMMITTEE

Chairman: MR J. BECH (Luxembourg).

(23) Continuation of the discussion on the establishment of an interim committee of the General Assembly (document A/C.1/196).

Mr Setalvad (India) said his Government supported the principle of the United States proposal.

He recalled that the discussion had revealed three major controversial issues. First, whether the proposal encroached upon the Security Council's prime responsibility for the maintenance of peace and security. Secondly, whether the Charter empowered the Assembly to constitute a subsidiary organ with the proposed functions. Thirdly, whether the establishment of the interim committee was likely to assist in achieving the efficiency of the United Nations and restoring confidence in its ability to maintain peace and security.

In regard to the first question, he considered, as had several representatives, that the General Assembly had clear and direct responsibility for the maintenance of international peace and security under Articles 10, 11, 13, 14 and 35. Consequently, the Assembly was fully competent to assert its authority in that matter so long as it limited itself to the functions ascribed to it. He could not agree that the mere establishment of a committee to make recommendations constituted in any way an infringement of the letter or the spirit of the Charter.

The second question, namely the duties and functions of the interim committee, was more controversial. The representative of the United States had stressed that the committee's task was to be solely that of making studies and reporting to the Assembly and that it consequently did not involve any delegation of authority. However, he considered that the provision enabling it to make a prior study of questions likely to be included in the agenda of a plenary session was a new one and would require careful consideration. Similarly, the supervisory character of the committee would enable it to exercise a certain control over the implementation of the Assembly's recommendations and might result in its taking measures as a result of those observations. Consequently, he thought that paragraph 2(*a*) and (*b*) should be subjected to a very close examination by a drafting sub-committee.

The most important question, however, was whether the committee would assist in the achievement of the objective aimed at, namely the co-ordination and integration of the responsibilities of the Assembly and the Security Council. If the committee merely added to the friction between the two organs, it would serve no useful purpose.

Consequently, the representative of India supported the Australian proposal that the whole matter should be referred to a sub-committee for close consideration in the light of the discussions in the First Committee. While agreeing, in principle, to the establishment of an interim committee, he emphasized that the Indian delegation accepted it purely as an experimental measure.

ORPGA, Second Session, First Committee, Document A/C.1/196.

145 30 *July* 1947

FOREIGN MINISTER, INDIA TO INDIAN DELEGATION, UNITED NATIONS FOR TRANSMISSION TO SECURITY COUNCIL

I have the honour, on behalf of the Government of India, to draw the attention of the Security Council under Article 35(1) of the United Nations Charter to the situation in Indonesia.

(2) During the last few days Dutch forces have embarked without warning on large scale military action against the Indonesian people. These attacks began without warning at a time when a delegation of the Indonesian Republican Government was actually at Batavia for negotiations with the Dutch authorities on the implementation of the Linggadjati Agreement. In the opinion of the Government of India this situation endangers the maintenance of international peace and security which is covered by Article 34 of the Charter. The Government of India therefore request the Security Council to take the necessary measures provided by the Charter to put an end to the present situation.

(3) The Government of India earnestly hope that, in view of its urgency, the Council will consider this matter as soon as possible.

Text supplied by the Ministry of External Affairs, New Delhi.

146 7 *January* 1949

SPEECH : SHRI B. RAMA RAU

Mr President, I do not intend at this stage to make any lengthy statement. In fact, after the very able presentation of the case by the Indonesian Representative and the application of devastating logic for an analysis of the situation by my friend the Representative of the

Philippines, any lengthy statement on the merits of the case is probably unnecessary.

I would like, before I speak further on this subject, to explain the significance of some of the developments in Asia that have attracted considerable attention in Europe as well as America. As you all know, the Prime Minister of India, Pandit Nehru, has issued invitations to fifteen countries including Australia and New Zealand to discuss the Indonesian problem. Most of the countries have already accepted the invitation and, as far as I know, none has declined so far. It is important that the scope of this Conference should be clearly understood so as to avoid any misapprehensions. I will therefore read out to you an extract from the speech in the course of which Pandit Nehru made the announcement regarding the Conference. He stated as follows: 'We have seen the most naked and unabashed aggression and the use of armed might to suppress a people and a government. We see attempts to revive dying imperialism and colonialism. That this imperialism will die I have no doubt, but there is danger that in the process of fading away it might bring catastrophe on a large scale in its train.'

No Intention to by-pass UNO

Pandit Nehru then stated that it was of vital importance that the countries concerned should all confer together and that all freedom-loving countries should co-operate in protecting freedom from this onslaught. If this was not done now, the consequences were going to be disastrous for the world. This co-operation, he explained, should be within the framework of the United Nations. I wish to emphasize this since fears have been expressed in some quarters whether this Conference was intended to sidetrack or by-pass the United Nations Organization. There is no such intention.

India has always supported very strongly the United Nations Organization and it is her desire to co-operate fully with the Security Council in any effective measures it may take with the object of solving this difficult problem on a satisfactory basis.

As I have stated, I do not wish to spend very much time explaining to you the position in regard to the Resolution passed by the Security Council some time ago because that work has been done by my predecessors, the Australian Ambassador, the Representative of the Philippines and the Representative of Indonesia. There is no question that that Resolution has not been carried out by the Netherlands Government and, if I may say so, nor is it possible to carry out that cease-fire order without removal of the troops to their original line.

The Netherlands Government attacked the cities and the Indonesian forces did not offer any resistance, but have withdrawn from the cities and organized themselves into small guerilla bands. I notice from the statement just made by the Netherlands Representative that in their opinion they have fulfilled the cease-fire order, but they say that they reserve the liberty to carry out mopping-up operations against guerilla bands. What does this mean? Can anyone be satisfied that the Netherlands have carried out this Resolution?

These mopping-up operations are directed against the same Indonesian forces organized on a different basis. That is the position in regard to the cease-fire order, and as regards the release of the leaders, I hardly need say anything because even the statement of the Representative of the Netherlands makes it very clear that that order has not been carried out.

What liberty can the principal leaders have when they are confined to a small island? Such an assertion by the Netherlands Government's Representative is really an insult to the intelligence of the Security Council. At the end of his statement, the Netherlands Representative explained the intentions of his Government.

Can any one believe in the sincerity of the Netherlands Government? The leaders are confined to a small island and separated from their followings who form the bulk of the population. And the Netherlands Government says it is going to set up a government on a democratic basis. Is such a thing possible under the conditions they are determined to impose?

Grave situation

I do not wish to say very much more about the Resolution for it is impossible for anyone to accept the statement of the Netherlands Government that the Resolution has been carried out. But I wish to say something about the repercussions of this problem on the European situation. I need not say very much about the repercussions in Asia. The Conference in New Delhi is an indication of the gravity of the situation. Every Asian country is gravely disturbed.

I wish to say a few words on the repercussions of this aggression on the European situation. The aggressor country is a member of the Western Union or the North Atlantic Pact, as it is sometimes called. The question arises, what are the implications of this pact?

Under the cover of the security afforded by the Union or the Pact, is one of the participant members to be allowed to create insecurity elsewhere and become a menace to world peace? Undoubtedly, this is an aspect of the question which will be carefully considered before the Powers who are not now members of the Union decide to lend their support to the Union.

International Repercussions

The second point arises in regard to the assistance given under the Marshall Plan to the Western Powers for the re-introducing of their economic structure. It is not a question of using Marshall aid as an instrument of political pressure. No modern war can be carried on without adequate economic resources. Indonesia and the other countries seriously affected by this development are clearly justified in requesting the United States to consider whether she should continue to provide resources for a country which is utilizing these resources for reviving imperialism in South-East Asia. This magnanimous gesture on the part of America was designed as a contribution to world peace and when one of the recipient countries is defeating the objects of the E.R.P. by creating conditions in another part of the world that would have very serious international repercussions, surely there is justification for reconsidering the whole policy.

I do not wish to put forward at this stage any concrete proposal for the solution of this problem. Any such proposal should be discussed and carefully considered outside the Council before any suggestions are put forward here. But I would like to impress upon the Council the gravity and the urgency of the situation. I do so because such informal conversations as I have had have made me somewhat pessimistic.

Some have referred to the healing qualities of time. It has been said that if you allow a situation to drift, a solution would be found somehow or other. Whenever this argument is produced, I am reminded of a very striking passage in one of the writings of the late Lord Keynes, the great economist. He was referring to the attitude of his fellow economists during the 'Thirties. I do not remember the exact words for I am quoting from memory but he said something to this effect: 'We economists are setting ourselves too easy and too futile a task, if, during a period of acute depression, we merely say that in the long run the period of depression will be followed by a boom. What solace is it to a sailor on a ship sinking that in the long run the ocean will be flat. In the long run we will all be dead.'

If today for any reason we hesitate to take any action, and if for any reason the Security Council does not accept this challenge, the consequences will be of a very serious nature. Inaction will mean not only the end of Indonesian independence, but will deal a death blow to the Security Council and to the whole United Nations Organization. I hope that the response of the Security Council to this challenge thrown out by the Netherlands Government will be swift and effective and will act as a deterrent to other aggressors in the future.

Indn. Inf., Vol. 24, No. 246.

147 12 *April* 1949

SPEECHES: DUTCH AND INDIAN DELEGATES

Mr Snouck Hurgronje (Netherlands) stated that the request of the Governments of India and Australia that the Indonesian question should be included as an additional item on the agenda of the third session of the General Assembly had surprised his Government, which was of the opinion that the discussion of the Indonesian question during the current session could be prejudicial to the objectives of the United Nations.

The Netherlands representative pointed out that the question had been on the agenda of the Security Council since 31 July 1947 and that the Council had established a committee of three members, the Committee of Good Offices which had been known since 28 January 1949 as the 'United Nations Commission for Indonesia', for the purpose of considering the question on the spot.

From the outset, the Netherlands had emphatically denied the competence of the United Nations to intervene in the matter. Mr van Kleffens and Mr van Roijen had given detailed explanations of the attitude of their Government in the Security Council on 31 July 1947 and 27 December 1948, respectively. The reasons they had given applied equally to intervention by the General Assembly and they should be sufficient to prevent the Assembly from discussing the Indonesian question.

There were, however, other reasons which certain representatives might find more convincing. In order to understand them, the General Assembly should consider to what extent the United Nations was already dealing with the Indonesian question. The Security Council had devoted twenty-five meetings to the consideration of the question since 20 December 1948. All the aspects of the problem had been studied in detail. The representatives of nineteen nations, including several countries of Asia, had participated in the discussion and had explained their views at length. The Netherlands representative could not understand why it should be necessary or even useful to reopen the discussion. In his opinion, not only would it be useless, but it might be prejudicial to the solution of the Indonesian question. He urged the General Assembly to reflect seriously before taking a decision.

Although it had refused to recognize the Security Council's competence and had raised basic objections to certain provisions of the Council's resolution of 28 January (S/1234), the Netherlands Government had nevertheless continued to co-operate with the Council with a view to finding a solution. After three months of discussion, a procedure had finally been found by which an agreement could be reached.

On 23 March the Security Council had recommended that a preliminary conference of the representatives of the Netherlands and the Republic of Indonesia should be held in Batavia under the auspices of the United Nations Commission for Indonesia for the purpose of reaching an agreement between the two parties on the implementation of paragraphs 1 and 2 of the Council's resolution, on the date of the round-table conference at The Hague and on the circumstances in which it was to be held. The Netherlands and the Republic of Indonesia had agreed to participate in the preliminary conference which would be held during the current week in Batavia.

To start a new discussion on the Indonesian question in the General Assembly at the very moment that the preliminary conference was to meet could not but prejudice the success of that conference. Under paragraph 1 of Article 12 of the Charter, the General Assembly could not make recommendations on the subject unless the Security Council asked it to do so. What, then, was the purpose of a discussion which could in no way lead to any conclusion? Was the purpose of such a discussion to arrive at a solution, or, on the contrary, to set the parties against each other by exerting pressure on one of them?

The reply to those questions must be decisive, for it concerned the very foundation and purposes of the United Nations. The aim of the Organization was to bring about a pacific settlement of disputes, not to provoke them; to promote mutual understanding, not to foster dissension. To open a discussion the sole purpose of which was to repeat the accusations already made by certain representatives in the Security Council, would be to act in flagrant contradiction to the spirit and the basic objectives of the United Nations.

The Netherlands representative hoped that the General Assembly, whatever might be the views of its Members on the Indonesian question, would bear those considerations in mind and would not decide to include the Indonesian question in the agenda.

Mr Setalvad (India) recalled that it was his country which had requested the inclusion of the Indonesian question in the agenda of the General Assembly.

The Indonesian question directly concerned the future of seventy-five million human beings. It was of the greatest importance for the maintenance of peace in South-East Asia and for the whole world. So great was its importance that nineteen States Members of the United Nations had recently met in New Delhi in order to try to discover a solution of the problem and to help the Security Council in its task. It would, therefore, be natural for the principal organ of the United Nations to examine that problem.

Objections had been raised, however, to the inclusion of the item in the agenda of the General Assembly. In the first place, the representative of the Netherlands had tried to raise the question of the Assembly's competence in the matter. It was easy to reply to him: the Security Council had felt that it could ignore the objections previously raised by the Netherlands on that subject, and it had been dealing with the Indonesian question for the past two years. It had even appointed a Committee of Good Offices, which had been functioning in Indonesia for a considerable time.

Moreover, the Republic of Indonesia had all the attributes of a State and had been recognized by various countries, including the Netherlands, by virtue of agreements concluded with it. That settled the question of the competence of the General Assembly.

Other speakers had said that the General Assembly could not discuss the Indonesian question because it was being dealt with by the Security Council. Mr Setalvad stated that, in requesting that the General Assembly should discuss the Indonesian question, his country was not moved by a desire to hamper the Security Council's efforts but rather to help it to act with greater efficacy.

Lastly, it had been said that difficult negotiations were pending and that discussion in the General Assembly might have an unfavourable effect on the outcome of those talks. The representative of India thought that the argument was unfounded. Discussion in the Assembly could only facilitate the negotiations and dispose the two parties to accept a solution. India had no desire to ask the Assembly to exert pressure on either of the parties, but to ask that it should seek to bring them to an understanding.

The representative of India therefore asked the Assembly to adopt the General Committee's recommendation for the inclusion of the Indonesian question in its agenda.

ORPGA, Third Session, Part Second, pp. 29-32.

148 11 *May* 1949

SPEECH : INDIAN DELEGATION

Mr H. Malik (India), recalling that the Indian delegation (A/826) with the support of the Australian delegation (A/827), had initiated the request for the discussion of the Indonesian question at the current session of the General Assembly, wished to state briefly the reasons which had prompted those two delegations to propose that

consideration of the question should be deferred to the following session of the General Assembly (A/AC. 24/73, A/AC. 24/73/Corr. 1).

The Government of India had taken that step because it had been disappointed at the way in which the Security Council had handled the Indonesian question and had desired that all possible steps should be taken to strengthen the action of the Council.

Drawing the Assembly's attention to the draft resolution submitted by the *Ad Hoc* Political Committee, Mr Malik pointed out that under the terms of that resolution the Assembly would merely take note of the fact that a preliminary agreement, based on the directives given by the Security Council on 23 March 1949, had been reached between the Netherlands Government and the Republic of Indonesia. He emphasized that the Assembly would not be endorsing the agreement. He added that the Assembly should not lose sight of the fact that the Netherlands Government had violated both the Linggadjati and *Renville* agreements, that it had resorted to the use of force and that it had repeatedly defied orders of the Security Council. In view of all those factors, extreme caution must be exercised. By that resolution the Assembly would express the hope that, on the basis of the preliminary agreement, a settlement could be reached which would ensure peace in Indonesia and freedom and progress for Indonesians.

It had been asked whether the preliminary agreement provided for the withdrawal of Netherlands troops from Indonesia and whether the Republican leaders had been released so that they could negotiate as free men. In Mr Malik's opinion, those questions were extremely important, indeed essential. Since the beginning of the dispute, the Government of India had stressed the importance of ensuring that the negotiations were carried on under conditions which were just and honourable for both sides. The presence of Netherlands troops, particularly after the regrettable incidents which had occurred during the previous two years, would only aggravate the situation and might hamper the normal development of the negotiations. It was evident that only a free government, acting in the name of the Republic of Indonesia under no pressure whatsoever, could conduct negotiations which had any possibility of achieving a permanent, just and honourable settlement.

The hope expressed in the draft resolution that a peaceful settlement would be reached in Indonesia was based on the assumption that those preliminary but most essential conditions had been or would soon be fulfilled. Mr Malik wished to remind the Netherlands Government of the grave responsibilities incumbent upon it. It must see to it that the Indonesian question, upon the solution of which depended not only the happiness and well-being of the Indonesian people but

also peace throughout South-East Asia, was settled without delay and in conformity with the noble principles and purposes of the Charter.

The nations of Asia, which had participated in the Conference on Indonesia held recently at New Delhi under the chairmanship of the Prime Minister of India, Pandit Jawaharlal Nehru, continued to follow with interest the negotiations between the Netherlands Government and the Republic of Indonesia. The United Nations must strive to bring about a just and honourable settlement of the question, which was of vital concern to the millions of inhabitants of Asia and was of paramount importance for the maintenance of peace in the world. As far as lay in its power, the delegation of India would take care that the United Nations remained constantly aware of its responsibilities in solving that problem.

ORPGA, Third Session, Part Second, pp. 336-7.

149 4 *May* 1949

INDIAN DRAFT RESOLUTION ON FORMER ITALIAN COLONIES

WHEREAS by article 23 of the Treaty of Peace with Italy signed on 10 February 1947, Italy renounced all right and title to the Italian territorial possessions in Africa, i.e., Libya, Eritrea and Italian Somaliland, and the final disposal of these possessions was left to be determined jointly by the Governments of the Soviet Union, of the United Kingdom, of the United States of America and of France within one year from the coming into force of the said treaty i.e., 15 September 1947,

WHEREAS in paragraph 3 of annex 11 of the said Treaty of Peace with Italy it was provided and agreed that if with respect to any of these territories the four Powers were unable to agree upon their disposal within one year from the coming into force of the said treaty, the matter must be referred to the General Assembly of the United Nations for a recommendation,

WHEREAS the four Powers mentioned above agreed to accept such a recommendation by the General Assembly and to take appropriate measures for giving effect to it,

AND WHEREAS, the four Powers informed the Secretary-General of the United Nations in a communication made on their behalf dated 15 September 1948 of their inability to agree upon the disposal of any of the said territories,

The General Assembly,

Having considered the matter and heard organizations representing substantial interests in the said territories,

Desirous of ensuring that the territories attain independence in the shortest possible time,

Recommends:

(*a*) That Libya and Somaliland be placed under the International Trusteeship System with the United Nations as the Administering Authority;

(*b*) That after a period of not less than ten and not more than twenty years, the exact period in each case to be determined by the General Assembly on the recommendation of the Trusteeship Council, these territories shall be independent or joined with adjacent territories according to the wishes of the inhabitants to be ascertained by a plebiscite;

(*c*) That the Fourth Committee in consultation with the Fifth Committee submit to the General Assembly detailed proposals as to the manner in which the territories may be administered by the United Nations and the stage or stages at which transfer of authority should take place from the present administrations to the United Nations;

(*d*) That steps be taken immediately to ascertain the wishes of the people of Eritrea as to whether they desire incorporation with Ethiopia; and that for this purpose a special commission appointed by the United Nations be despatched to Eritrea to ascertain the wishes of the people either through a plebiscite or, if this be unsuitable, by other means appropriate to the circumstances of the territory, and to report to the General Assembly, in the light of its enquiries in different parts of Eritrea, whether the whole or any part of Eritrea should be amalgamated with Ethiopia;

(*e*) That the commission should consist of seven members of different nationalities who will be appointed in their individual capacity and by name by the Secretary-General of the United Nations;

(*f*) That the Fourth Committee submit recommendations under paragraph (*c*) above to the General Assembly not later than . . . .

(*g*) That the Special Commission appointed under paragraph (*d*) above make a report so that it may be available for consideration at the next session of the General Assembly.

ORPGA, Third Session, Part Second, First Committee, Annexes, Agenda Item 13 (66).

150 3 *October* 1949

RÉSUMÉ OF SPEECH: INDIAN DELEGATE ON ITALIAN COLONIES

(1) Sir Benegal N. Rau (India) wished to emphasize the two following points: first, that the General Assembly would be acting for the first time like a world parliament, the recommendations of which would be accepted and carried out by the parties concerned; and second, that the solutions proposed by the Assembly would therefore have to commend themselves to world opinion.

(2) His delegation was very pleased that many delegations had changed their attitude and were now in favour of granting independence to Libya. The best way of safeguarding that independence would be to allow the populations concerned to draw up their own constitution through their chosen representatives, as had been done recently in India and Burma.

(3) Citing as an example the Constitution of the Free City of Danzig, which had been prepared under the auspices of the League of Nations, he suggested that the Libyan constitution should be drawn up by a constituent assembly, acting under the authority of the United Nations, so as to make sure that the constitution would reflect the genuine will of the people.

(4) In order to achieve that end, the General Assembly could appoint a commission for the purpose of setting up the constituent assembly. The commission would have the necessary authority to adjust any differences that might arise out of the fact that Libya was administered by two different powers. Those powers, namely the United Kingdom and France, could submit to the United Nations a panel of three candidates for each of the territories concerned: Tripolitania, Cyrenaica and the Fezzan. The Assembly could then choose one member from each panel and the three members elected would form the United Nations commission.

(5) The commission would then examine the local conditions and lay down a suitable basis for either a unitary or a federal constituent assembly.

(6) His delegation favoured the creation of a single constituent assembly in order to promote the unity of Libya. Nevertheless, the representatives at the assembly would have the right to decide whether they wished to have a unitary constitution, a federal constitution or a federation of three separate states with certain services in common. Should the assembly decide in favour of a federal state, the members would divide into three committees, each would draft a constitution

for the state it represented, and finally all three committees would sit together in order to combine the constitutions into one harmonious whole with that of the federal state.

(7) It would not be advisable for the constituent assembly to exercise authority over administrative matters until it had adopted a constitution. Nevertheless, in order to expedite the preparation of the constitution, the United Nations commission should remain on the spot and its main function would be to make sure that human rights and fundamental freedoms were properly safeguarded in the constitution. When the draft constitution had been approved, the commission would submit its report to the United Nations.

(8) Since the preparation of a constitution had taken two years in so far as the Free City of Danzig was concerned, three years for India and only eight months for Burma, it would not be possible to fix a definite time limit at that stage, but, in any event, it should be possible to prepare the proposed constitution within three years.

(9) Turning to the question of Italian Somaliland, Sir Benegal noted that the Four-Power Commission of Investigation had decided that the country was not yet sufficiently developed economically or politically for self-government. Only five months previously, however, the majority of Member States had considered that Libya was not ready for self-government and they had since changed their opinion. It was therefore possible that a United Nations commission of inquiry, if sent to Somaliland, might come to the conclusion that the country was just as ready for self-government as Libya.

(10) A United Nations commission (preferably the same as he had suggested setting up for Libya) should therefore be sent to Somaliland. If the commission decided that Somaliland was not ready for self-government, it would have to consider placing the country under the Trusteeship System with the three following guiding principles: (*a*) the preparation of a constitution appropriate to the present stage of development of the territory; (*b*) the inclusion in the constitution of a provision for its periodical amendment by the appropriate organs of the United Nations, with a view to ensuring the full independence of the country within ten years; (*c*) the administration of the territory by the Administering Authority strictly in accordance with the constitution. The Administering Authority could be chosen after the preparation of the constitution.

(11) With regard to Eritrea, the representative of India considered that it would be useful if the United Nations commission for Libya could also visit Eritrea and collect information concerning the partition of the territory. If the majority of the population favoured partition, the commission should make recommendations concerning the exact

position of the boundary line, the allocation of each part of the territory and the safeguards to be given to minorities.

(12) If the commission found that the population did not wish for partition, it should state whether, in its opinion, Eritrea was ready for self-government or whether a system of trusteeship, similar to that envisaged for Somaliland, should be applied.

(13) The Indian delegation was of the opinion that the United Nations could not decide anything with regard to Somaliland or Eritrea until a commission had been sent to investigate on the spot. The fact that independence was to be granted to Libya was very important, for it might have repercussions in Somaliland and Eritrea if those countries were not granted their independence at the same time.

ORPGA, Fourth Session, First Committee, Annexes, Agenda Item 13 (66).

151 4 *October* 1949

INDIAN DRAFT RESOLUTION CONCERNING LIBYA

The General Assembly,

Noting that by virtue of the Treaty of Peace with Italy and the events which have happened since, the matter of the final disposal of the former Italian territorial possessions in Africa has been referred to the General Assembly of the United Nations for a recommendation which the Powers concerned have agreed to accept, and

Considering that under the said Treaty the final disposal of these territories has to be made primarily in the light of the wishes and welfare of their inhabitants,

Makes the following recommendation in respect of the disposal of the territories of Libya:

(1) The territories of Libya shall form a single united independent group, with a constitution to be drawn up by a constituent assembly representative of the inhabitants of the entire group and to be approved by a commission appointed by the General Assembly of the United Nations,

(2) The commission shall consist of not less than three and not more than five persons to be chosen by the General Assembly from a panel of experts,

(3) The commission shall study local conditions and lay down a practicable basis for a truly representative constituent assembly for the purpose of drawing up a constitution for the said territories,

(4) The constituent assembly shall after drawing up the constitution submit it for the approval of the commission,

(5) When the commission has approved of the draft constitution, it shall report the fact of the approval and send a copy of the draft constitution to the Secretary-General who shall thereupon communicate the same to the present Administering Powers (namely, the United Kingdom and France),

(6) The present Administering Powers shall, upon receipt of the said communication, take appropriate steps for giving effect to the constitution as approved by the commission,

(7) All the steps prescribed above shall be completed within a period not exceeding two years from the appointment of the commission.

ORPGA, Fourth Session, First Committee, Annex, Document A/C.1/491.

152 19 *November* 1949

SPEECH: INDIAN DELEGATION ON ITALIAN COLONIES

A third circumstance to which Sir Benegal would like to call attention was that the First Committee had adopted the whole of section A of the draft resolution, relating to Libya, by 50 votes to none, with 8 abstentions. Even more impressive was the fact that paragraph 1 of section A and paragraph 1 of section B proposing independence for Libya and Italian Somaliland had been adopted by 56 votes to none, with 2 abstentions, and by 58 votes to none, with one abstention, respectively. It was heartening to think that however much the world might be divided in other spheres, it was unanimous, in the sense that there had not been a single dissenting voice, in its support of independence for territories which had hitherto been colonies. It was to be hoped that that decision would be endorsed with the same unanimity by the General Assembly. It might well be claimed that at least the beginning of the end of the era of what was called colonialism had been reached.

Referring to the experiment of appointing a United Nations commissioner to set up a Constituent Assembly or a National Assembly to frame a constitution for Libya, the representative of India pointed out that that was the first time the United Nations had taken so momentous a step.

Finally he called attention to paragraphs 6 and 7 of section B of the draft resolution relating to Italian Somaliland, pointing out that he understood paragraph 7 to mean that the Trusteeship Council and

the Administering Authority would be guided by the principles contained in the annex and not necessarily bound by every small detail.

Sir Benegal attached the greatest importance to those paragraphs and to the principles embodied in the annex proposed by his delegation. It would be remembered that one of the basic objectives of the International Trusteeship System, laid down in Article 76 of the Charter, was to promote the progressive development of the inhabitants of the Trust Territories towards self-government or independence.

Paragraph 2 of section B of the draft resolution stated that Italian Somaliland should become independent at the end of ten years. It was necessary, therefore, to make sure that the progressive development towards independence was completed within that period. It would be seen that paragraph 8 of the Indian annex laid that responsibility fairly and squarely on the United Nations. The use of the word ' may ' in the paragraph was in accordance with the usual drafting practice of using the courteous ' may ' rather than the mandatory ' shall ', but the intention in either case was the same. The United Nations was expected to ensure that independence was realized within the prescribed period.

Furthermore, the annex was intended to ensure that, even during the preparatory period of ten years, the Administration of the Territory should be responsible in all internal matters to a local representative council and in all external matters—defence and foreign relations—to the United Nations itself. Paragraphs 3 and 4 of the annex made that clear.

There had been some controversy on the manner in which members of the local council were to be appointed. Paragraph 8(*a*) of the annex empowered the United Nations to make rules to ensure that the council should be really representative of local opinion.

The joint effect of paragraphs 4 and 5 was that the Administration would be subject either to control from below, in other words, by the people of the Territory acting through their representatives, or to control from above, in other words, by the peoples of the world acting through their representatives in the United Nations.

The control from below was intended to reassure the local inhabitants that their interests would be safeguarded. The control from above was intended to reassure the Government of Ethiopia, in particular, that Ethiopia's security would be safeguarded.

In fact, if full effect were given to section B of the draft resolution and to the principles contained in the Indian annex, the United Nations would, for the first time, be creating a new pattern of trusteeship which would, of course, be within the framework of the Charter.

It would be a pattern as far removed from existing patterns as a limited or constitutional monarchy was from a dictatorship. Italy, with the assistance of certain other countries, would thus have the opportunity of being the first in that field of international relationships. Sir Benegal hoped that, in the interests of the Somalis and the prestige of the United Nations, Italy would justify the confidence placed in it.

Generally speaking, the draft resolution, though not giving full satisfaction to any single delegation, was the best that could be achieved in the circumstances. In politics, the second best had often to be accepted. Nevertheless, in its essentials, the draft resolution approximated so closely to the solution outlined by the Indian representative in his speech in the Assembly on 21 September (222nd meeting) and in his speech in the First Committee on 3 October, that he would have much pleasure in supporting each and every part of it.

ORPGA, Fourth Session, pp. 271-2.

153 1 *November* 1947

SPEECH: SOUTH AFRICAN DELEGATION (EXTRACT) ON SOUTH-WEST AFRICA

Will you allow me to say that there are certain aspects of this matter which, though they have been thrashed out in great detail, are, in the view of the South African delegation, so plain and undisputable, and yet so consistently misunderstood or ignored that, even at this late hour and at the risk of monotonous reiteration, I must once again dwell upon them. I hope that those who have not yet appreciated these simple facts which I have in mind will not impatiently brush them aside but will consider them objectively and with open minds. If they will only do so, I feel sure that some of them, at any rate, will feel bound to concede that there is, after all, a great deal to justify the attitude of my Government.

The South African Government certainly has an accusation to meet. In substance, the accusation is that by not submitting a trusteeship agreement in respect of the Territory of South-West Africa, my Government has failed to carry out a moral and, in view of some, also a legal obligation to do so.

The alleged legal obligation is reflected by the fourth paragraph of the proposed resolution of the Fourth Committee, which I do not need to read again now. If this statement is correct, it may well be contended that there is a legal duty upon the Union Government to

submit a trusteeship agreement in respect of South-West Africa. In my submission, however, there can be no question that this statement is very clearly incorrect. Chapter XII of the Charter expresses no such intention. As was pointed out before the Fourth Committee, the specific terms of that Chapter are so clearly permissive that it is difficult to appreciate the basis upon which any other view could be held. The very first Article of that Chapter, Article 75, dealing with the establishment of the Trusteeship System, refers to such territories as may be placed thereunder by subsequent individual agreements. The word 'may' used in conjunction with the word 'agreements'—a word necessarily implying a voluntary connotation—is obviously and incontestably permissive and not obligatory. The same applies in respect of the following governing phrase in Article 77: '. . . such territories in the following categories as may be placed thereunder . . .'—namely, the Trusteeship System—'. . . by means of trusteeship agreements'. Here also there is an incontrovertible permissive sense.

This is confirmed by an examination of the categories of territories referred to in that Article. Two of them, namely, the territories detached from enemy states and the other territories in paragraph 1(*c*), are admittedly voluntary categories. It is difficult to understand by what process of logic the third category, namely, mandated territories, although governed by the very same opening words and appearing in precisely the same context, is to be regarded as an obligatory category; and, when regard is had to the unequivocal words of paragraph 2 of Article 77, this difficulty does indeed become insuperable. That paragraph reads as follows: 'It will be a matter for subsequent agreement as to which territories in the foregoing categories will be brought under the Trusteeship System and upon what terms.'

It would hardly be possible to express the voluntary character of all these categories in terms more clear or precise. No implication which may be said to arise from the use of the word 'voluntarily' in item (*c*) of paragraph 1 could possibly override this specific provision in paragraph 2. If anything, that word was used *ex abundanti cautela*, and not in order to negative the voluntary nature of the categories referred to in items (*a*) and (*b*). Moreover, the alleged implication in paragraph 2 of Article 80 cannot nullify the very explicit terms of paragraph 2 of Article 77.

The provision in paragraph 2 of Article 80 against delay and postponement is explained by the unsettled state of the world at the time the Charter was drafted, and can apply only where the State concerned has already decided to submit an agreement. It must also be borne in mind that this provision against delay and postponement applies with reference to all territories specified in Article 77, and also

to the specifically voluntary category in item (*c*) of paragraph 1 of that Article, and not merely to mandated territories.

This circumstance alone makes it quite impossible to contend that paragraph 2 of Article 80 carries the implication of a legal obligation. Such an implication would make it entirely inconsistent with paragraph 1(*c*), and would mean that every state responsible for the administration of any territory in any category referred to in Article 77 (including *inter alia* Non-Self-Governing Territories), is bound to submit a trusteeship agreement. I have no hesitation in saying that such a conclusion would be quite absurd and could not possibly be accepted.

The view that there is no legal obligation is finally confirmed by the proceedings at San Francisco. Here I would say with great respect that I think the representative of Iraq has misunderstood or misconstrued the proceedings at San Francisco. As was pointed out in the Fourth Committee by the representative of Canada, the representative of Egypt at San Francisco proposed an amendment to the effect that all mandated territories were to be brought under the Trusteeship System. After a full discussion, this amendment was rejected.

We have further been told by the representative of the United States that at San Francisco the United States representative was at some pains to ensure, because of the situation in respect of the Pacific islands, that trusteeship was not made obligatory for mandated territories, and that it was generally agreed at the time that the trusteeship provisions of the Charter were not intended to impose, and did not in fact impose any legal obligation. This final confirmation, by the discussions and views of those who drafted the Charter, removes every remaining doubt which there may be as to whether or not there is such an obligation.

In reply to all this, it was repeatedly argued before the Fourth Committee that, if there is no legal obligation, this mandated Territory of South-West Africa would hang in the air. With great respect, I would submit that this is an overstatement. If it is accepted that, in the absence of a trusteeship agreement, the Charter would not apply, that would mean that the position of this Territory remains undefined altogether.

What are the facts? Although the Union of South Africa may not have complete sovereignty over this Territory, it does have definite rights in respect of it. It is entitled to legislate for and administer this Territory as an integral part of the Union. Moreover, having abandoned the project of incorporation, in deference to the wishes of this Assembly, it is still the declared policy of the Government of the

Union of South Africa to honour the trust and duty to promote to the utmost the material and moral well-being and the social progress of the inhabitants, and to administer the Territory in accordance with the spirit of the Mandate in so far as that remains possible, now that the League of Nations has ceased to exist. In addition, the Government of the Union of South Africa has expressed its readiness to submit annual reports for the information of the United Nations. That understanding stands.

Although these reports, if accepted, will be rendered on the basis that the United Nations has no supervisory jurisdiction in respect of this Territory, they will serve to keep the United Nations informed, in much the same way as they will be kept informed in relation to Non-Self-Governing Territories under Article 73(*e*) of the Charter. I would submit, therefore, that it is not correct to say that this Territory will be hanging in the air. It will be administered according to a system which today may be *sui generis*, but which is nevertheless a system not inconsistent, I would submit, with the objectives of the Charter. I would urge upon the General Assembly that, by adopting such a system, the Government of the Union of South Africa is not resorting to a form of administration which could reasonably be regarded as out of keeping with the prevailing concepts of the comity of nations.

The representation of the Territory in the Parliament of the Union of South Africa, to which some attention has been drawn in the Fourth Committee, will not be a departure from such a form of administration. Under the Mandate, such representation could clearly have been granted without in any way violating any provision of the Mandate. It is not the same thing as incorporation, as has been contended by some representatives. By such representation, the Territory will not be incorporated in the Union of South Africa any more than the territories under French administration have been incorporated into France by representation in the French legislature. Also, after such representation has been granted, the Territory will continue to be administered in the spirit of the Mandate.

I now come to deal with the alleged moral obligation. Judging from the preamble of the proposed resolution, there are two possible grounds on which a moral obligation may be said to arise. The first is the fact that all other states administering territories previously held under mandate have placed these territories under the Trusteeship System, or offered them independence; the second, the resolutions of this Assembly dated respectively 9 February 1946 and 14 December 1946.

As regards the fact that all the other states concerned have submitted agreements or offered independence, it must be apparent that a moral

obligation on the part of the Government of the Union of South Africa can only be said to arise if the position of the mandated Territory of South-West Africa is not substantially different from that of the other territories previously held under mandate. My Government has on more than one occasion directed attention to the material differences which do in fact exist. I trust the representatives will permit me once again to remind them of these differences.

In the first place, there is the fact that this Territory falls within the category of 'C' Mandates, which were to be administered as integral portions of the administering States, and for which both the Covenant and those responsible for the making of the Covenant, envisaged no future other than integration as a self-governing part of the administering state. This alone sharply differentiates this Territory from most of the others.

In the second place, there are other more distinctive differences which place this Territory in a position which is entirely unique among mandated territories. South-West Africa is contiguous with and has no natural barriers separating it from the Union of South Africa—so much so that, on two occasions, the national existence of South Africa has been threatened from this Territory. Ethnologically, there is a kinship between all its peoples and the peoples of the Union of South Africa. Administratively, integration between this Territory and the Union of South Africa has long reached the stage where international supervision would affect the purely internal affairs not only of this Territory but also of the Union of South Africa itself. I think I am justified in saying that, in view of some of the remarks which have been made today. In matters such as customs and excise, railways and harbours, immigration, police, defence, marketing, price control and the distribution of certain essential commodities, there is a very close integration between the Territory and the Union of South Africa. Furthermore, in the case of this Territory and in the case of no other, the majority of the inhabitants have expressed themselves against a trusteeship agreement.

It is true that this Assembly has expressed the view that the native inhabitants of the territory have not yet reached the stage of development which would enable them to express an opinion. It must be borne in mind, however, that Europeans are also inhabitants of this Territory, and that they are equally entitled to be heard. Their views are equally emphatic, and whatever the stage of development of the native inhabitants, my Government is not prepared to subscribe to the proposition that the views of the native inhabitants should be ignored altogether in this matter, or in any other matter affecting their present or future well-being.

A statement was made today that the vast majority—hundreds of thousands—of Africans in South-West Africa were against the present system. That is not correct. There are certain Africans of the Herero tribe—10,000 out of 300,000—who have expressed themselves against incorporation and against the present system, but we have never hidden that fact from the General Assembly. It has always been disclosed that that small minority was against both incorporation and the continuation of the mandatory system. To brush aside the clearly expressed views of both Europeans and natives would be inconsistent with the trust assumed by the Government of the Union of South Africa under the Mandate.

This alone should, in my respectful submission, dispose of the alleged moral obligation which may be said to arise from the action of other mandatories. But there is more. It is only in respect of this Territory that a specific reservation has been made. This was done at San Francisco before the Charter was signed, and also at the first session of the General Assembly in London. It has been said that all kinds of people might have made reservations, but the reservation was in fact made and that fact was known to all parties. It is true that this reservation does not appear against the signature of the Charter on behalf of the Government of the Union of South Africa. The reason for this is a very simple one. It was not necessary to make this reservation in that way because the Charter quite clearly does not impose any obligation to deal with the Territory only by submitting a trusteeship agreement and in no other way. My Government, nevertheless, thought it expedient, in order to avoid all future misunderstanding, to make its position in regard to this Territory quite clear. That was done in the only way in which it could properly and appropriately be done, namely, by means of an official statement handed in at San Francisco as a conference document.

It is true that when this document was subsequently read by the South African representative before the committee dealing with the trusteeship provisions of the Charter, it was ruled out by the Chairman of that committee, but only in so far as it could be said to be introduced for the expression of an opinion or for action by that committee in relation to the future of the Territory, and not in so far as it served merely as an illustration of the difficulties of administering 'C' Mandates. It was ruled out, to the extent I have just described, on the ground that it dealt with the future of a particular territory, whilst the committee was concerned not with particular territories but with the general principles of the Trusteeship System. But this cannot alter the indisputable fact that this statement was handed in to the Secretariat as a conference document, and that it was circulated

as such and brought to the notice of the representatives of other states.

In the absence of a legal obligation under the Charter, that was all that was necessary. We openly declared our intentions, and, unlike other states which have summarily incorporated large territories with millions of inhabitants, we did not propose to take any action until the inhabitants of this Territory had been consulted and the United Nations had considered the matter.

Having made that statement, and having repeated it at the first session of the General Assembly in London, on what ground can it now be said that the action of other mandatory Powers, in submitting trusteeship agreements, imposes on the Government of the Union of South Africa the moral obligation of doing likewise? My Government has, by these reservations, made it clear in advance that there are special and distinctive considerations which remove South-West Africa from the general category of mandated territories. Having done that, they cannot agree that any moral obligation has been imposed upon them by any consistency of action in relation to other mandated territories under totally different circumstances.

These, then, are the reasons why my Government is satisfied that the submission of agreements by other mandatory Powers does not give rise to any moral obligation to submit an agreement in respect of South-West Africa. These reasons dispose, at the same time, of any contention that there is such an obligation, arising from the much invoked spirit of the Charter. The spirit of the Charter, I would submit, does not enjoin that the legal rights of States under international law should be held to be of no account, or that any State should abandon any trust under a mandate for another and a different trust, or that it should do so in defiance of the wishes of those primarily concerned, namely, the inhabitants of the territory held under trust. It is my submission, therefore, that up to the time the resolutions referred to above were passed, my Government had no moral obligation whatsoever to enter into a trusteeship agreement.

How then, we must ask ourselves, did these resolutions affect the position? From what I have already said, it seems to me it would follow that, in the view of my delegation, these resolutions were not passed in order to ensure compliance with any existing legal or moral obligations on the part of the Government of the Union of South Africa. When they were passed, there was no obligation at all, either legal or moral. In assessing the force of these resolutions, it is important that this should be kept in mind. The first resolution, moreover, that of February 1946, purported to be no more than an invitation to all mandatory Powers to submit agreements. This point is important.

Did this invitation create a moral obligation where none existed before? If it did, the word ' invitation ' would seem to have lost its meaning. We should be faced with the fact that an invitation by the General Assembly cannot be declined without moral deliquency. An invitation would no longer be an invitation. It would be a precept in a moral code. And that, surely, is putting too high a construction upon what the General Assembly itself expressed to be an invitation, and no more.

Coming now to the resolution of December 1946, it is clear, of course, that the resolution is more than an invitation. It contains a recommendation. And that brings us to the all-important question : to what extent recommendations by the General Assembly are binding upon Member States. I do not want any misunderstanding to exist of the view held by my Government on this question.

The representative of Mexico quoted some of my remarks in the Fourth Committee, and he quoted them quite correctly. He may have misconstrued or misunderstood what I attempted to say. I should like these views to be clear.

I venture to think that we are all agreed that such recommendations —that is, recommendations of this Assembly—are not binding in the same sense as a rule of international law. This Assembly is not a legislative body. Its recommendations cannot create legal obligations where none existed before. Neither can they, in submission, serve to create binding rules of international morality. However much this Assembly, from time to time, may give expression to the current moral convictions of the world in international affairs, it cannot with absolute effect prescribe what is to be approved as morally right and what is to be condemned as morally wrong. In other words, I would submit with the greatest respect, that a recommendation, as the very term itself denotes, is not a rigidly binding injunction, legal or moral.

By this, however, I do not mean to convey that a recommendation does not give rise to any obligation at all. I am prepared to admit that it does give rise to an obligation. But the obligation, I would submit is no more than this : It is the duty of every State affected by a recommendation to give that recommendation its bona fide and earnest consideration ; to carry out that recommendation if it is at all practicable for it to do so ; and not to disregard it on grounds that are clearly insufficient or frivolous.

This duty my Government has conscientiously performed. It has given the recommendation of December 1946 its most anxious consideration. It has given effect to it to the extent to which circumstances have allowed. I wonder whether that fact has been sufficiently appreciated in some delegations. In deference to the wishes of this General Assembly, and with the concurrence of the Parliament of the Union

of South Africa, it has decided not to incorporate this territory. However, for the reasons which I have once again explained, my Government, and also the Union Parliament, find themselves unable to go any further. You may differ from my Government, but I would say, in all earnestness, that you cannot fairly brush aside these reasons as having no substance or as being of no consequence, and you cannot fairly stigmatize my Government's attitude as one of defiance.

It is in these circumstances that my delegation cannot support either the resolution as it has emanated from the Committee or the resolution in amended form. I have attempted to adopt a consistent attitude in regard to this matter throughout. My delegation cannot be party to any resolution, amended or unamended, which involves asking or urging the Government of the Union of South Africa to do something which, after having given most careful consideration to the matter, it conscientiously feels that it cannot in honour carry out.

ORPGA, Second Session, Vol. I, pp. 630-7.

154 1 *November* 1947

SPEECH: MRS VIJAYALAKSHMI PANDIT ON SOUTH-WEST AFRICA

I had no intention of intervening in this debate, but statements have been made by certain representatives which are of such great importance and raise moral issues of such far-reaching implications that I consider it necessary that the position of my delegation should be stated clearly and unequivocally.

Statements have been made with great emphasis which, in effect, mean that this Assembly should divest itself of any further interest in the fate of the mandated Territory of South-West Africa. It is being urged that the General Assembly should not have any resolution on what is clearly a failure on the part of the Union of South Africa to implement the decision which the General Assembly took last year, namely, that South-West Africa be placed under international trusteeship.

It is argued that there is neither a moral nor a legal obligation on the part of the Union Government to place South-West Africa under trusteeship, and that the stand taken by the Government of the Union of South Africa is not open to question.

I want to emphasize in all seriousness that this is a view which will at one stroke undo the work of the last thirty years in the field of

international trusteeship and retard the progress that has been achieved.

The essence of the mandate system was to place certain backward peoples under the guardianship of the League of Nations and under the supervision of the conscience of the world. True, the administration of these mandated territories was entrusted to certain Powers, but it was in the nature of a sacred trust. Whatever may be the legal position arising out of the extinction of the League of Nations and the creation of the United Nations, the peoples of the world have always understood, and indeed it has been so conceded, that the responsibilities of the League of Nations in the wide field of moral authority have been assumed by the United Nations. In fact, we have been proceeding on this basis, and in the General Assembly we have taken over the work which the League of Nations had been carrying out so effectively in such matters as white slave traffic, trade union rights and so forth.

More than this, we have been, very rightly and with the full concurrence of world opinion, extending the scope of our activities. Are we to say on this most important matter on which the backward peoples of the world have pinned their faith, that the mandate system disappeared when the League of Nations died, and that it has to be recreated?

It is clear beyond doubt, and has never indeed been questioned, that the territories which were brought under the international system of supervision shall continue under such supervision until the peoples of the area are fit to take over the responsibilities of their own government.

Even the Government of the Union of South Africa, however grudgingly, recognizes the validity of this position by asserting that it proposes to administer South-West Africa in the spirit of the Mandate. The spirit of the Mandate is international supervision. If, as it claims, it proposes to administer South-West Africa in the spirit of the Mandate, then why does it wish to take shelter behind a legal quibble?

The Government of the Union of South Africa has argued that it is under neither a legal nor a moral obligation to place South-West Africa under the Trusteeship System. I do not claim to be a lawyer, but speaking purely from the history of the last quarter of a century, it seems to me an astounding statement to make in this General Assembly before the nations of the world, that no moral obligation exists in this matter. What would the Charter be but a medley of words, were it not sustained by the spirit which lies behind it and which has inspired the peoples of the world to join together to solve their common problems?

Mr Evatt has paid a high and well-deserved tribute to Field-Marshal Smuts. I fully share the view he has expressed that this Organization owes a very great deal to him. But what Mr Evatt said amounts to this: that we may leave the question to the wisdom, experience and statesmanship of Field-Marshal Smuts, and that what he does in the matter should amply satisfy us.

The issues with which we are faced far transcend personal considerations. In our consideration for a great personality, we must not forget the fate of hundreds of thousands of Africans in South-West Africa who will look to this Assembly for the safeguarding of their interests.

Therefore, I trust that the representatives will carefully weigh these considerations before they make any final decision. With the permission of the President, my colleague will make a further statement at a later stage on the merits of the respective resolutions.

ORPGA, Second Session, Vol. I. pp. 596-8.

155 16 *November* 1948

SPEECH: MRS VIJAYALAKSHMI PANDIT ON SOUTH-WEST AFRICA

Indian Resolution

The resolution proposed by India seeks to give concrete form to the views of my delegation on the question of the future of South-West Africa. As it is already in the hands of the Honourable Members of this Committee, I shall not waste time in reading it but will attempt to explain briefly its scope. It deals with the following aspects of the question:

(1) Report of the Trusteeship Council on the Administration Report of South-West Africa;

(2) Failure of the Government of the Union of South Africa to place the territory under trusteeship;

(3) Question of its incorporation;

(4) Submission of Annual Reports;

(5) Proposal to send a Commission to South-West Africa.

By its Resolution of last year—No. 65 of November 1, 1947—the General Assembly authorized the Trusteeship Council to examine the Report on South-West Africa submitted by the Government of the Union of South Africa and to submit its observations thereon to the General Assembly. The Trusteeship Council, in pursuance of this

Resolution, examined the Report in spite of certain handicaps, namely the lack of adequate information and the absence of any representative of the Union Government to explain the Report to the Council. It has now submitted its observations to the Assembly. My delegation is of the view that the observations made by the Council should be endorsed by this Committee and the General Assembly.

This is the third time that the Government of the Union of South Africa, ignoring repeated recommendations of the General Assembly, has declined to submit a trusteeship agreement in respect of South-West Africa. Members of the Committee will recall that in the course of the discussions at Lake Success the Fourth Committee, while taking an unfavourable view of the failure of the Government of the Union of South Africa to place the territory of South-West Africa under trusteeship, refrained from any expression of condemnation or regret in the hope that, under pressure of world opinion as expressed by the United Nations, the Government of the Union would reconsider its position and submit a trusteeship agreement on South-West Africa. This expectation has unfortunately not materialized.

One point which has been established beyond doubt during the general debate in this Committee last week is that we cannot at this stage go back to a narrow legalistic interpretation of Article 77, ignoring the proceedings and decisions of the General Assembly of the last three years. We must recognize, as indeed Article 80 unmistakably indicates without any qualification that, until a trusteeship agreement is concluded by the Government of South Africa, the existing rights of the people of South-West Africa must remain absolutely intact and inviolate. Until such agreement is concluded, as the Article points out, ' nothing in this Chapter shall be considered in or of itself to alter in any manner the rights whatsoever of any states or peoples or the terms of existing international instruments to which Members of the United Nations may respectively be parties '.

Rights of South-West African people

In the present case, what are the existing rights of the people of South-West Africa? They were entitled, so long as the mandatory system was in force, to Annual Reports on the Administration of their territory by the Union Government being scrutinized by the Permanent Mandates Commission. As we have been told, the representative of the Union Government was personally present to be examined when such scrutiny took place. That right cannot be extinguished merely because the Permanent Mandates Commission has ceased to exist. For this reason, the General Assembly passed a Resolution last year authorizing the Trusteeship Council to step into the position

of the Permanent Mandates Commission and I reiterate that view in my resolution.

The people of South-West Africa were also entitled under the terms of the Mandate to submit petitions to the Permanent Mandates Commission. That right again cannot lapse in the absence of the Permanent Mandates Commission. I assert that the Trusteeship Council is entitled to take the place of the Permanent Mandates Commission and receive petitions from the people of South-West Africa.

So far as the people of South-West Africa are concerned, these two rights must be recognized as existing and they cannot be taken away by any unilateral action on the part of the Government of the Union in defiance of the Resolution of the General Assembly.

Mandatory Power not Sovereign

Another feature of the general debate to which I wish to draw attention is that the Government of the Union has only administrative rights over South-West Africa and the Mandate did not confer sovereign rights over a territory to the mandatory power. Nothing in this Charter, I would remind Members of the Committee in the language of Article 80 of the Charter, can alter in any manner the right of any states or the terms of existing international instruments to which Members of the United Nations may be parties. The rights enjoyed by South Africa as mandatory power cannot therefore be expanded to include sovereign rights over South-West Africa. I stress this point because of steps contemplated for the establishment of what has been described as ' closer political association ' of the territory of South-West Africa with the Union of South Africa. A distinguished delegate of South Africa has tried to convince us that this does not amount to annexation or absorption, and that the identity of South-West Africa will be maintained. But can we accept such assurance in the face of the avowed policy contained in the election manifesto of the Nationalist Party which now forms the Government of the Union?

Violation of Charter

It is in the opinion of my delegation a clear and flagrant violation not only of the Charter but of the assurance given to the General Assembly by the Union Government in its letter of 23rd July 1947 that it would not proceed with the incorporation of South-West Africa into Union territory. My resolution asks the Government of South Africa in specific terms to halt these measures. It is not clear from the facts placed before us precisely what the new administrative arrangements for South-West Africa would be: whether, for instance, the affairs of the natives of South-West Africa would henceforth be under

the control and supervision of the Union's Department for Native Affairs or not. This, I submit, is a serious matter for the natives of South-West Africa.

I wish to repeat that we must act swiftly and effectively if annexation is to be prevented. The comments of the nationalist press in South Africa leave no doubt as to the immediate future. I will quote one typical observation of a Natal paper: 'It is in our greatest interest that a territory that forms a natural unity with the Union should stand under the Union Parliament and not under strange management, and above all that it should not be subjected to the guardianship of the United Nations and of such countries as Russia, China, India—yes, even Abyssinia. In order to preclude even the possibility of United Nations authority in South-West Africa it is necessary that the negotiations be carried to a quick and successful end.'

I would like to say a word about the suggestion contained in the last paragraph of my resolution regarding the appointment by the Trusteeship Council of a Commission to visit South-West Africa. We have made this proposal only after careful consideration. The Trusteeship Council is far from being satisfied with the adequacy of the information supplied by the Union Government on its administration of South-West Africa. The United Nations have received a large number of petitions from individuals and organizations in South-West Africa which give a picture different from the one placed before us by the distinguished representative of South-West Africa. We do know, however, from the observations of the Trusteeship Council that the situation looked at from any point of view is extremely serious. The Commission when it visits South-West Africa, will doubtless be in a position to interview the leaders of tribes, to receive petitions, to examine not only representatives of the Union Government but also those of different sections of the people. The Commission will ascertain how far the people of South-West Africa desire the incorporation of their territory with South Africa. On the Report of the Commission the Trusteeship Council will take its own decisions so that, next year, when the Fourth Committee meets during the session of the General Assembly we may be in a position to reach more definite and satisfactory conclusions than we can do this year. I recommend the resolution for the consideration of the Committee.

Mr Chairman, I crave your indulgence, and the indulgence of this Committee, for a brief personal explanation. During his speech on the 11th instant in this committee, a distinguished representative of South Africa thought fit to refer to many matters entirely irrelevant to the subject under discussion. I did not intervene in the general debate for a second time because the nature of the personal attack

on me and the references to my country which he has tried to explain away today were not such as are taken notice of by a responsible person. I do not wish to speak of them now except to say that this Committee is not concerned with what happened in India or elsewhere in the world but only with the policy of South Africa in respect of South-West Africa. But there was one statement which demands reply. The distinguished representative of South Africa said: 'Even the Prime Minister of India when last week, on the insistence of the Indian Delegation he was accorded the special and unusual privilege of addressing the Assembly, did not hesitate to make use of that privilege for indirectly referring to a matter on the agenda, viz., the Indian complaint against the Union.' This, Sir, is wholly untrue. The Prime Minister of India spoke to the Delegates of the United Nations only on the invitation of the President of the Assembly—an invitation which had been extended to him even before the arrival in Paris and renewed here during his two visits to this city. His address was a reaffirmation of the policy of the Government of India on problems of world interest and significance.

India's Stand

One last word, Sir, before I conclude. The distinguished delegate of South Africa said in his speech in reply to mine that the Indian delegation and the Government of India have been pursuing a 'vendetta' against the Union of South Africa for three years. I submit that it is highly improper to use words in such an irresponsible fashion. I would ask you, Sir, and the Honourable Members of this Committee to believe me when I say that my delegation and my Government pursue no vendetta against any country. The only vendetta we pursue is against injustice in all forms, wherever it exists, and from that nothing can deter us. It is our earnest desire to work in friendship and co-operation with all nations, to broaden freedom, to raise standards of living and to establish peace with justice throughout the world. But we must raise our voice against policies and courses which are bound to produce friction and lead ultimately to conflict. We feel that all Members of the United Nations owe a special responsibility in this matter to the peoples and countries who are not directly represented here but who look up to us for vindication of their rights. If such a conception of our duties is to be characterized as a 'vendetta', I can only say that the Indian delegation must continue to discharge its obligations to the United Nations undeterred by attempts to misrepresent our views and motives.

ORPGA, Third Session, First Part, Fourth Committee, pp. 351-4.

156 26 *November* 1948

SPEECH : MRS VIJAYALAKSHMI PANDIT ON SOUTH-WEST AFRICA

Mrs Pandit (India) wished to explain why her delegation did not consider the resolution before the General Assembly to be satisfactory. The General Assembly was dealing with one of the most important questions before the United Nations; as it involved an accession of territory, it could not be brushed lightly aside.

Referring to the rejection by the General Assembly in 1946 of the proposal put forward by the Union of South Africa, for the incorporation of South-West Africa, and the latter's subsequent announcement that it had decided against incorporation, she pointed out that, one by one, measures had been taken to bring the Territory to the verge of annexation at present described as closer political association. The speeches of the representatives of the Union of South Africa in the Fourth Committee, as well as of the South African Prime Minister in Parliament and outside, confirmed the fact that annexation was imminent.

That question involved the whole Charter principle of international trusteeship, which was more liberal than that of the old Mandate System; it was based on the desire of the United Nations for the early attainment of self-government or independence by the peoples of the Trust Territories, and, as pointed out in the Fourth Committee, was an expanding one.

By refusing three requests by the General Assembly that it should submit a trusteeship agreement for South-West Africa, the Union of South Africa had struck a heavy blow at the International Trusteeship System, and thereby permanently retarded the attainment of self-government by hundreds of thousands of backward people in South Africa. Mrs Pandit recalled in that connexion that under the closer association scheme there would be no representation in the Parliament of the Union for the indigenous inhabitants of South-West Africa.

It was a matter of considerable surprise and disappointment that the Fourth Committee had rejected, by an extremely narrow margin, even the modest Indian proposal (A/C.4/164) that the General Assembly should not merely take note of but endorse, the observation of the Trusteeship Council regarding the unsatisfactory nature of the administration of South-West Africa, thereby strengthening the hand of the Council.

The report did not reflect the discussion in the Committee on the desirability of specifying the rights enjoyed by the people of

South-West Africa under the Mandate System. Unless timely measures were adopted, those rights would be threatened with extinction. The representative of Cuba had made an unsuccessful attempt in the Committee to include those points in his amendment (A/C.4/166). The Indian delegation particularly regretted the fact that there was no mention in the resolution of the right of petition of indigenous inhabitants of South-West Africa, a right which could not be taken away in view of the specific assurance of Article 80 of the Charter.

It was flagrantly unjust that steps of a far-reaching political nature should be taken in South-West Africa without first giving the indigenous inhabitants of the Territory an opportunity of direct representation to the General Assembly or the Trusteeship Council. That was particularly important in the light of the fact, pointed out by the Trusteeship Council, that the indigenous inhabitants of that Territory had no political rights or representation anywhere.

Since a number of tribal leaders had protested against the manner in which the so-called referendum had been held, the result of which had been claimed by the Union Government as a vote by an overwhelming majority in favour of incorporation, facilities should be given to representatives of the indigenous inhabitants to submit petitions on the subject. The First Committee had heard representatives of Jews and Arabs on the problem of Palestine. Consequently, her delegation thought that a similar right might appropriately be granted to the indigenous inhabitants of South-West Africa before the Union Government took any irrevocable steps in the matter. That was the least that the General Assembly could do after the rejection, by a narrow margin, of the Indian proposal to send a visiting mission to South-West Africa.

As had been pointed out in the Fourth Committee, the Mandate System had at no time conferred on the Union Government anything more than administrative rights. Consequently there could be no question of exercising rights of sovereignty over that Territory. The representative of the Union of South Africa had argued that the League of Nations, the Permanent Mandates Commission and the Mandate System being extinct, the Government of the Union of South Africa, being in possession of South-West Africa as a mandated territory, would continue to enjoy all the privileges of the Mandatory Power without, however, accepting any of the corresponding obligations; namely, to restore to the people of South-West Africa the exercise of their former rights.

In view of that position taken by the Union Government, it was difficult to attach much importance to its assurance that it would continue to administer South-West Africa as an integral part of the

Union in accordance with the spirit of the Mandate. It had been frequently stated that the Mandate System was dead and had no binding force. When it was asked why the spirit of a dead mandate should be invoked when there was unwillingness to accept the spirit of the living Charter, the reply was that on a strictly legal interpretation of Article 77 of the Charter there was no legal or moral obligation to produce a trusteeship agreement.

The Union of South Africa had made it sufficiently clear that, rather than submit a trusteeship agreement in respect of South-West Africa, it would walk out of the United Nations. Mrs Pandit wished, in that connexion, to justify a statement made by the representative of India at the 83rd meeting of the Fourth Committee regarding the alleged statement by the Prime Minister of the Union of South Africa in Pretoria on 16 November 1948, to the effect that South-West Africa should be incorporated in the Union and that, rather than submit a trusteeship agreement for that Territory, the Union would leave the United Nations. Although the truth of that statement had been denied by the representative of the Union of South Africa, it seemed to be confirmed by a report published in the *Daily Mail* of Johannesburg of 17 November.

India had no direct interest in South-West Africa. Its position was based on the conviction born of its recent fight for independence from foreign rule, that freedom, like peace, was indivisible. India was proud of its privilege of being a Member of the United Nations, but felt that it involved corresponding obligations towards those who were not represented in the Organization, but who were nevertheless aspiring to freedom.

The same could be said of the rest of the delegations of Asiatic and African countries. It was not a question of an amendment, or a resolution, but of the principles of the end of the colonial system and the equality of peoples for which Asia should stand. Mrs Pandit deeply regretted the fact that the countries of Asia had been divided on the issue. India, like its eastern neighbours, needed help to develop economically and raise the standard of living of its people, but it could not and would not bargain for material advantages at the expense of its pledged word.

The draft resolution before the General Assembly was lifeless and almost seemed to condone an act which amounted to a violation of the Charter itself. It had already been hailed as a tacit acceptance of the position taken by the Union of South Africa.

In conclusion, replying to the charge that her delegation had been trying to influence the emotions of the General Assembly, Mrs Pandit pointed out that the General Assembly and its Committees were rapidly

being reduced to the status of law courts in which the different legal angles were being discussed, a policy which might spell disaster for the United Nations as the Organization which should give effect to the hopes and aspirations of mankind.

ORPGA, Third Session, Part First, pp. 582-6.

157 6 *December* 1949

SPEECH: INDIAN DELEGATION ON SOUTH-WEST AFRICA

Mr Chaudhuri (India) said that his delegation had sponsored draft resolution I because it felt that the United Nations should remind the Government of the Union of South Africa that it disapproved of that Government's refusal to supply information on the mandated Territory of South-West Africa.

Many delegations believed that there existed an obligation to supply such information, arising not only from the provisions of the League of Nations mandate and of the Charter, but also from General Assembly resolution 141 (II) of 1 November 1947, which acknowledged an undertaking given by the Union of South Africa itself.

On that occasion, the Government of the Union of South Africa had solemnly and in writing promised to supply the information in question. Indeed, the General Assembly resolution itself had been based upon that solemn promise. Pursuant to that undertaking, the Government of the Union of South Africa had supplied information on the economic, social and educational progress of the mandated Territory. On the basis of that information, both the General Assembly and the Trusteeship Council had voiced certain criticisms about conditions in that Territory. The Government of the Union of South Africa had appeared to have resented those criticisms and in a letter dated 11 July 1949 (A/929) had refused to supply any further information.

More than that, the South African Government had then enacted legislation relating to the administration of South-West Africa. Draft resolution II contained a proposal to refer that question to the International Court of Justice. Despite such legislation, however, the Indian delegation could not but regard the refusal to supply information as a defiance of the United Nations.

If the criticisms resented by the Union of South Africa had been justified, the proper course of the Union would have been to eradicate

the causes and to show in subsequent information on the Territory that those causes had been removed.

If, on the other hand, the criticisms had been unjust, the proper course would have been to have a thorough discussion on the subject in subsequent statements of information and so to remove any doubts and misgivings on that subject.

What the Indian delegation failed to understand was the refusal to supply any information. He believed that there was no justification for such action. It had been argued that in law there was no obligation to supply information, since the undertaking was of a purely voluntary character, and that in any event the League of Nations having ceased to exist, there was no mandate and therefore no obligation to supply any information to the United Nations. His delegation did not agree with that contention. In the first place, it could not and would not subscribe to the view that, the League of Nations having ceased to exist, a mandatory Power could exercise absolute domination over mandated territories without accounting for its administration to any international body. It was the view of the Indian delegation that the Mandate had continued. That view was confirmed by Articles 77 and 80 of the Charter and also by the resolution of the League of Nations passed on 18 April 1946 on the eve of the League's dissolution.

In examining that legal problem it was sufficient to observe that the Union of South Africa, a Member of the United Nations, had freely undertaken to supply information and that the United Nations had accepted that undertaking. That undertaking had no doubt been made in good faith and that good faith alone should have impelled the Union of South Africa to furnish the information in question. Moral commitments in the realm of human rights were as great and compelling as any legal commitments.

The draft resolution before the General Assembly proposed that the question of the rights of the Union of South Africa in respect of South-West Africa should be referred to the International Court of Justice. It might be argued that the adoption of that resolution would be tantamount to prejudging the very issue referred to the International Court of Justice. In the view of the Indian delegation, whatever the opinion of the International Court of Justice on the legal obligations, there existed a moral obligation to supply information. That obligation followed from the undertaking of the South African Government which had been accepted by the General Assembly. The need for an authoritative opinion on the exact legal position of South-West Africa could not affect the moral obligation to promote the well-being of the local population and its progress towards self-government.

The General Assembly was concerned not only with people who were backward and whose need for advancement had been recognized, but with the people of a territory which had been entrusted to the Union of South Africa after the First World War and which could not, in any circumstances, be regarded as a territory of the mandatory Power or as belonging to it. Even if it were found that there were no legal obligations, the United Nations could scarcely be so ineffective as not to ask the Union of South Africa to carry out the terms of the Mandate, not on the grounds of legal duty but on the grounds of humanitarian and moral duty. There was nothing to prevent the General Assembly from making such a request, which would obviously have a persuasive influence. The fact that the matter might be referred to the International Court of Justice was no reason for the General Assembly to cease its endeavours to persuade the Union of South Africa that although it might be right from the legal point of view, it should, as an advanced state holding advanced ideas, abide by its promise. The fact that there might have been a misunderstanding should not prevent the fulfilment of that promise.

The Indian delegation believed, therefore, that draft resolution I could be safely adopted without in any way prejudging the issue. It had always advocated and adhered to principles of moderation in all international matters. At the same time it had been equally firm in its regard for the rights of humanity and no consideration had ever deflected India or its delegation from that one principle. The draft resolution, which had originally been proposed by India, had not been submitted in a spirit of censure but rather as an effort towards persuasion. It was moderate in its terms and merely expressed the real view of the General Assembly. His delegation only hoped that its efforts would succeed and that the Union of South Africa would agree to start supplying the necessary information again.

ORPGA, Fourth Session, pp. 530-1.

158 3 *November* 1947

SPEECH: INDIAN DELEGATION ON FIFTH RESOLUTION OF FOURTH COMMITTEE

Raja Sir Maharaj Singh (India): The representative of the United States considered that a two-thirds majority was necessary for the passage of the fifth resolution of the Fourth Committee (document A/424). I beg to disagree with him. There was never any intention

that this special committee should be of a permanent nature. But to make the point clear, an amendment was proposed by us (document A/446), to which he made no reference, but which has been circulated, which makes it clear that the special committee was to be composed of Members of the United Nations transmitting information and of an equal number of Members elected for a period of two years, as an experimental measure by the General Assembly. They were to be selected on as wide a geographical basis as possible and were to meet some weeks before the opening of the third and fourth sessions of the General Assembly.

It seems to me impossible to hold that a temporary committee of this nature is going beyond the framework of the Charter and is of such a nature as to demand a two-thirds majority for its establishment.

I wish to draw the attention of this representative, as well as the representative of France, to Article 22 of the United Nations Charter, which reads as follows: 'The General Assembly may establish such subsidiary organs as it deems necessary for the performance of its functions.' I submit that this special committee is a subsidiary organ. Some of the arguments used against a special committee were used last year by many representatives who disliked the whole idea. But the *Ad Hoc* Committee was established and it has functioned very satisfactorily, in my humble opinion, and has made useful suggestions which have commended themselves to many of my colleagues. But if the opposition had succeeded last year, you would have had no proposals whatsoever—you would not have had these proposals which are now being supported by so many of our colleagues.

Let us look at the text of the resolution adopted by the General Assembly last year establishing the *Ad Hoc* Committee. It reads: '*Invites* the Secretary-General to convene, some weeks before the opening of the second session of the General Assembly'—exactly what the resolution of the Fourth Committee now proposes—'an *Ad Hoc* Committee composed in equal numbers of representatives of the Members transmitting information under Article 73(*e*) of the Charter and of representatives of Members elected by the General Assembly at this session on the basis of an equitable geographical distribution.'

There is no fundamental difference between that Committee and the committee which has been proposed by the resolution of the Fourth Committee, with this exception: we think that, in order to give it greater prestige and dignity, it should be appointed by the General Assembly instead of being appointed by the Fourth Committee.

The resolution of the General Assembly adopted last year went on to say that the General Assembly '*Invites* the Secretary-General to request the Food and Agriculture Organization, the International

Labour Organization, the United Nations Educational, Scientific and Cultural Organization, and the World Health Organization and the International Trade Organization, when constituted, to send representatives in an advisory capacity to the meeting of the *Ad Hoc* Committee '.

The resolution states further that the General Assembly ' *Invites* the *Ad Hoc* Committee to examine the Secretary-General's summary and analysis of the information transmitted under Article 73(*e*) of the Charter with a view to aiding the General Assembly in its consideration of this information, and with a view to making recommendations to the General Assembly regarding the procedures to be followed in the future and the means of ensuring that the advice, expert knowledge and experience of the specialized agencies are used to the best advantage '.

Once again, I ask, where is the substantial difference between what was adopted by the General Assembly last year and what is proposed by the Fourth Committee this year?

I believe that the colonial Powers do not like the deletion of the following words: ' but not with respect to individual territories ' (document A/438). I am convinced that that is the reason for their criticism. They are afraid, as they have been afraid throughout this discussion, of criticism of colonial rule and the colonial system, in spite of the fact that the representative of the United States, Mr John Foster Dulles, stated categorically in the Fourth Committee that the colonial system is obsolete and should be done away with—words stronger than I should have used, and words to which no reference has been made by his successor, Mr Sayre.

Yet, what does the deletion of these words mean? It simply means that recommendations can be made in regard to any subject, not excluding mention of an individual territory. That does not mean that the Secretariat, which is composed of able and impartial men, is going to write into its report a criticism of individual colonial Powers. Why should the Secretariat do that? No responsible body of men would do it.

There is the further safeguard that the representatives of colonial Powers will have seats on the special committee. There are several colonial Powers thus represented. Will they not be able adequately to safeguard any individual colonial territory against the possibility of being misrepresented? I have greater faith in them and in the committee than to admit that there is a danger that false criticisms will be made in respect of individual Powers.

The representative of the United Kingdom charged me with expressing wholesale condemnation of colonial rule. Those representatives

who have heard me speak—and they have heard me speak often—will know that I have uttered no universal condemnation. The representative of the United States, Mr Dulles, expressed stronger condemnation than I did; yet neither the representative of the United Kingdom nor the representative of any other colonial Power said a word about the condemnation expressed by the representative of the United States. I think we are in a better position to be critics of colonial rule than is the United States of America, which was a colony several scores of years ago.

As I have said repeatedly, we were a dependent nation until recently, and we know what that means. We are grateful to the United Kingdom —and I say this in the presence of Mr McNeil—for its eminently laudable act this year in making India and Pakistan Dominions, however late we may think that action came. We are not unmindful of what the United Kingdom has done. Furthermore, we know that improvements have taken place in several colonies; I am not going to deny that. However, I have visited more colonies than has my friend, Mr McNeil, and I can say that the idea that there is general satisfaction among the peoples of the colonies (and so many references have been made to their opinions) is not correct.

I have cited more than once the case of Kenya. Not a word has been said by any representative of the United Kingdom concerning the racial discrimination exercised in so intense a form against all Africans and all Asiatics in that colony. I should like Mr McNeil to make a reference, even now—and if he wishes to do this, I shall sit down—to the colony of Kenya. I challenge him to defend the racial discrimination which prevails there.

Let me now turn to other matters. It seems to me that there is unnecessary apprehension among the colonial Powers—altogether unnecessary. I am convinced that if they voluntarily furnished—yes, I say ' voluntarily '—political information about the peoples of their territories and their progressive development towards self-government, they would enhance their prestige among all of us. All that we are interested in is seeing progress, seeing these dependent territories move forward to independence and self-government at as early a date as possible. The furnishing of information will lead us to take an additional interest in those peoples whose real opinions are never, or very seldom, expressed here. The more a ruling nation develops those colonial peoples and helps them to advance to self-government, the greater will be our appreciation of that nation and its rule.

It seems to me, incidentally, that this resolution which has been adopted by the Fourth Committee is in a neater and more compressed form than the resolution of the *Ad Hoc* Committee. In this connexion,

I have only to point to the division of paragraph 1 into two paragraphs which correspond to paragraph 1 and 3 of the *Ad Hoc* Committee's resolution. Is it not better that a committee of this kind should meet some weeks before the General Assembly holds its session? We know fully well the great demands made on our time by this General Assembly. What we have suggested (document A/446) is what was suggested, in exactly the same language, for the *Ad Hoc* Committee: that the best time for the meeting of this committee would be a few weeks before the General Assembly convenes.

We had good fortune in the Fourth Committee. We do not seem to be experiencing the same good fortune in the General Assembly. It does not matter. Victories of this kind are ephemeral. But if we have been able to do something for the colonial people and if our debates will, as I hope they will, reach the ears of these poor people—many of them humble and many of them uneducated—then I feel that these debates will have been of considerable benefit.

ORPGA, Second Session, pp. 739-42.

159 26 *October* 1948

FIFTH RESOLUTION

Cessation of transmission of information under Article 73(e) of the Charter.

WHEREAS, by Article 73(*e*) of the Charter, Members of the United Nations which have or assume responsibilities for the administration of Territories whose peoples have not yet attained a full measure of self-government have accepted the obligation to transmit, subject to such limitation as security and constitutional considerations may require, statistical and other information of a technical nature relating to the economic, social and educational conditions in those Territories,

WHEREAS, by General Assembly resolution 66(I) adopted on 14 December 1946, seventy-four Territories were enumerated, in accordance with the declarations of the responsible Governments, as falling within the scope of Article 73(*e*),

WHEREAS some of the responsible Governments concerned have not transmitted information on certain of these Territories in 1947 and in 1948, without furnishing any explanation for such omission.

The General Assembly

(1) *Welcomes* any development of self-government that may have taken place subsequent to the passing of General Assembly resolution 66(I) in any of the Territories enumerated therein;

(2) *Considers* that, having regard to the provisions of Chapter XI of the Charter, it is essential that the United Nations be informed of any change in the constitutional position and status of any such Territory as a result of which the responsible Government concerned thinks it unnecessary to transmit information in respect of that Territory under Article 73(*e*) of the Charter; and

(3) *Requests* the Members concerned to communicate to the Secretary-General, within a maximum period of six months, such information as may be appropriate pursuant to the preceding paragraph, including the constitution, legislative act or executive order providing for the government of the Territory and the constitutional relationship of the Territory to the Government of the metropolitan country.

ORPGA, Third Session, Part First, Annexes, pp. 298-9.

160 3 *November* 1948

SPEECH: INDIAN DELEGATION ON NON-SELF-GOVERNING TERRITORIES

Mr Shiva Rao (India) reminded the meeting that the first four draft resolutions had been the subject of a lengthy discussion in the Special Committee which had met in Geneva. Resolution V, presented by India to the Fourth Committee, had been adopted without opposition.

The delegation of India would vote for the five resolutions. It was convinced that it was desirable to have wherever possible the assent of the colonial Powers, as after all it was they who had to furnish the information required. Unfortunately, for the time being, it was impossible to get them to adopt resolutions of a liberal character.

The Indian delegation wanted to see the Special Committee set up on a permanent basis. The summaries and analyses provided by the Secretariat were remarkable for their accuracy. The information they gave was of the greatest value as was the subsequent discussion of the economic, social and educational conditions in the Territories. To postpone for one year the establishment of the Special Committee on a permanent basis did not matter really much, although it would have been preferable to take the decision at once.

The Indian delegation hoped that another session of the Special Committee would further strengthen the argument in favour of a permanent organization, by proving its work to the administering

Powers. Measures taken to hasten social, economic and educational advancement should inevitably lead to the development of self-governing institutions.

The General Assembly had the right to make sure that the information furnished by the administering Powers was quite accurate; it should obtain proof positive that the administering Powers were guided by the considerations specified in Article 73 of the Charter that '. . . the interests of the inhabitants of these territories are paramount . . . .' The resolutions before the Assembly endeavoured to effect improvements in the technique of preparing the analyses and summaries of the Secretary-General and in the nature of the information supplied. They were also concerned with the assistance which the Economic and Social Council and the specialized agencies could render to the Special Committee. But what the Indian delegation could not admit was that it was not thought essential to have information of a political nature and data on the extent of the people's representation in local government institutions in order to get a proper idea of the people's social and economic development and educational progress. After all, the General Assembly itself had recognized the previous year that in accordance with the spirit of Article 73 of the Charter political information should be regarded as essential. Most administering Powers, with the exception of the United States, did not seem prepared to supply information of a political or constitutional nature. It was regrettable that the administering Powers should insist on a narrow legalistic interpretation of Article 73.

Legally, the administering Powers had no doubt adequate grounds not to feel obliged to supply information of a political nature until the Charter had been amended.

The Indian delegation proposed a much easier method. Progress could be achieved by the establishment of suitable conventions. Indeed, that had already been done to some extent, for although Article 73(*e*) merely referred to the furnishing of information, that information was analysed by the Secretariat and scrutinized by the Special Committee. That led to a broader interpretation of Article 73 which satisfied the Indian delegation.

The United States supplied political information and did not shelter behind a narrow interpretation of Article 73(*e*). The United Kingdom did publish information in the reports of its Colonial Office but refused to allow it to be used in the discussions of the United Nations. The example of the United States deserved to be followed. It was pointless to argue that supplying political information to the Secretary-General amounted to accepting United Nations control over the administration of the territories involved. On the contrary, the furnishing of

such information would disarm most criticisms and would give hope to 200 million people whose sacrifices during the war for the cause of freedom it was time to recognize.

As regards one certain class of territories, Mr Shiva Rao felt that the General Assembly had the right, even at present, to ask for political information.

In 1946, the administering Powers had presented a list of 74 territories they regarded as Non-Self-Governing and in respect of which they were under an obligation to supply information. Later, some of the Powers in question had, without a single word of explanation, ceased to supply any information regarding fourteen of those territories. The Indian delegation did not wish to raise the issue of a legal definition of the term ' non-self-governing territory '. India knew that the list drawn up in 1946 was not altogether accurate; some colonial territories were not mentioned at all on the list, which, on the other hand, mentioned other territories which India regarded as independent, such as Indonesia for instance. The Indian delegation, however, wished to know the grounds on which fourteen territories had been struck off the list, for it maintained that the responsibilities assumed by the administering Powers under Article 73 could cease only when the territories concerned had attained a full measure of self-government. The Indian delegation wished to know the grounds on which certain territories had been struck off the list.

ORPGA, Third Session, Part First, pp 384-6.

161 17 *November* 1948

RESOLUTION OF FOURTH COMMITTEE

RESOLUTION II

Administrative unions affecting Trust Territories

THE GENERAL ASSEMBLY,

Mindful that one of the basic objectives of the Trusteeship System is to promote the political, economic, social and educational advancement of the Trust Territories, and their progressive development towards self-government or independence,

Noting that the trusteeship agreements for some of these Territories authorize the Administering Authority concerned to constitute the Territory into a customs, fiscal or administrative union or federation

with adjacent territories under its sovereignty or control and to establish common services between the Trust Territory and such adjacent territories, where such measures are not inconsistent with the basic objectives of the Trusteeship System and with the terms of the trusteeship agreement,

Recognizing that, in certain circumstances, such unions may be in the interests of the inhabitants of the Territory concerned,

Noting further that the three types of unions or federations referred to in the trusteeship agreements, namely customs, fiscal and administrative unions or federations, clearly exclude any kind of political union,

Recalling that the General Assembly approved these agreements upon the assurance of the Administering Powers that they do not consider the terms of the relevant articles in the trusteeship agreements ' as giving powers to the Administering Authority to establish any form of political association between the Trust Territories respectively administered by them and adjacent territories which would involve annexation of the Trust Territories in any sense or would have the effect of extinguishing their status as Trust Territories ',

Having considered the observations of the Trusteeship Council, contained in the report covering its second and third sessions (A/603), on the existing or proposed administrative unions between certain Trust Territories and the adjacent territories under the sovereignty or control of the Administering Authority,

Notes the observations of the Trusteeship Council on such administrative unions; and in particular,

Endorses the observation of the Trusteeship Council that an administrative union ' must remain strictly administrative in its nature and its scope and that its operation must not have the effect of creating any conditions which will obstruct the separate development of the Trust Territory, in the fields of political, economic, social and educational advancement, as a distinct entity ';

Is of the opinion

(*a*) That the present status and identity of the Trust Territories must be carefully maintained until, in accordance with the provisions of Article 76 of the Charter, the inhabitants of the Trust Territories reach a state of political advancement enabling them to assume the responsibility of determining for themselves the form of their government and the political associations, if any, into which they may wish to enter;

(*b*) That the establishment of these unions raises questions of fundamental importance affecting the political status of the Trust

Territories and the attainment of the basic objectives of the Trusteeship System in regard to these Territories;

Recommends accordingly that the Trusteeship Council should:

(*a*) Investigate these questions in all their aspects with special reference to such unions already constituted or proposed and in the light of the terms of the trusteeship agreements and of the assurances given by the Administering Authorities in this connexion;

(*b*) In the light of this investigation, recommend such safeguards as the Council may deem necessary to preserve the distinct political status of the Trust Territories and to enable the Council effectively to exercise supervisory functions over such Territories;

(*c*) Request, whenever appropriate, an advisory opinion of the International Court of Justice as to whether such unions are within the scope and compatible with, the stipulations of the Charter and the terms of the trusteeship agreements as approved by the General Assembly;

(*d*) Invite the Administering Authorities to make available to the Council such information relating to administrative unions as will facilitate the investigation by the Council referred to above;

(*e*) Report specifically to the next regular session of the General Assembly on the results of the Council's investigations and the action taken by it;

Recommends further

(*a*) That before constituting any customs, fiscal or administrative union or federation of a Trust Territory with adjacent territories, or extending the period or scope of any existing union or federation, the Administering Authority concerned should consult the Trusteeship Council;

(*b*) That no administrative union or federation should be such as to hinder the Trusteeship Council in obtaining information clearly showing the exact situation in the Trust Territory and that, should it become impossible to furnish separate financial, statistical and other data relating to the Trust Territory, the Administering Authority concerned should submit the unified administration to such supervision by the Trusteeship Council as the latter may consider necessary for the effective discharge of its responsibilities with respect to the Trust Territory.

ORPGA, Third Session, Part First, Annexes, pp. 362-4.

162 18 *November* 1948

SPEECH: INDIAN DELEGATION

Mr Jha (India) stated that resolution II, which had been jointly sponsored in the Fourth Committee by the delegations of Cuba, India, Iraq, Philippines and Venezuela, had been subjected to the most careful scrutiny and analysis by the Committee and presented the considered views of a substantial majority of its members. The Indian delegation supported the draft resolution and commended it to the General Assembly for acceptance.

The resolution might be divided into six parts: the first part set out the preamble; the second part comprised an endorsement of the observations of the Trusteeship Council on the subject; the third part expressed the opinion that the present status and identity of the Trust Territories should be maintained until such time as the inhabitants were capable of determining for themselves the form of their government and the political associations, if any, into which they might wish to enter; the fourth part requested that a special investigation should be made into the whole question of administrative unions; the fifth part recommended that there should be prior consultation with the Trusteeship Council before those unions were constituted; and finally, the sixth part recommended that no administrative union or federation should be such as to hinder the Trusteeship Council from obtaining information on the exact situation in the Trust Territories, and that, if necessary, the unified administration should be submitted to such supervision by the Trusteeship Council as might be necessary for the effective discharge of its responsibilities.

The problem dealt with in the resolution was the most important political issue with which the United Nations was faced in its supervision of Trust Territories. There had been an increasing tendency in the last few years to bring about an integration, partial or complete, of Trust Territories with adjacent colonies under the control of the same Administering Power. In its examination of the reports on Ruanda-Urundi, Tanganyika and New Guinea, the Trusteeship Council had found that, in the case of Ruanda-Urundi, an administrative union with the Belgian Congo had been in force since 1925. The Australian Government had referred to the Council a proposal for the forming of an administrative union between New Guinea and Papua; and in the case of Tanganyika, the Council was faced with the *fait accompli* of the partial integration of that Territory with Kenya and the Uganda Protectorate in what was called the Interterritorial Organization of East Africa.

The Trusteeship Council's report clearly showed that the problem of administrative union raised questions of fundamental importance: questions which the United Nations had to face immediately. Most of the trusteeship agreements contained a provision authorizing the Administering Authority to constitute a fiscal, customs or administrative union or federation with adjacent territories under its control. Although the working of the relevant articles in the trusteeship agreement relating to administrative unions varied slightly, it was a vital condition that no administrative union should be inconsistent with the basic objectives of the Trusteeship System as set forth in Article 76 of the Charter. He recalled the controversy that had been aroused by those clauses in the draft trusteeship agreements; but they had ultimately been accepted and the assurance of the Administering Powers given that they would not be used to promote any administrative union or federation which might amount to annexation or lead to the extinction of the identity of the Trust Territories.

It was only permissible, therefore, to bring about a union for administrative purposes subject to these two conditions: first, that it should not be inconsistent with Article 76 of the Charter, and, secondly, that there should be no detraction from the political integrity and status of the territory concerned.

Mr Jha quoted Article 76(*b*) of the Charter to make it clear that any scheme of administrative union must be in the direction of political advancement and be conducive to the development of self-government or independence, and that the freely expressed wishes of the peoples concerned should be taken fully into account.

There was a third condition to be fulfilled in regard to administrative unions: namely, that there should be no derogation of the responsibilities and authority of the United Nations. That followed from the basic conception of the Trusteeship System, as set forth in Chapters XII and XIII of the Charter. Under Articles 75 and 85, the United Nations exercised supervisory authority over Trust Territories. There should be no diminution of such authority in any way, by any kind of administrative union of a Trust Territory with an adjacent territory.

It was thus clear that the limitations, conditions and safeguards under which those administrative unions could be formed in conformity with the provisions of the Charter, as well as the draft agreements themselves, had to be carefully examined and defined. The United Nations, through the Trusteeship Council, needed to be specially vigilant to see that any proposed union did not detract from the identity or status of a territory or retard the process of advancement towards self-government. For that reason, therefore, there was need for a special

investigation into the question of administrative unions in all its aspects. Resolution II recognized that fact and made provision for such an investigation.

There were certain other aspects of the draft resolution worthy of special mention. The fourth paragraph of the preamble noted that the three types of unions or federations referred to in the Trusteeship Agreements—customs, fiscal and administrative—clearly excluded any kind of political union. Objections had been levelled at the paragraph in the Fourth Committee, on the grounds that the line of demarcation between administrative and political unions was very thin and that it was not possible to make a categorical statement of that kind. The Indian delegation did not regard those arguments as valid. It was not difficult to distinguish between a purely administrative and a political union, and the relevant clause in the trusteeship agreements, especially in the French text, made it clear that such unions were intended for fiscal, customs and administrative purposes and not for political. His delegation would therefore support the fourth paragraph of the preamble.

An important provision in the resolution was that recommending prior consultation with the Trusteeship Council, when any administrative union or federation was contemplated, or any extension of any existing union or federation. The Administering Powers had strongly objected to that part of the resolution, the argument being that there was nothing in the Charter or the trusteeship agreements to require such prior consultation and that it would involve an extension of the Trusteeship System. The argument put forward was at best only a negative one, and the Indian delegation attached the greatest importance to prior consultation. The right to ask for such consultation was implicit in the supervisory powers conferred upon the United Nations by Article 75 of the Charter; his delegation was of the opinion, therefore, that the Trusteeship Council was entitled to ask for prior consultation regarding proposed administrative unions, and if it chose to do so, the Administering Authorities could not object.

But apart from the legal basis for such consultation, was it not prudent and wise for the Trusteeship Council and the Administering Authorities to act as partners in regard to matters affecting Trust Territories? That would seem to him to be a much more practical and common sense course. The Trusteeship Council was placed in a most embarrassing position by being informed of far-reaching schemes of administrative union after their introduction. Any comments and suggestions it might make at that stage were bound to be void of result. Then, again, it had been argued that prior consultation might amount to prejudging the findings of the special investigation recommended

in the resolution. The argument had no real validity, and the Indian delegation strongly supported the proposal for prior consultation.

The last, but not the least important part of the resolution laid down a very simple principle. The Trusteeship Council, in order to carry out its functions under the Charter, was entitled to receive full information concerning the political, social, educational and economic conditions in a Trust Territory. Where, by reason of the administrative union of a Trust Territory with a neighbouring colony, the furnishing of separate information on the Trust Territory became impossible, it was obvious that the relevant information relating to the unified administration should be submitted to the Council. The Indian delegation hoped the Assembly would adopt that principle.

He appealed to the Administering Powers to lend their full co-operation to the United Nations in the discharge of its noble and responsible task. On the successful application of the provisions in the Charter relating to trusteeship largely depended the welfare and political advancement of many millions of backward peoples. Many of those peoples were awakening to the value of freedom, and international public opinion towards them had changed since the time of the Permanent Mandates Commission. Although he did not wish to minimize what had already been achieved by the Administering Authorities in some of those Territories, it would be agreed that there was room for a quickening of the pace of progress. World public opinion at the present time demanded higher and more exacting standards. It was unfortunate that very often the Administering Powers put forward the legal interpretation of their rights under the Charter and the trusteeship agreements. Such action led to the conclusion that the old colonial outlook still prevailed. Full progress in Trust Territories could not be achieved without the full co-operation of the Administering Powers with the Trusteeship Council, in a broad and progressive spirit.

In the administration of Trust Territories, the United Nations had a very definite responsibility. The General Assembly, to whom the Trusteeship Council was accountable, should give such positive directions and guidance as would help the Council in the discharge of its responsibilities. The present resolution sought no more than that, and the Indian delegation hoped the General Assembly would not fail to adopt it.

ORPGA, Third Session, Part First, pp. 481-5.

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SPEECH: SHRI D'SOUZA (EXTRACT)

Mr D'Souza emphasized that in the evolution of the countries in question, political emancipation should not be dependent on an advanced degree of educational, social and economic progress; such progress, although it was essential and would doubtless keep pace with increasing self-government, could best be judged by the peoples themselves. The Indian delegation could not accept the thesis that self-government should not be granted until illiteracy, for instance, had been abolished. An electorate could be trained and initiated to democratic institutions by radio and films as well as by newspapers and political handbooks; in particular, political meetings, oral communications and contact between leaders and followers were means by which political sense could be developed in an intelligent population.

India had experience in such matters and, although illiteracy was as yet by no means eliminated, a constitution had already been drawn up providing universal suffrage. India would proceed with elections, confident that they would express the will of the people. Once political autonomy and self-government were even partially secured, it would be the task of the people to decide what type of education was most acceptable to them, most suited to their needs and in harmony with their genius; it was hoped that in all cases such education would be given in their own languages. India was making an interesting experiment in Basic education, which aimed at simplifying and rendering more effective the process of instruction, developing skills until then neglected by primary education, increasing practical capacity and love of physical work, thus giving a stamp to national character along the lines marked out by Mahatma Gandhi. Such education was still at its experimental stage, but the experience and capacity for guidance gained from it would be at the disposal of the peoples of the Trust Territories, if they so wished.

In no sphere, however, was progress without self-government so difficult as in the economic sphere. Administering authorities would always find it difficult to escape the limitations, systems, ideologies, and financial requirements of the metropolis however much they might wish to do so. It would be almost impossible for them to administer a Trust Territory without linking it in some way or integrating it with their own system of industrial production. The tendency, moreover, would always be to make the Trust Territory a producer of raw materials for industry and a market for the finished goods. Experience

showed that such had always been the case in colonial and administered territories, and no amount of apparent prosperity resulting from the exploitation of the natural resources of the country and the opportunity for humbler types of employment could prevent the slow impoverishment of the land by a continually unfavourable trade balance. Another result might be large-scale shifts of population from country to town, with the attendant evil effects on the physique and morale of people accustomed to live in the open, insufficiency of food crops as compared with industrial yield, and other evils of centralized industry such as those which had led to the serious social difficulties of Europe.

India believed it had a solution whereby that danger could be met. That solution, enunciated in its broad outlines by Mahatma Gandhi, was based on the organization of the village community as the primary unit, on the ideal of self-sufficiency in food production and the introduction of a cottage industry. In other words, the solution consisted in the establishment of a decentralized industry based on a co-operative economy. The implications of such a solution, both for India's problems and for the social and economic problems facing the world as a whole, were far-reaching.

In the opinion of the Indian delegation, the draft resolution on social advancement and, to an even greater degree, the draft resolution on economic advancement before the Assembly were rather too vague. The Indian delegation would have preferred to support specific recommendations along the lines laid down above; it realized, however, the need for disseminating such ideas and, in particular, for making available more materials from the evolution of movements in India itself. In the meantime, the General Assembly should be guided, in its economic dealings with the Trust Territories, by a spirit of devotion to the interests of the peoples of those Territories, a spirit which was well brought out by the draft resolutions in question. The Indian delegation would therefore support them as general directives pending the formulation of more concrete proposals.

It would be tragic if, after the experience suffered by the great industrial countries, the helpless peoples of the Trust Territories, with their simple needs and demands, were thrown into a vortex from which the strongest seemed incapable of emerging. The Indian delegation did not mean that the peoples of the Trust Territories should be kept outside the current of modern scientific invention and industrial progress. Beneficial inventions must be utilized, the drudgery of purely mechanical work must be diminished and a decent standard of living, with a reasonable degree of material well-being, must be established everywhere, but not at the expense of the physical and moral health

of the people or in defiance of their cultural or inherited characteristics. India desired for those peoples, as for itself, a prosperous future. It hoped that their roots would remain firmly fixed in the past but that their gaze would be resolutely turned towards the hopes and adventures of the future. It believed that no human group was so backward or so debased that it did not respond quickly to the idea of personal freedom and dignity and that once that dignity was assured by a régime of political freedom, such a people would know better than others how to guide its own destiny along lines of social and cultural progress.

ORPGA, Fourth Session, pp. 177-8.

164 2 *December* 1949

SPEECH: INDIAN DELEGATION

(14) Mr Shiva Rao (India) had intended to confine himself to a very brief statement in connexion with some of the ten draft resolutions before the General Assembly. The exigencies of the debate, however, had placed him immediately after some spokesmen of the Administering Powers whose statements had been sharply, and even extravagantly critical, not only of the resolutions but of the Fourth Committee itself. As spokesman of a delegation which had supported all the resolutions in the Fourth Committee and proposed to do so in the General Assembly, he therefore felt bound to note some of the criticisms which had been voiced.

(15) As far as the draft resolutions themselves were concerned, they seemed to have one main purpose. They sought to improve the quality and the scope of the information transmitted by the Administering Powers under Article 73(*e*) of the Charter. They would ensure that the collaboration of the specialized agencies, referred to in paragraph 2 of that Article, was rendered practical, effective and properly co-ordinated. They emphasized the urgent need for speeding up educational progress in Non-Self-Governing Territories, without any slackening of effort in the fields of social and economic activity. Finally, they attempted to establish machinery under the United Nations for making the whole of Article 73 a provision of increasing reality and significance for the millions of people who lived in the Non-Self-Governing Territories.

(16) Article 73 laid down certain broad principles which had definitely been accepted by the Administering Powers. True, they were in the form of a declaration, but that declaration was an integral

part of the Charter to which all Members of the United Nations were committed. Those principles were, first, the paramount importance of the interests of the inhabitants of the Non-Self-Governing Territories and the promotion of their well-being to the utmost; secondly, a guarantee of their political, economic, social and educational advancement, their just treatment and their protection against abuse; thirdly, the development of self-government and of free political institutions; and fourthly, the promotion of constructive measures of development, of research and of co-operation with the specialized agencies for the practical achievement of the social, economic and scientific purposes set forth in Article 73.

(17) Those principles were comprehensive in scope. There was one other point: information was to be transmitted regularly by the Administering Powers in respect of all territories for which they were responsible, the only exception being territories to which Chapters XII and XIII, relating to Trusteeship, applied. There might be limitation of the information transmitted based on security and constitutional considerations, but even that was only limitation and not complete cessation of information.

(18) Draft resolution VIII dealt with the exclusion of a Non-Self-Governing Territory originally listed as such by an Administering Power from the application of Article 73 and had proved to be a controversial one, especially the paragraph which claimed that it was within the responsibility of the General Assembly to express an opinion on the principles which had guided or might in future guide Administering Powers in regard to territories on which information should be transmitted. The number of Non-Self-Governing Territories had diminished in three years from seventy-four to sixty-two, on the ground that the other twelve had risen out of their non-self-governing status within the meaning of Article 73. That, so far as the General Assembly was concerned, was not a negligible matter. As the Indian delegation had observed in the Fourth Committee, the problem was not a simple one capable of an easy solution. The draft resolution invited the Special Committee, on the establishment of which there was a separate resolution, to examine the factors which should be taken into account in reaching such a decision. It was to be a mere examination of the factors and no more, and it therefore seemed to the Indian delegation that a study of that kind was both legitimate and well worth undertaking, in view of the far-reaching consequences of Administering Powers taking unilateral decisions. For that reason, the Indian delegation would support draft resolution VIII.

(19) A number of the draft resolutions dealt with various aspects of education and of the development of training facilities in

Non-Self-Governing Territories in the economic and social fields. There was the eradication of illiteracy and the promotion of indigenous languages; special emphasis had also been laid on the study of educational problems in Non-Self-Governing Territories. The Indian delegation heartily agreed that it was of vital importance that the educational progress of the indigenous peoples of Non-Self-Governing Territories should be stimulated by every possible means, and therefore supported all the resolutions. He would reiterate a note of caution which the Indian delegation had struck in the Fourth Committee: UNESCO should not be asked to undertake too ambitious a programme in the Non-Self-Governing Territories, which it might not be able effectively to carry out at once. Secondly, as indicated in draft resolution V on international collaboration in the economic, social and educational spheres, there were a number of problems in fields other than education —soil erosion, nutrition, migrant labour in Africa, juvenile delinquency, development of social services, housing in the tropics, training of public health personnel and others—which were equally important and urgent. The view had been taken in the Fourth Committee by some delegations that special emphasis on one major problem every year, with education as the first question, would give a more practical turn to the labours of the Special Committee. The Indian delegation concurred in that view, at least as an experiment worth attempting.

(20) The Indian delegation could not accept the view which had been put forward that a detailed study and investigation by the specialized agencies of the various problems mentioned would in any way encroach upon the sovereign rights of the Administering Powers. The draft resolution did not contemplate, as had been said, an independent study and investigation of that type by the specialized agencies in the Non-Self-Governing Territories. It sought to do nothing of the kind, and it was surprising that that criticism should be levelled against the resolution.

(21) As already stated, paragraph (*d*) of Article 73 referred to two types of international collaboration for the practical achievement of the economic, social and scientific purposes set forth in the Article. The first was co-operation among the Administering Powers themselves, and the second was co-operation, in the words of the Charter, ' when and where appropriate, with specialized international bodies '. In other words, the initiative for seeking the assistance and co-operation of the specialized agencies rested at all stages with the Administering Powers themselves. What the General Assembly was trying to do was to make a number of suggestions as to how that second type of collaboration might become increasingly fruitful and positive. Certain problems were mentioned in the draft resolution, though

they might not have the same significance or urgency in all Non-Self-Governing Territories. There was no interference there with the sovereign rights of the Administering Powers. The General Assembly, by virtue of its position as the supreme organ of the United Nations, had sought, every year, fresh means of making Article 73 a reality to the people of the Non-Self-Governing Territories. Now for the first time the General Assembly had drawn attention to Article 55 on international economic and social co-operation, with its emphasis on universal respect for and observance of human rights and fundamental freedoms for all without distinction.

(22) As the Indian delegation had pointed out both in the Special Committee and in the Fourth Committee, it had become a duty, in the face of the increasing evidence of the building up by the Administering Powers of machinery of their own for mutual co-operation outside the United Nations, to stress the need for that other type of international collaboration through the specialized agencies. The General Assembly had the right to say that the principles of Article 73 must govern all international collaboration in the Non-Self-Governing Territories.

(23) Finally, he referred to the establishment of the Special Committee. Some delegations, including the Indian delegation, had taken the view in the Special Committee that it should be made a permanent body, in fact, a subsidiary organ of the United Nations. In a spirit of compromise, however, they had yielded in the Fourth Committee and had agreed to accept the United States proposal for a three-year term, leaving it to the General Assembly of 1952 to decide whether the Special Committee should continue to exist, and also to decide upon its composition and terms of reference. The Indian delegation saw nothing in that proposal which could fairly be interpreted as an underhand attempt to amend the Charter. The main resolutions on the subject adopted by the General Assembly in previous years had, step by step, improved the technique of dealing with and utilizing the information transmitted by the Administering Powers. Secondly, a standard form had been evolved which was being steadily elaborated in the light of experience. A Special Committee had been appointed, which had demonstrated its practical usefulness during the past two years. For that reason, the Fourth Committee was proposing a number of draft resolutions of the utmost importance to the peoples of the Non-Self-Governing Territories. As the standard form was revised and the specialized agencies submitted their annual reports on the results achieved, or on the experiments attempted in different Non-Self-Governing Territories, there would be an increase in the volume of work for the Special Committee. By 1952 the General

Assembly would be in a position to decide whether to continue the Committee and, if so, under what conditions.

(24) In that, the Indian delegation saw no overt or covert assault on the Charter. It was a source of satisfaction and encouragement to those who had been in the Fourth Committee that at least two Administering Powers, the United States and Denmark, did not seem to share the fears and misgivings and had adopted a positive attitude towards many of the resolutions.

(25) He felt that greater vitality should be infused into the provisions of the Charter so that the General Assembly could better fulfil its tasks, and that there should be constant endeavour to liberalize the working of the Charter in order that millions of people outside the direct supervision of the United Nations might achieve full self-government in the shortest possible period and qualify for direct membership. Those were the legitimate functions of the General Assembly, which it could not afford to surrender.

(26) To go back upon so much that had been accomplished in and through the General Assembly, as some of the Administering Powers seemed to suggest should be done, would have the most serious repercussions in the Non-Self-Governing Territories. To their peoples, Chapter XI, interpreted as it had been by the General Assembly in the terms of the resolutions adopted at past sessions, was a symbol of hope for the future. The General Assembly must continue along those lines with the support of the Administering Powers if possible, if it was to enjoy the confidence of those ' who are not directly represented here ', to quote the words of the first resolution on that vital subject which had been adopted at the first session of the General Assembly.

ORPGA, Fourth Session, pp. 458-60.

SECTION VII

NEW DELHI CONFERENCE ON INDONESIA

165 20 *January* 1949

PROCEEDINGS OF FIRST PLENARY SESSION

PANDIT JAWAHARLAL NEHRU (INDIA): Your Excellencies, ladies and gentlemen, I bid you a warm welcome on behalf of the Government of India and on my own behalf, and I should like to express my deep gratitude to your Governments for having responded at short notice to the urgent invitation that we extended to them. That response itself is witness to the deep feelings that have been aroused all over Asia and in other parts of the world at recent happenings in Indonesia. We meet today, because the freedom of a sister country of ours has been imperilled and the dying colonialism of a past age has raised its head again and challenged all the forces that are struggling to build up a new structure of the world. That challenge has a deeper significance than might appear on the surface, for it is a challenge to a newly awakened Asia which has so long suffered under various forms of colonialism. It is also a challenge to the spirit of man and to all the progressive forces of a divided and distracted world. The United Nations—symbol of One World that has become the ideal of men of thought and goodwill—has been flouted, and its expressed will set at naught. If this challenge is not met effectively, then indeed the consequences will affect not merely Indonesia but Asia and the entire world. That would represent the triumph of the forces of destruction and disintegration and the certain sequel would be ceaseless conflict and world disorder.

Although we meet to consider a vital problem of immediate importance, my mind is filled with the historic significance of this unique gathering. Here we are, representatives of the free nations of Asia and our friends from Australia and New Zealand as well as Egypt and Ethiopia, met together for the first time to consider a matter of common concern to us. We represent, from Australia, New Zealand and the Philippines on the one side to Egypt and Ethiopia on the other, the vast area embracing half of the circumference of the globe and by far the greater part of its population. We represent the ancient civilizations of the East as well as the dynamic civilization of the West. Politically, we symbolize in particular the spirit of freedom and

democracy which is so significant a feature of the new Asia. This long sweep of history passes before my eyes with all its vicissitudes for the countries of Asia, and standing on the edge of the present I look to the future that is gradually unfolding. We are the heirs of these long yesterdays of our history, but we are also the builders of the tomorrow that is shaping itself. The burden of that tomorrow has to be borne by us and we have to prove ourselves worthy of that great responsibility. If this gathering is significant today, it is still more significant in the perspective of tomorrow. Asia, too long submissive and dependent and a plaything of other countries, will no longer brook any interference with her freedom.

We meet in this Conference to consider the present situation in Indonesia and I would suggest to you that we should concentrate on that issue and not divert our attention to the many other issues which undoubtedly demand our attention. The story of Indonesia during the last three years has been a strange and revealing one. It should be remembered that Indonesia was reconquered from the Japanese by the Allied Forces and then handed over to the Dutch. Therefore, a special responsibility attaches to the Allied Nations. Many remarkable things have happened in Indonesia during these past three years and these are detailed in the papers supplied to the Conference. It is a long story of broken pledges and continuous attempts to undermine and break the Republic of Indonesia.

On the 18th December of last year, the Dutch forces launched an offensive, practically without warning, against the Republic while negotiations for a peaceful settlement were still going on. Even the dulled and jaded conscience of the world reacted to this with shock and amazement. The leaders of the Republic were imprisoned and separated from one another and treated with inhumanity. The Security Council of the United Nations passed a series of resolutions asking for the release of the Republican leaders and a cessation of hostilities as an essential preliminary to the resumption of negotiations for a peaceful and honourable settlement. The directions of the Security Council have not yet been carried out and the Dutch authorities seem to be concentrating all their efforts on the formation of a so-called interim Government which they hope will be subservient to their will. Any person, who is acquainted with the spirit of the Indonesian people or of Asia today, knows that this attempt to suppress Indonesian nationalism and the deep urge for freedom of the Indonesian people must fail. But if open and unabashed aggression is not checked and is condoned by other Powers, then hope will vanish and people will resort to other ways and other means even though these might involve the utmost catastrophe. One thing is certain: there can be, and will

be, no surrender to aggression and no acceptance or reimposition of colonial control.

It was not without deep thought and earnest consideration that we decided to hold this Conference. Believing as we do that the United Nations must be strengthened as a symbol of the New Order, we were reluctant to take any steps which might appear to weaken its authority. But when the will of the Security Council was itself flouted, then it became clear to us that we must confer together to strengthen the United Nations and to prevent further deterioration of a dangerous situation. We meet, therefore, within the framework of the United Nations and with the noble words of the Charter before us. That Charter itself recognizes regional arrangements as a means of furthering international peace and security. Ours is, therefore, a regional conference, to which we invited both Australia and New Zealand, whose interest in the tranquillity and contentment of Indonesia is as great as that of any of us. Our primary purpose is to consider how best we can help the Security Council to bring about a rapid and peaceful solution of the Indonesian problem. We meet to supplement the efforts of the Security Council, not to supplant that body. We meet in no spirit of hostility to any nation or group of nations, but in an endeavour to promote peace through the extension of freedom. It must be realized that both freedom and peace are indivisible. I should like to make it clear that we do not wish to consider this, or any other problem, in a spirit of racialism. Racialism has been, and is even today, the policy of some other countries. We, in Asia, who have suffered so much from it are not going to encourage it, but will combat it, believing as we do that it is not only a negation of democracy, but is also the seed of conflict. Our task will be threefold :

(1) To frame and submit to the Security Council proposals which would, if accepted by both parties concerned, restore peace immediately to Indonesia and promote the early realization of freedom by the Indonesian people ;

(2) Also to suggest to the Security Council what action it should take if either party to the dispute fails to act according to its recommendations ;

(3) To devise machinery and procedure by which the governments represented here today can keep in touch with one another for purposes of mutual consultation and concerted action for the achievement of the purposes for which this Conference has met.

I do not think it would be proper for me at this stage to offer any detailed proposals. That will be for the Conference to consider. But it seems to me clear that our immediate objective should be to restore, as far as possible, the conditions which existed before this recent Dutch

aggression, so that the Republic may be able to function freely and to negotiate as a free government without military or economic pressure. The next step should be to aim at the elimination of colonialism. It must be appreciated that so long as any form of colonialism exists in Asia or elsewhere, there will be conflict and a threat to peace. The situation in Indonesia is full of dangerous possibilities and requires urgent action. We have to aim, therefore, to complete our work as quickly as possible, so that the Security Council which is still considering this difficult problem should be in possession of our views within the next few days. All of us who meet here have, I believe, this community of outlook and our deliberations should bear fruit soon.

We are living in a revolutionary age of transition. On the one hand, we see a divided and disintegrating world, a multitude of conflicts and an ever-present fear of world war. On the other hand, we see creative and co-operative impulses seeking a new integration and a new unity. New problems arise from day to day which, in their implications, concern all of us or many of us. The Americans have already recognized a certain community of interest and have created machinery for the protection and promotion of common interests. A similar movement is in progress in Europe. Is it not natural that the free countries of Asia should begin to think of some more permanent arrangement than this Conference for effective mutual consultation and concerted effort in the pursuit of common aims—not in a spirit of selfishness or hostility to any other nation or group of nations, but in order to strengthen and bring nearer fulfilment the aims and ideals of the Charter of the United Nations? In this world of hatred, conflict and violence, let us endeavour to work jointly and in co-operation with others of goodwill to further the cause of peace and tolerance and freedom. We shall not succeed in our mission if we follow the path of violence or seek to divide the world further, but we may well make a difference to the world if we fashion ourselves in accordance with the old spirit of Asia and hold up the torch of truth and peace to a war-distracted world. May I, in all humility but also with pride, remind this Conference of the message of the Father of our Nation who led us through the long night of our subjection to the dawn of freedom? It was not through hatred or violence or intolerance of each other, he told us, that nations grow in stature or attain their freedom. It was by following his lead in some measure that we attained our independence through peaceful methods. The world has got caught in a vicious circle of fear, hatred and violence. It will never get out of that vicious circle unless it seeks other ways and practises other means. Therefore, let us adhere to the right means with the conviction that right means will inevitably lead to right ends. Thus, we shall help in the process

of integration and synthesis which is so urgently needed in the world of today.

HIS EXCELLENCY SARDAR NAJIBULLAH KHAN (AFGHANISTAN): Mr Chairman, ladies and gentlemen, it is a matter of great pleasure for me to have received the privilege of representing Afghanistan in this international Conference of Asian countries which may truly be reckoned as the first gathering of the free nations of the East.

In reality, this is the first time, when, by the admirable initiative of His Excellency Pandit Jawaharlal Nehru, Prime Minister of India, and his Government, we, the representatives of the Eastern countries, from China to Ethiopia, and from Libya to the Pacific and Australia, find ourselves gathered here for consulting ourselves about a problem of great and general importance and of common interest to all of us and for helping a people struggling for their legitimate freedom and being oppressed by tyrannical treatment.

So, our gathering has a double significance, that of being the first of its kind and that of having a sacred aim before it, namely the restoration of the unquestionable rights of freedom and self-determination to 70 million Asiatics.

As the representative of a free nation of Central Asia, which always places her freedom above her existence and which sincerely wishes to live in peace and on good terms with all in a world of liberty, equality and fraternity of peoples, I thank His Excellency the Prime Minister of India, our eminent President, and his Government for their kind invitation to the Government of His Majesty the King of Afghanistan to participate in this Conference.

We, the Afghans, believe in freedom, not of ours alone, but also in the freedom of others. We believe that the primordial condition of world security, the one compact and indivisible security we so much cherish, is to recognize the rights and the liberties of all nations and peoples. The fundamental bases of our policy are the very principles of the United Nations Charter and the Rights of Man.

Being animated with the spirit of the United Nations and having a conscience alive to the duties that its principles impose on us, we are participating in this Conference. In other words, the aim of our participation is to help the UNO in the realization of its principles particularly in assisting a multitude of suffering humanity, oppressed and tortured for their consciousness of their full rights to freedom.

It is not with the intention of creating an Asiatic bloc antagonistic to others, that we answered to the generous appeal of India. It is also not for manifesting any anti-Dutch, anti-European or anti-occidental feelings that we are here.

We are here only to help a people which has the right to be free like ourselves and which has been attacked in contravention of the previous and already concluded agreements and the UN Charter, to which all the free and freedom-loving countries adhere. This point has been explained several times by His Excellency Pandit Jawaharlal Nehru, the Prime Minister of India, and I am certain that it is the unanimous point of view of all the governments represented here.

The Afghan Government hopes that after a careful study of the situation and a common consultation, we shall be able to present our points of view to the Security Council, which is dealing with this case, and to expose to it the ways and means that may seem to us necessary and effective for a peaceful and just settlement of this problem.

Afghanistan also hopes that we shall invite the attention of the Hague Government to revise its policy of armed intervention and to remind it that imperialism is out of date today and that no power can impose on any people of the present world a condition which is not acceptable to it.

We have a good many precedents in this respect and among others one that can be mentioned is the realization of Independence by this hospitable country, which fortunately took place more than a year ago, in an atmosphere of comprehension and good understanding. Today Great Britain enjoys not only the precious friendship of the great people of India, but also the esteem and sympathy of the other nations. We believe that it is in the interest of the Dutch themselves to follow this example.

We are not hostile towards the Dutch people. We had a great sympathy for them when they themselves struggled, only some years ago, for their own freedom, but we condemn their policy of armed intervention, that has added another difficult problem to the already existing ones agitating and disturbing the present world. A people that has itself suffered from foreign occupation and has been able to forbear great sacrifices for her own freedom may possibly be expected to respect the rights of others.

Afghanistan is considering the Indonesian problem as an international one, affecting the security of the world, and she recognized more than a year ago the Indonesian Republic as the only national authority of that country. She is well disposed to help the United Nations Organization and to take part, in the spirit of the Charter of the UNO, in the action that may jointly be undertaken by the Asian countries, for a just and peaceful settlement of the Indonesian problem.

In the end I have to express my Government's appreciation of the convocation of this Conference and the participation of most of the oriental and Far Eastern countries, which is in itself a real proof of the solidarity of these peoples to assure the rule of Right, Justice and Peace—solidarity, which has roots in the past centuries of our history and which has been shaped by the common sides of culture and even the adversities of time. If on the basis of this solidarity, we, the Eastern countries can organize an institution of cultural, social and economic character with a body for the exchange of views about the common problems, it will not only be useful for the good understanding and elimination of the occasional differences between ourselves but also of a great utility and help to international peace and security of the world and the UNO.

Also I like to take this opportunity to thank on behalf of my Government those member states of the UNO, other than the oriental countries, who have tried to help Indonesia in this difficult hour, and who have extended their efforts to find out an equitable outcome of this problem.

Lastly, I have to add that we, the Afghans are happy to witness that the first international gathering of oriental states is being held in the territory of a country with whom we have had many thousand years of friendly and brotherly relations, the country which is animated with the humanitarian spirit of the late Mahatma Gandhi, the Great Asian.

HIS EXCELLENCY U WIN (BURMA) : Mr Chairman, Your Excellencies, ladies and gentlemen, it gives me no end of pleasure to see that the suggestion made by my Prime Minister, Thakin Nu, to call a conference of this kind has been accepted by the Hon'ble Pandit Jawaharlal Nehru with enthusiasm and with an intuitive perception of Asia's needs. In calling this conference, he has demonstrated to the world the truth of the warning that he gave in Cairo, on his way back to India from the Conference of the Commonwealth Prime Ministers, to the effect that if there was another instalment of aggression in Indonesia, the result would be to the detriment of peace not only in Asia but in the whole world. The protest that we, the Asians gathered in this conference, are able to register at this so-called ' police action ' of the Dutch which, in essence, is an attempt supported by the Dutch military might to retrieve its lost ground in Indonesia, should be forcible enough to check a repetition of this type of aggression on the part of any other foreign power making a last-minute bid for a revival of imperialism. Talking of aggression in other parts of Asia, it reminds one of our neighbour, Viet-Nam, which is similarly placed and makes one feel her absence at this conference.

From a careful study of recent happenings in the Security Council and the reports of the continued struggle in Indonesia, it is more than obvious that if the Security Council did not take effective steps and satisfied the honest nationalist aspirations of the Indonesian people in ordering the Dutch to implement their obligations which they have accepted under the Charter of the United Nations as one of its members, this Conference would have no alternative but to bring the weight of its concerted opinion to bear upon the Security Council and the United Nations by way of demonstrating that Asia will not accept any halting or half measures. The world already knows that this conference has been called to reinforce the purposes of the United Nations and the Security Council and not to obstruct the fulfilment of the hopes of mankind which are centred in this great body.

We in Asia and certainly a good number of other European and Pacific countries have felt that the deliberations of the Security Council up-to-date have not given the correct lead. The firmness that one expected from the Security Council has unfortunately been absent. This itself is enough provocation for this Conference, demanding of us, as it does, that we Asians should be vigilant, united and concrete in the measures that we take in helping our sister country, Indonesia. The time factor is of paramount importance because every day means the loss of more precious lives in this struggle. Agreements honourably reached have been violated and the United Nations and the Security Council have not only been by-passed but the latter's recent directives have been defied. Information given to the world with regard to the freedom that the detained Indonesian leaders were supposed to be enjoying has been nothing more than a cruel joke, from all accounts.

Burma is convinced that the action that this Conference will ultimately decide upon should be concrete and effective. She desires to place the following lines of action for the consideration of this Conference:

(1) As a demonstrable gesture of our good will, all Asian governments should forthwith accord *de jure* recognition to the Republican Government of Indonesia as the authentic government of its people.

(2) To approach the Security Council with the request for the immediate release of all leaders of the Republican government who are under detention.

(3) To move the Security Council immediately to order the lifting of the blockade on Indonesia which has resulted in untold sufferings of the Indonesian people.

(4) The range of sanctions that have been spontaneously applied by some of us already should be widened immediately after we have concrete proof that the Netherlands Government have failed to

implement the directions given to them by the will of the countries represented in the United Nations.

(5) The setting up of machinery, say, in the shape of a Standing Committee, to watch the progress of the future decisions that may be taken by the Security Council and to implement any combined decisions to be taken by this Conference and subsequent conferences that may have to be called in this connection.

(6) A move must be made, here and now, by this Conference to appeal to the United States of America to withhold all aid to the Netherlands Government.

The so-called cease-fire has not resulted in cessation of fire in Indonesia. The position demands of us, Asians, gathered at this Conference, that we should express our minds in unmistakable language by urging the Security Council that the basis for peaceful negotiations must be created and the only way in which it could be created is to get the Dutch to withdraw to the position they occupied before they shocked the world by their so-called ' police action ' and that all the arguments that have been advanced by the Dutch spokesmen have left us completely cold; it is more than obvious that the Indonesians have been placed at a disadvantage not only by the present cease-fire but also due to absence of their accredited leaders to represent their case. The Security Council is primarily an arbitral body and, in the fitness of things, the Indonesian leaders who are the only persons competent to place their case before the bar of world public opinion should be invited to participate in the future deliberations of the Council. As it is, it is not too late to do so.

We have faith in the Security Council. We shall support it in all ways given to us but this Conference should be alive to the realities of the international scene and envisage the possibility of failure on the part of the Security Council to take steps which in our opinion would be effective. What steps should be taken in that eventuality should also be within the range of this Conference. On behalf of my Government I wish to assure brother Asian countries that whatever action may be taken or may be decided upon in this Conference, it would have the full support of my Government which I have the honour to represent at this Conference.

HIS EXCELLENCY SIR MOHAMMAD ZAFRULLAH KHAN (PAKISTAN) Mr President, fellow delegates, it is a very happy augury that representatives of so many states and regions, which have so many problems common to themselves, should have gathered together here to ponder over one particular acute problem that has so suddenly presented itself. One is encouraged to express the hope that this will not be the only conference of its kind, and that from time to time such of us as have common

problems to ponder over and to resolve shall continue to meet, to consult among ourselves as to how best to resolve them.

Mr President, I have very little to say this morning on the particular question with which we are at the moment faced beyond emphasizing the points that you have with so much dignified eloquence presented to us this morning in your opening address. The views of Pakistan on the situation in Indonesia and the recent Dutch action there are well-known and need no reiteration at this stage. We shall develop them more fully in the course of the discussions upon which this Conference will presently enter with reference to specific proposals designed to speed forward a happy settlement of the Indonesian problem in accordance with the purposes of the United Nations and the principles set out in its Charter.

The point I desire to stress at this stage is, as you have made perfectly clear this morning, Sir, that we are gathered together here on this occasion not to short-circuit in any manner the United Nations or its organs, but to support and reinforce the Organization to take such action as the Organization might deem adequate in the circumstances or to suggest to the United Nations action that might appear to us to prove likely to be more effective and adequate. I also desire to make it clear that however much we are grieved and distressed over recent Dutch action in Indonesia, we are not the least inspired by hostility or ill-will towards Holland or its people. We recognize and admire their great qualities and the valuable contribution that they have made in the past towards the advancement of learning and culture in various fields, particularly in the sphere of the development of international law. It will be recalled that the struggle of the people of Holland itself to secure freedom from alien rule was characterized by grim determination and was inspired by the spirit of the highest patriotism and furnished to the world over a long period of eighty years a spectacle of heroic struggle carried to a successful conclusion after a protracted course of suffering and sacrifice. That Indonesia should have to struggle for its freedom against Holland is a tragedy and an irony. The tragedy is enhanced by the reflection that during the last war, Holland proved utterly unequal to the discharge of its primary obligation towards the people of Indonesia to defend them against the invader and incontinently abandoned them to their fate. That Holland should now seek to subjugate Indonesia once more to its political domination is something so incongruous as to have provoked ridicule were it not that the attempt is so fraught with suffering and tragedy to the people of Indonesia and constitutes a serious threat to the restoration of peace in South-East Asia and the maintenance of international peace.

Sir, I hope that before this Conference brings its deliberations to an end, it will have placed on record its deliberate view not only of the conflict that is going on in Indonesia but also of the concrete steps that must be taken by the United Nations and, if the United Nations should fail to take them, by such Member States as may be more immediately concerned, as would speed forward the solution of this unhappy problem at a very early date. The world unfortunately has recently witnessed too many *faits accomplis* based on military force and aggression and as I had occasion recently to remark, the United Nations is beginning to acquire a very unhappy reputation of becoming more or less an instrument of stamping with its active—and if not active at least its tacit—approval the results of military aggression. That must not be permitted to continue. Round this table here are gathered today representatives of 17 Member States of the United Nations and representatives of another sovereign country which we hope will soon be admitted to that fellowship. That constitutes an exact 30 per cent of the membership of the United Nations and as you have pointed out, Sir, the representatives gathered round this table represent at least half the human race. Surely the conclusions to which this Conference may deliberately come would deserve the most earnest and serious consideration of the United Nations and the other Member States who are present here today.

HIS EXCELLENCY DR NAZIM EL KUDSI (SYRIA) : Mr President, Excellencies, ladies and gentlemen, holding this Conference in India, the country that inspires peace and calls for upholding ideal human principles, is a happy augury presaging greater hopes of peace.

We thank the people of India and their Government represented here by His Excellency Pandit Nehru for having taken the initiative in summoning this first Asian Political Conference, which enables the honourable representatives here present to meet and discuss a matter of mutual interest.

We also thank the beautiful city of New Delhi which once again has extended a warm welcome and afforded facilities for this Conference.

As we meet here we remember with great grief and deep sorrow Mahatma Gandhi whose loss is shared by the entire humanity. We pay tribute to the ideals he practised and preached openly. He taught us how to become world citizens and to love humanity irrespective of race, colour, language or religion. Though Gandhi is dead, his example is ever alive.

The Indonesian question taken in the light of his principles becomes clear. Similarly, the principles of the United Nations Charter signed

by us and by the Netherlands Government too, state plainly the right of peoples to freedom and independence. However, any comparison between events and written principles shows us how great is the difference and the contradiction. Any comparison would shake the faith of millions in international justice. To consolidate this faith is our duty, and we are here to find the means to do so.

We all remember that among the arguments advanced by Hitler to wage the last war was: How can it be possible that the Dutch who are a few millions should rule 70 million Indonesians, when Germany with a population of 70 millions has not a single vital space. The use of this argument is not confined to the Nazis, but it can equally be used by every Big Power intending to embark its people on similar ventures. The continuation of the Dutch aggression in Indonesia is tantamount to helping those who intend to wage new wars. It is worthy to mention that the statements made by the Good Offices Committee to the Security Council plainly show the extent of the injustice done to Indonesia. These statements proved to what limits the Indonesians made concessions to reach a peaceful solution.

Yet all these sacrifices did not prevent further unwarranted aggression.

Similarly the solution advocated for Palestine is no less dangerous than the Dutch aggression, for it has enabled the Zionists to compel nearly one million Arabs to leave their hearths and homes and seek refuge in the wilderness and replace them with outsiders. History does not recall a greater injustice, felt by seventy million Arabs in Morocco, Algeria, Tunis, Tripolitania, Egypt, Lebanon, Saudi Arabia, Yemen, Iraq and Syria.

Solutions of this kind cannot help the cause of peace which we seek and for which we signed the United Nations Charter.

The world today is in a crisis; it appears that some did not benefit from the lesson and the price paid by mankind for peace. If one had listened to speeches in the San Francisco Conference he would have thought that the world had finally removed war from human activity, but the meetings, speeches and discussions that followed would lead to the belief that years have passed on the spirit of the San Francisco Conference and that man's capacity to forget has set a new record in speed.

For this reason we look with interest and hope to the invitation extended by India, who shares her worthy sister Pakistan's ancient culture and modern struggle for freedom. This interest is due to the fact that several big and small nations are not always in a position to have their own views and plans to safeguard their security and neutrality of opinion; to be able to do so, they have to come together

on a basis of understanding and mutual interest to determine a policy that would safeguard their position in the international field. This unity and co-operative action within the principles of the United Nations Charter does not hinder the United Nations but will add to its strength and activity. Such regional grouping, within the United Nations Organization, will help solve the problems it faces, in a spirit closer to justice and more opposed to aggression. It will strengthen the faith of millions of mankind in the United Nations.

Syria has great sympathy for Indonesia and fully supports her aspirations for freedom and independence. Syria also welcomes the strengthening of political and economic ties with the countries of Asia here present, for our mutual safety, and prosperity. Syria believes that a regional and Asian permanent understanding within the framework of the United Nations will be beneficial to all the nations taking part in it. It will enable these countries to make their voice heard in the United Nations to solve their just problems in the spirit and the letter of the Charter.

Thus, the main causes of conflict between nations will be removed and mankind will be saved from the horrors of war.

HIS EXCELLENCY GENERAL CARLOS P. ROMULO (PHILIPPINES): Mr President, Your Excellencies, I would like to begin my brief statement by conveying to you, Sir, the warm fraternal greetings of His Excellency the President of the Philippines, and to the distinguished representatives here gathered the solemn assurance that the people and Government of the Republic of the Philippines are ready and determined to do their part in helping the people of Indonesia to achieve their freedom through measures that may be agreed upon by this Conference in accordance with the purposes and principles of the United Nations.

Upon my arrival here two days ago, I was asked what I thought the Conference would accomplish. My reply was brief. We have a job to do here, I said, and I hope we shall do it. Our task is of the most urgent kind, and may be divided into two parts; namely, concrete measures that may be recommended to the Security Council which will assure to the people of Indonesia the fullest exercise of self-determination, and, in the event of continued defiance by the Netherlands or of the Council's failure to act, other concrete measures that may be taken pursuant to the relevant provisions of the Charter by the states here represented that will make unmistakably clear our profound condemnation of aggression and our stout refusal to recognize the fruits of aggression.

The Conference might consider further certain measures for the establishment of continuing machinery for the implementation of proposals that may be adopted, including a small permanent

Secretariat in New Delhi, or maybe, at Manila, to serve as a clearing-house of information essential to concerted action by our various governments, and a method of consultation on matters of common interest between the permanent representatives of our states to the United Nations. It is to be hoped that out of such methods of co-operation in nuclear form, we shall be able to evolve a potent permanent organization of Asian States, functioning as a regional body alongside other associations of its kind, as contemplated by Article 52 of the Charter.

We are gathered here representing nations that belong to many races, speak numerous languages and believe in all the principal religions of the world. This is not a conference of states representing a monolithic political, economic or cultural system. We are not met to pool our material resources, our army divisions, our navies and air armadas in pursuit of motives of power. We are met here in order that, by methods of self-help, we may strengthen the forces of democracy and prevent other ideologies from capturing the faith of Asia by default.

This is the first inter-governmental conference on the political level to be held in Asia. Although it may be considered historic for that reason, it will have real meaning in the perspective of history in this part of the world only if we accomplish what we have come here to do, and can look back to this point in time as the genuine beginning of our realization of a common destiny.

HIS EXCELLENCY SHAIKH MOUVAFFAK EL ALOUSSY (SAUDI ARABIA): Mr President, ladies and gentlemen, I should like to reaffirm the great concern felt by His Majesty King Abdul Aziz Al Saud over the unfortunate conflict between Indonesia and Holland, a conflict, an aggression, which adds to our sorrows, after the great suffering and many misfortunes in Palestine.

May I take this opportunity of reminding you that the first expression of sympathy on the part of His Majesty King Ibn Saud has been to refuse the Dutch permission to fly over the territory of Saudi Arabia.

His Majesty King Ibn Saud naturally wishes to see a peaceful solution of the dispute between the two parties.

We firmly hope and believe that the Security Council, this great institution of international justice and equity will succeed in finding a solution for this conflict.

And we are here to help, if need be, the Security Council in finding the solution so ardently awaited and not to hinder or oppose its efforts.

HIS EXCELLENCY MR ISA NAKHLEH (YEMEN): Mr President, Sir, His Excellency the Under Secretary for Foreign Affairs for the Yemen who is unable to address you in English asked me to convey to you the

message of His Majesty King Ahmed of the Yemen, to you personally and to the great State of India, and to state that he wishes that this Conference will meet with all success.

The Yemen delegation, Sir, associates itself with the eloquent remarks which you made regarding the right of the Indonesian people to independence and freedom, and states that the aggression of the Netherlands on that country must be condemned by all peace-loving nations. The Indonesian Republic have rightly acquired their freedom and they have declared their independence as far as the 17th of August 1945 when the people of Indonesia declared that they were enjoying their birthright to freedom and independence and that the Netherlands Kingdom itself did recognize that independence by their Linggadjaati agreement in 1946 which agreement was ratified by the parliaments of both the countries. In the face of such a position in international affairs, Sir, the Yemen delegation feels that any use of force by the Netherlands against the Free Republic of Indonesia is definitely an aggression and a violation of the Charter of the United Nations, and, therefore, any action which this Conference sees fit to recommend to rectify that wrong done to the Indonesian Republic and people will be supported by the Yemen.

We take this opportunity, Sir, to say that we are grateful for your leadership in calling this Conference and we hope that this Conference will be able to lay the foundation for the future co-operation of the Asiatic and oriental nations, on all problems whether political, social or economic. There are in the world many Unions—we have the Pan American Conference every year, the nations of both North and South America meet to discuss points of common interest and we never heard that these nations are making any bloc against anybody; they are discussing matters of common interest. So also, we have the Atlantic Union, the Scandinavian Union and so many other Unions. If the Asiatic nations come and try to make a machinery for consultation, for study and for co-operation in all problems, this I hope will bring a new era to the oriental people. We, Sir, in agreeing among ourselves, have no imperialistic motives or intentions of aggression against any nation. What we want to do in this Conference and for future consultations between the Asiatic nations is to find how to stand together with the purpose of preserving the freedom and independence of the oriental people and to try to help those who have been until now denied that freedom to gain that freedom. I think any arrangement in this regard will be in accordance with the purposes and principles of the Charter of the United Nations because the United Nations Organization has been formed in order to preserve international peace and justice and in order to solve all problems in accordance with

international law and justice, and we the oriental nations here desire no more than to see that the rules of international justice have been applied to all problems.

We do not intend this Conference to take any action contrary to the United Nations; on the contrary, Article 52 of the Charter of the United Nations allows regional arrangements or agencies to sit for consultation in order to help solve problems in accordance with the Charter of the United Nations. If, Sir, we are to co-operate as neighbours, as members of one family, that is the Oriental family, we hope this co-operation will not be construed by other Powers that it means that we are forming one bloc against the other. As I said, we have no purpose other than to work within the Charter of the United Nations and we work for liberty, for the freedom, for the independence of nations and for preserving international peace in the world.

DR J. W. BURTON (AUSTRALIA): Mr President, as the Prime Minister of India you have already clearly expressed thoughts which are so much in accord with our own, that there is little that I might add. You have convened us here to discuss the problem which has been presented to the United Nations, and in particular to the peoples of the United Nations in this area, by the failure so far of the Security Council effectively to deal with the situation which has been brought about in Indonesia. We are all agreed on the general principles involved, that is the principles of the United Nations, and in particular the principle of the encouragement of self-government. At this Conference, we are more concerned with detailed suggestions for the consideration of the Security Council and the General Assembly of the United Nations as to how these agreed principles might be implemented in the case of Indonesia and as you pointed out, Sir, in this case only.

We do not meet in any vindictive spirit, we do not contemplate reprisals or restraints as an objective; our attitude is rather that a mistake has been made which has cost life and which has brought about suffering not only to the peoples of Indonesia but also to the peoples of the Netherlands who have themselves already suffered too much at the hands of an aggressor. A mistake has been made from the point of view of the future of the United Nations and a mistake has been made from the point of view of world peace and the development of independent political institutions which alone can withstand the infiltration of undemocratic influences.

So, we have only one objective at this Conference, and that is to try to offset or remedy these grave errors, to find a way in which peace can be restored in Indonesia, a peace which is just and which therefore

can be lasting, to endeavour to remedy the damage already done to the prestige and standing of the United Nations and of the Security Council without which we can have no security.

We here can make a real contribution to the solution of this problem, as a regional conference assisting the Security Council in accordance with the Charter. Wisdom does not reside only in countries having great economic or military power. We assembled here, therefore, with our special knowledge of this area have a duty to advise, and if our deliberations are characterized by objective thinking, persistence of thought for the principles and purposes of the United Nations and by constructive planning, then our advice must ultimately be accepted by the peoples of the United Nations.

As is well known, Australia, as a Member of the Security Council, representing this area at the time of the Dutch action has from the first made every endeavour to obtain a settlement to this dispute, and we will not rest content until peace is restored.

Our Australian Foreign Minister, who is well known to you, and is at the moment President of the United Nations General Assembly, just a few days ago observed that not a single Member of the Security Council had justified the action of the Dutch and he added: 'I sincerely hope that in view of the Security Council discussions and the general feeling that the Dutch will desist as far as possible from the action taken and release Indonesian leaders from captivity with a view to a quick settlement of the new constitutional set-up for the United States of Indonesia.' That I am sure is the hope of all of us at this Conference and we are meeting therefore for a specific purpose, viz., that of assisting the United Nations in settling finally and justly the problem of Indonesia. The countries represented here are in general agreement on the question and it is for the Conference in later sessions to clarify in greater detail our thoughts so that we can make positive and helpful suggestions, and even at this last moment endeavour to retrieve the position, so that not only the people of Indonesia will look forward to a nearer freedom, peace and increasing prosperity, but also that the prestige and standing of the United Nations which are so vital to us all, will be maintained.

The Australian Government's policy, as is well known to you, is to carry out its obligations to the United Nations with sincerity and earnestness, and it will give immediate and earnest consideration to the reports and observations which will be taken back to it at the conclusion of this Conference by its officials attending it.

I might say, Sir, in conclusion how grateful we are for the consideration and hospitality which has been shown to us by the Government of India, yourself in particular, and your very able officer who

by his careful planning and preparation has already assured the success of this Conference.

HIS EXCELLENCY MR MOHAMMED ALI HAMADE (LEBANON): (Translation from French).

In the name of my Government, I address the Government of India and its Chief and thank him for the opportunity given to us to meet in this historic town. I also bring to you the sympathy of my people. We have assembled together to find a solution to the problem confronting us. The problem is one of peace and stability in this important part of the world. Therefore, we can neither ignore it nor neglect it. It is a grave problem, a problem which brings us face to face with the present condition of the world that affects the wise equilibrium which must reign if humanity is to live in an atmosphere of peace and not be drowned in anarchy. This meeting, gentlemen, gives us confidence in the future because it illustrates the will of the people of the East to find a way, and to contribute, to the edification of a world built on peace and justice. The meeting here will be an indication of the desire of our people to have peace which must be durable and just. Peace cannot be a reality unless it is sincerely willed by all the nations without exception. It cannot be a durable peace unless we all believe in a common principle of international justice. Peace cannot become a reality unless we all contribute towards it and towards the re-establishment of equilibrium based on international justice. It is therefore the profound conviction of my people, that we who are gathered here today will help towards finding a solution of the problems which will be based on international justice.

MR SYED ABDUL KADER EL GAYEANI (IRAQ): Mr Chairman, my honourable colleagues, it is my great honour to represent the Iraqi Government in this distinguished gathering. We are gathering here today to deal with the Indonesian question, which would have been so simple to deal with had not the United Nations Charter been violated. We are gathering here not as a separate body or organization, but as Members of the United Nations entrusted in the application of the Charter and the realization of justice among the nations.

These aims are the first objectives of the United Nations Charter. Unfortunately, the United Nations Charter was violated and the Security Council's decision was broken by the use of arms. So it is our desire to support the United Nations in solving the question of Indonesia which is within the letter and the spirit of the Charter and in respecting the will of the self-determination of the nations in order to have a peaceful and democratic world.

This is not the only question before the United Nations Organization. We have the Palestine question also, which should have been

dealt with in the same spirit, that is to say that the will of the Arabs of Palestine should be respected and no chance should be given to foreigners to establish a state in lands which do not belong to them. It is a very dangerous precedent and the nations should consider this question very carefully.

We the Arabs, as a free nation, believe that if the United Nations Charter is fully applied in letter and spirit, it will be the only refuge for a permanent world peace, which is the hearty desire of every individual of this world and we believe that this world peace cannot be realized except by applying the United Nations Charter.

In order to deal with the Indonesian question, as members of the United Nations we stress upon the United Nations Organization the importance of dealing with this and similar problems within the spirit and letter of the United Nations Charter. We do hope that with our co-operation with the United Nations Organization we shall arrive at a successful conclusion.

Before concluding my short speech I would like to express my thanks to the Indian Government and to the Honourable the Prime Minister of India for their kind hospitality towards us.

HIS EXCELLENCY MR S. W. R. D. BANDARNAIKE (CEYLON): Mr Chairman, Your Excellencies, ladies and gentlemen, the invitation which you, Mr Chairman, extended to the Government of my country to participate in this Conference we accepted most readily and gladly. This is the second occasion on which India has afforded us, the countries of Asia and of this particular region, the opportunity of meeting and discussing problems of a common interest. In 1947 we assembled at Delhi at the Asian Relations Conference to discuss in a friendly way matters of common interest to us. That process has today been taken a step further. We owe to the hospitality of yourself, Mr Chairman, and of India the opportunity of again meeting and discussing here on an Asiatic as well as a regional basis a specific issue of great importance, may I say of almost crucial importance to us all.

We are not met here today to decide whether or not a wrong has been done. We are met here as those who, convinced that a wrong has been done, wish to discuss amongst ourselves the ways and means of helping in a satisfactory and happy solution of the problem that has arisen. May I say in passing that my own country of Ceylon had the privilege of taking the first practical and concrete step in dealing as far as we were concerned with the situation that had arisen. We banned from our harbours and airports Dutch ships and planes bearing to Indonesia military or warlike personnel or material in their conflict with the people of Indonesia. We were the first country to take that step.

The happenings in Indonesia, in my opinion, have far-reaching implications beyond the question of the struggle for liberty on the part of the people of Indonesia. These implications have been referred to by you, Mr Chairman, as well as other speakers. I wish to draw attention to a few of them myself. They are implications, in one aspect, of world importance. Those of us who believe in the democratic way of life and who would wish therefore to establish close and friendly collaboration and co-operation with other democratic countries, particularly of the West,—I should like to say and say quite frankly,—have suffered a grievous disappointment in the action which the Government of the Netherlands has taken in Indonesia. I know of no single happening since the conclusion of the last war, which has dealt a more grievous blow to the co-operation and friendly relations of all democratic countries engaged in the common task of defending one way of life than what has happened in Indonesia. In the context of the United Nations Organization—the world instrument for the preservation of peace and security—there are also serious implications. One more item has been added to a long and melancholy list of failures or partial failures on the part of the United Nations Organization to deal, with reasonable effectiveness, with serious problems that have faced that organization in recent times.

As far as we are concerned—and I am speaking as one who is still waiting in the ante-chamber of the United Nations Organization for admission—may I say still that we all recognize the immense and incalculable value of the United Nations Organization, that whatever may be its present shortcomings it still continues to be the only lifeline of mankind for the preservation of peace, and that it is certainly not the intention of any one of us in any way to weaken that Organization but really to assist it and to support it by whatever deliberations we may have here?

With regard to many of our own countries assembled here the Indonesian incident has also serious implications. This action, which cannot be characterized in any other terms than a flagrant and provocative attempt to reintroduce a principle, an evil thing which we thought was dead—the principle of imperialism and colonialism—is a situation that can have most unfortunate repercussions in the countries of a good many of us. May I say here and now that once for all, without any question or doubt, imperialism and colonialism must be considered to be dead and that, as far as we are concerned, on no pretext or excuse whatsoever can we permit any attempt at a recrudescence of those principles? I do not intend on this occasion to enter into any detailed discussion of the problem that we are met to discuss. The more appropriate occasion to do so will be when we

meet later on to discuss those details. But, with your permission, Mr Chairman, there is only one point that I would like to stress here, which I think is one of the very great fundamental and primary importance to a consideration of all other details—one indeed which has not escaped attention; attention has been drawn to it. I wish to re-emphasize it and it is this: Beyond the general question of helping the people of Indonesia to regain their freedom is the important question of the position of the Republican Government of Indonesia. It is not possible to proceed to any discussion of this matter without recognizing the fundamental importance of that position. The Republican Government, recognized *de facto* by the world in general, by the UNO, and by the Government of the Netherlands itself, has suffered an entirely unjustifiable assault. That government must be restored in whatever way is practicable, and the procedure of negotiation between, in effect, two sovereign states must be reinstated before any satisfactory solution can be reached. I stress this point for this reason that everything else depends upon this first issue. All the steps that may be suggested also flow from the attitude one adopts with regard to this matter. Is that government to be restored, in whatever practical way is possible, or are we to proceed on the basis that no such government now exists, that the situation for negotiations is past, and all that remains is for the Government of the Netherlands, in the exercise of its sovereignty of the whole of Indonesia, and in whatever spirit of liberality the Netherlands choose to exercise, to form some provisional interim government or make some other arrangement? I stress therefore the primary importance of that point of view in considering the entire problem.

Let us finally proceed to the task that faces us with a clear understanding of the important general issues involved, without forgetting at the same time the stark realities of the case and what steps are in effect likely to be practicable and what steps are not likely to be practicable. Let us also bear in mind the obligations which we have in our relations to international organizations which, I repeat, it is not our intention to weaken but to strengthen. Within the ambit of such considerations and without, as some of the honourable delegates have said, any bitterness or recrimination—the issues involved, believe me, are too important for the indulgence of mere recrimination in this matter—let us proceed to consider what action we can take that is really effective in giving assistance to the sorely tried people of Indonesia and their Republican Government.

Mr Chairman, on behalf of my country may I assure you and all honourable delegates here that we shall give our whole-hearted co-operation to you in the endeavour to achieve those high objects.

HIS EXCELLENCY MR ISMAIL KAMEL BEY (EGYPT): Mr Chairman, Your Excellencies, ladies and gentlemen, I see that we have taken too much of your time and so I will be very brief. I am only raising the spirit of the meeting to the terms redolent in the words of our dear Chairman and specially in the reference he made to those most highly inspiring principles of the Great Mahatma. We are now taking in hand the question of Indonesia as supporting the United Nations in their endeavour to arrive at a very friendly and peaceful solution. But in the meantime it is an occasion for us to stress the vital importance of all efforts tending towards the establishment of real peace between nations. If it is a recommendable thing to the leaders of every country to ask for determined will to continue wars, I think it is a nobler task for every country, for every man and woman in this wide world, to join hands and to claim without shame that peace and happiness are absolutely our own right on this earth, and no effort will be spared and no effort will be too expensive towards the achievement of this end.

But this problem of Indonesia will be one of the cases which at this conference will be very easily put to a very happy conclusion. I want to draw a parallel between the tentative efforts made by Humanity to establish organizations for paving the way to human brotherhood. In 1898, the nations of the world sought to set up the International Court of Justice at the Hague; but the background was always vicious and all the Powers who signed the treaty armed themselves and led the world to the first World War in 1914. After the war came to an end, Humanity, led by the Fourteen Points of President Wilson, cherished the hope that the League of Nations, which was the result of so many protracted negotiations, would bring about human brotherhood. But the same background persisted and the same fate, to which all efforts were doomed, was there: the desire to arm and the desire to solve the problems by war were there. We have now our last hope in the world-wide Organization of the United Nations and the Security Council.

May we all join hands and ask for the most lofty detachment and for the sincerest efforts towards the fulfilment of that ideal and then, ladies and gentlemen, we can implore for the time which consumes our lives, to ring out a thousand years of war and ring in a thousand years of peace?

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RESOLUTIONS OF CONFERENCE ON INDONESIA TO SECURITY COUNCIL

RESOLUTION I

This Conference of representatives of the Governments of Afghanistan, Australia, Burma, Ceylon, Egypt, Ethiopia, India, Iran, Iraq, Lebanon, Pakistan, the Philippines, Saudi Arabia, Syria and Yemen

Affirming their support of the purposes and principles of the United Nations and the obligation of all Member States to accept and carry out the decisions of the Security Council in accordance with the Charter;

Having considered the situation in Indonesia in the light of all available data and, in particular, the reports submitted by the Good Offices Committee of the Security Council;

Being of the opinion that the Dutch military action launched on the 18th December, 1948, constitutes a flagrant breach of the Charter of the United Nations and defiance of the efforts of the Security Council and its Good Offices Committee to bring about a peaceful settlement;

Noting that the Netherlands authorities have failed to give full effect to the resolutions of the Security Council after that date;

Finding that this action is directed against the very existence of the Republican Government which the Security Council and several member Governments of the United Nations, including the Netherlands Government itself, have recognized;

Conscious of the danger to the peace of South-East Asia and of the world through the continuance of hostilities in Indonesia;

Recognizing that the people of Indonesia are entitled, according to the principles of the Charter, to independence and the exercise of full sovereign rights;

Recognizing further that the maintenance of international peace and security and development of friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, constitute the high and steadfast purpose of the United Nations;

Firmly convinced that the Security Council is properly seized of the Indonesian question, as a breach of the peace and an act of aggression, under Article 39 of the United Nations Charter.

RECOMMENDS to the Security Council of the United Nations:

A. (1) That members of the Republican Government, other Republican leaders and all political prisoners in Indonesia, be immediately restored to complete freedom;

(2) That the Republican Government be enabled to function freely and, to this end

(i) the Residency of Jogjakarta be handed back immediately to the Republic and the Netherlands authorities refrain from taking any action that may interfere with the effective functioning of the Government of the Republic. That Government should also have facilities for communication and freedom of consultation throughout Indonesia;

(ii) such areas of the islands of Java, Sumatra and Madura as were held by the Government of the Republic on the 18th December, 1948, be restored to the Republic not later than the 15th March, 1949;

(iii) Dutch forces be withdrawn (*a*) immediately from the Residency of Jogjakarta, and (*b*) progressively from the rest of the Republican territory mentioned in (ii), such withdrawal to be effected in stages and under conditions to be prescribed by the Good Offices Committee or any other body to be appointed by the Security Council and to be completed not later than the 15th March, 1949;

(iv) all restrictions imposed by the Netherlands authorities on the trade of the Republic be immediately removed;

(v) pending the formation of the Interim Government referred to in (3), the Republican Government be afforded all facilities for communication with the outside world.

(3) That an Interim Government composed of representatives of the Republic, and representatives of territories in Indonesia other than those under the authority of the Republic commanding the confidence of the Indonesian people, be formed not later than 15th March, 1949, with the approval and assistance of the Good Offices Committee, or any other body that may be appointed by the Security Council. Pending the result of the deliberations of the Constituent Assembly referred to in paragraph (6) below, no new regional governments shall be formed or recognized.

(4) That, subject to the provisions of paragraph (5), such Interim Government shall enjoy full powers of government including control over its armed forces. To ensure this, all Dutch troops shall be withdrawn from the whole of Indonesia on a date to be determined by the Good Offices Committee, or any other body appointed by the Security Council. Pending such withdrawal, Dutch forces shall not be used for the maintenance of law and order except at the request of the Interim Government and with the approval of the Good Offices Committee or any other body that may be appointed by the Security Council.

(5) That the Interim Government shall have such freedom in external affairs as may be determined, in consultation with the Interim

Government and the Netherlands authorities, by the Good Offices Committee or any other body that may be appointed by the Security Council.

(6) That elections for the Constituent Assembly of Indonesia be completed by 1st October, 1949.

(7) That power over the whole of Indonesia be completely transferred, by 1st January, 1950, to the United States of Indonesia whose relationship with the Netherlands shall be settled by negotiation between the Governments of the United States of Indonesia and of the Netherlands.

(8) That the Good Offices Committee, or any other body appointed by the Security Council be given authority to secure the application of the foregoing recommendations under the supervision of the Security Council to whom it shall report as frequently as may be necessary.

B. That, in the event of either party to the dispute not complying with the recommendations of the Security Council, the Council shall take effective action under the wide powers conferred upon it by the Charter, to enforce the said recommendations. Member States of the United Nations represented at this Conference pledge their full support to the Council in the application of any of these measures.

C. That the Security Council be pleased to report, for consideration by the United Nations General Assembly at its adjourned session commencing in April, 1949, the measures taken or recommended by the Council for a solution of the Indonesian problem and the action taken by the parties concerned to give effect to these measures.

RESOLUTION II

Adopted on 22 January 1949

In order to ensure close co-operation among themselves on matters dealt with in Resolution I, this Conference recommends to the participating governments, whether Member States of the United Nations or not:

(*a*) That they should keep in touch with one another through normal diplomatic channels;

(*b*) That they should instruct their representatives at the Headquarters of the United Nations or their diplomatic representatives to consult among themselves.

RESOLUTION III

Adopted on 22 January 1949

The Conference expresses the opinion that participating governments should consult among themselves in order to explore ways and

means of establishing suitable machinery, having regard to the areas concerned, for promoting consultation and co-operation within the framework of the United Nations.

CHAIRMAN OF CONFERENCE TO PRESIDENT OF SECURITY COUNCIL

As you are aware, a Conference of representatives of the Governments of Afghanistan, Australia, Burma, Ceylon, Egypt, Ethiopia, India, Iran, Iraq, Lebanon, Pakistan, the Philippines, Saudi Arabia, Syria and Yemen, met in New Delhi on the 20th, 21st, 22nd and 23rd of January to discuss the present grave situation in Indonesia. The Governments of China, Nepal, New Zealand, and Siam sent observers to the Conference. A set of the speeches delivered by the representatives of the participating governments at the opening session of the Conference is enclosed. These pronouncements bear witness to the strength of feeling among the participating governments about Dutch action in Indonesia and to their earnest and urgent desire that this dispute between the Netherlands Government and the Government of the Republic of Indonesia which endangers the peace of South-East Asia and of the world, should be rapidly settled in accordance with the principles of the Charter. Further evidence of the active sympathy of these nations with the Republic is furnished by the action already taken by the Governments of Burma, Ceylon, India, Pakistan and Saudi Arabia to deny to the Netherlands Government facilities of transit by land, sea and air.

(2) Of the resolutions passed by the Conference, one contains recommendations to the Security Council. The text of this resolution has been telegraphed separately to your Excellency. It will be observed that this resolution has been framed in full recognition of the authority of the Security Council and mainly with a desire to assist it in the solution of the Indonesian problem. The Member States of the United Nations represented at the Conference recognize their obligation to give effect to any measures which the Council may take in order to bring about a solution of the Indonesian problem. But they wish to point out that the Council, which has been vested under the Charter with the primary responsibility to ensure prompt and effective action for the maintenance of international peace and security, acts not merely on behalf of the Member States represented on the Council but on behalf of the Nations as a whole. The Member States represented at this Conference constitute a substantial proportion of the membership of the United Nations and I have been asked to request that the Council will, therefore, give due weight to the resolution adopted by the Conference.

(3) The Council has given proof of its awareness of the dangers of the Indonesian situation and of its desire to bring about a satisfactory solution. The Conference has asked me to point out, with respect, that effective action by the Council to bring this situation to an end is overdue. The Conference earnestly hopes that such action will not be further delayed and assures the Council of the full co-operation of the Member States represented at this Conference in any measures that it may decide to take.

CHAIRMAN'S ADDRESS AT OPEN PLENARY SESSION
23 JANUARY 1949

Three days ago we met here to confer together about recent happenings in Indonesia. For these three days we have laboured and now we meet again in open session to conclude the work we had undertaken. It is perhaps not correct to say that this is the beginning. Yet we have completed one stage, and an important stage.

During our private session, after full consideration, we passed three resolutions and I have already, as your Chairman, communicated the principal resolution to the President of the Security Council at Lake Success. The other two resolutions are for us to act upon and they indicate the beginning of that close consultation and co-operation which, I hope, has come to stay among the nations represented at this conference. All these resolutions will be communicated to the participating governments for their approval.

Our meeting at this conference has been called an historic one and rightly so. May I, with all respect, congratulate all the delegates to this conference on the success they have achieved and on the way they have risen to the height of this great occasion. It is not difficult for each one of us to express our feelings or our opinions forcibly on any issues. But when representatives of many governments meet together, it is not easy for common agreements to be arrived at, for not only is there a variety of opinion but also each independent government is reluctant to commit itself to any particular course of action in the future. That is why international conferences, more especially on political issues, prolong themselves indefinitely and seldom lead to satisfactory conclusions. Yet all of us have succeeded in a short space of time in coming to an agreement on a vital issue affecting not only Indonesia but the future of peace in Asia and the world. That is an achievement which we can justly praise.

But the manner of our doing so seems to me even more important. Results and ends have importance and have to be achieved. But the means and manner we adopt are at least equally important.

I think it may be said that the most significant feature of this conference has been the friendly and co-operative approach of all those who attended it as delegates or as observers.

We worked together smoothly, efficiently and in a businesslike manner. We wanted to achieve something and not merely to talk about it, and we have laid the foundation of that achievement. Because of this approach of ours, I think that this conference may well serve as a model to others.

This could only be so because of the community of interest and outlook that all of us had on this vital question, and also because, I think, there is a still wider community of thought and interest amongst us. I am deeply grateful to all the delegates and observers and to the governments that sent them for their courtesy and co-operation.

There are a multitude of problems facing us and each one of us is interested more specially in some of them. The whole world is a question mark today. It was natural that, having met together, many of us should desire that we should discuss some other problems also. Yet it was a wise decision, I think, that in this conference we should concentrate on the issue for which this conference was called; it also demonstrates our businesslike approach to a particular problem. Success in co-operation in one matter leads inevitably to further co-operation in other fields.

We have passed our first resolution indicating what, in the opinion of this conference, should be done immediately and in the course of the next few weeks and months in Indonesia. This is a recommendation to the Security Council, and a recommendation coming from a large number of members of the United Nations must necessarily have great weight. This first resolution has been drafted by us with the greatest care and after full and prolonged deliberation. We have taken especial care to say something which is definitely practicable and feasible. It was easy for us to say much more and we would have been justified, in the circumstances, to say more, because injustice has been done and it is our right and duty to remedy that injustice fully. But we have considered this question in the larger context of the world and of the many forces that are in operation today and have recommended something which is eminently feasible. Anything less than we have said would fail to meet the requirements of the situation. I trust that the Security Council will appreciate our approach and realize the strength of feeling that lies behind it. Yet this is not a matter of emotion but of cold and calculated thought. For the issues before us are of the most far-reaching character and failure at this moment will bring disastrous consequences.

Our second resolution reminds us that we have to remain vigilant and to take counsel together on this issue whenever need arises, so that we might take joint action to achieve the ends in view. We have not met in this conference just to pass a few resolutions but to follow them to the end.

Our third resolution indicates that wider sphere of co-operation which is becoming more and more necessary for us. We have to explore that and devise such methods for consultation and co-operation within the framework of the United Nations as are to our common advantage and the advantage of the world.

I would repeat that we have not met here in hostility to any nation or group of nations, not even to the Netherlands, who have done injustice to Indonesia. We believe that even from the point of view of the Netherlands, it is urgently necessary and desirable that this injustice be rectified, or else other evil consequences will follow. For evil breeds evil and an evil action leads to evil consequences.

Europe and America have played a great part in world history and they will no doubt continue to play an important part. But it must be realized that Asia also wants to play her part and fully intends doing so. That part will be one of peace and co-operation. We have too much of division and conflict in this world already. Let none of us add to that division or that conflict.

I must thank you again and your governments and express the hope that this historic conference is a forerunner of a period of close co-operation between our respective countries. To that co-operation India will gladly devote herself and may I say that all of you or other representatives of your countries will always be welcome in India.

Text supplied by the Ministry of External Affairs, New Delhi.

SECTION VIII

TREATIES OF FRIENDSHIP

167 14 *August* 1948

DOMINION OF INDIA AND SWISS CONFEDERATION

His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominion beyond the Seas for and on behalf of the Dominion of India and the Swiss Federal Council being desirous of consolidating the bonds of peace and friendship, which have ever existed between the two States and of developing peaceful and friendly relations between them, have resolved to conclude this Treaty and have, for that purpose, appointed as their plenipotentiaries . . . (who) have agreed and signed the following articles:

Article 1

There shall be perpetual peace and unalterable friendship between the Dominion of India and Switzerland.

Article 2

Each of the contracting parties shall be able to appoint diplomatic representatives, Consuls-General, Consuls, Vice Consuls and Consular Agents, who shall reside in towns, ports and other places in each other's territory where the corresponding representatives of other countries reside or in such other places as may be agreed to.

Consuls-General, Consuls, Vice Consuls and Consular Agents shall be provided with exequaturs or other valid authorization of their appointment. Such exequatur or authorization is liable to be withdrawn by the country which issued it if considered necessary. The reasons for the withdrawal shall be indicated wherever possible.

The persons mentioned above shall enjoy on a reciprocal basis all the rights, privileges, exemption and immunities that are accorded to persons of corresponding status of any other State.

Article 3

The nationals of either of the contracting parties shall have in the territory of the other party, subject to the laws and rules in force in that territory, the right of establishing themselves and of residence, of going from and coming to and of moving freely within that territory.

Article 4

The nationals of each of the contracting parties residing in the territory of the other party shall be treated in all respects that concern the exercise of their trades and professions and the carrying on and development of their commercial or industrial enterprises and their lawful traffic and trade on a footing of equality with the nationals of the ' most favoured foreign nation ' provided they conform to the laws and rules in force. They shall not be liable to any charge import or tax of whatever nature other or greater than that which is demanded from the nationals of the ' most favoured foreign nation '.

Article 5

In no case shall either of the parties demand for its own nationals more extensive rights than it grants to persons of the other party similarly engaged in a trade or a profession or in the development of any commercial or industrial enterprise or lawful traffic and trade.

Article 6

The contracting parties undertake to extend to the nationals and goods of each other for everything concerning commercial travellers and the import, export and transit of goods, treatment on the same basis as that given to the ' most favoured foreign nation '.

The privileges which are at present extended or may be extended in future of facilitating the frontier traffic to neighbouring countries, as also such privileges as might arise from a Customs Union already in existence or to be concluded in future by either of the contracting parties are excluded.

Article 7

The contracting parties will, as soon as possible enter into negotiations for the conclusion of a more comprehensive Treaty or Treaties of Establishment and Commerce which will *inter alia* cover the matters referred to in Articles 3, 4, 5 and 6. Subject to the terms of such Treaty or Treaties, this Treaty with respect of Articles 3, 4, 5 and 6 shall remain in force for a period of six months after notification by either party to the other of its intention to terminate the operation of those articles.

Article 8

Any disputes arising out of the interpretation or application of this Treaty or one or more of its articles shall be settled in the first instance, by negotiations, and, if no settlement is reached within a period of six months from the commencement of negotiations, by arbitration

in such manner as may hereafter be determined by a general or special agreement between the contracting parties.

Article 9

The present Treaty shall be ratified and shall come into effect on the date of the exchange of ratification which shall take place as soon as possible in Berne.

In witness whereof, the Plenipotentiaries have signed the present Treaty in the English and French languages and have affixed thereto their seals.

Done in duplicate in New Delhi the fourteenth day of August in the year one thousand nine hundred and forty-eight.

Final Protocol

(1) For the purpose of this Treaty, the term, ' nationals of India ' includes the subjects of the Indian States which have acceded or may in future accede to the Dominion of India.

The provisions of this Treaty which secure in the Dominion of India ' most favoured foreign nation ' treatment to Swiss nationals and goods shall not apply to any special favours or preferences which the Dominion of India accords or may hereafter accord to the nationals or goods of the Republic nationals or goods of the Republic of Burma or of the Kingdom of Nepal.

(2) The ' most favoured foreign nation ' treatment under Article 6 shall not be deemed to be contravened by the import and export control necessitated by considerations of foreign exchange or other emergent considerations.

The present protocol shall be considered as approved and sanctioned by the contracting parties . . . by the sole fact of the ratification of the Treaty to which it appertains . . . .

Text supplied by the Ministry of External Affairs, New Delhi.

168 4 *January* 1950

GOVERNMENT OF INDIA AND ROYAL GOVERNMENT OF AFGHANISTAN

The Government of India and the Royal Government of Afghanistan recognizing the ancient ties which have existed between the two countries for centuries and their mutual need for co-operation in strengthening and developing these ties and urged by their mutual

desire to establish peace between the two countries with a view to the common benefit of their people and the development of their respective countries, wish to enter into a Treaty of Friendship with each other and to this end have appointed as their plenipotentiaries . . . (who) have agreed as follows:

Article 1

The two Governments recognize and respect the independence and rights of each other.

Article 2

There shall be everlasting peace and friendship between the two Governments who will further strive to maintain and strengthen the cordial relations existing between the people of their respective countries.

Article 3

(1) In order to establish and maintain the relations referred to in Article 2, the parties agree to continue diplomatic relations with each other by means of representatives with all such suitable staff as the representatives may require for the due performance of their functions and to such extent as may be mutually agreed on from time to time by the respective Governments.

(2) Such representatives and their agreed staff shall have such diplomatic privileges and immunities as are customarily granted by international law on a reciprocal basis:

Provided that in no case shall these be less than those granted to persons of a similar status of any other State having diplomatic relations with either Government.

Article 4

The two Governments agree to appoint Consuls-General, Consuls, Vice Consuls and Consular Agents, who shall reside in towns, ports and other places in each other's territory as may be agreed to.

Consuls-General, Consuls, Vice Consuls and Consular Agents shall be provided with exequaturs or other valid authorization of their appointment. Such exequatur or authorization is liable to be withdrawn by the country which issued it, if considered necessary. The reasons for the withdrawal shall be indicated wherever possible.

The persons mentioned above shall enjoy on a reciprocal basis all the rights, privileges, exemptions, and immunities that are accorded to persons of corresponding status of any other State.

Article 5

The two Governments agree that such trade agencies of either Government as already exist in the territories of the other shall be continued and others may be established in the future.

Article 6

The two Governments agree to strengthen and develop cultural ties between their respective countries and to assist in each other's industrial and agricultural progress.

Article 7

Any differences arising out of the interpretation or application of this Treaty shall be settled by negotiations through the ordinary diplomatic channels. If no settlement is arrived at within a reasonable time the matter shall be referred to arbitration in such manner as may be mutually agreed upon.

Article 8

The Treaty shall be subject to ratification and shall come into force from the date of the exchange of the instruments of ratification, which shall take place as soon as possible at New Delhi.

Article 9

This Treaty shall continue in force for five years after coming into force as provided in Article 8 and shall thereafter continue in force:

Provided that after the said period of five years either Government may give to the other not less than six months' notice of its intention to terminate the Treaty, and on the expiry of the period of such notice the Treaty shall cease to be in force.

In faith whereof, the said plenipotentiaries have signed the present Treaty in the English and Persian languages, both texts being equally authentic, and have affixed thereto their seals.

Done in duplicate in New Delhi on the fourth day of January 1950.

Text supplied by the Ministry of External Affairs, New Delhi.

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