BIRLA CENTRAL LIBRARY
PILANI (Rajasthan)

Class No:- 915.4

Book No: B421 I

Accession No. 46440

INDIA ANALYSED

EDITORS :

FREDA M. HOULSTON, St. Hugh's College, Oxford
B. P. L. BEDI, M.A. (Punjab), Hertford College, Oxford

It is the growing, and not the decaying forces of society which create the most disquieting problems.

GRAHAM WALLAS

INDIA ANALYSED

will be completed in four volumes, the remaining three of which will be ready shortly.

Some Particulars

Volume II ECONOMIC FACTS

Ch. I The Peasant: Prof. Brij Narain, M.A., *Professor of Economics, Sanatana Dharma College, Lahore.*
II The Labourer: B. Shiva Rao, *Labour Representative to the International Labour Conference, and Delegate to the Round Table Conference.*
III The Manufacturer: Dr. P. P. Pillai, Ph.D., *Director, International Labour Office, New Delhi.*
IV The Trader: Dr. Vera Anstey, D.Sc., *Lecturer in Commerce, London School of Economics.*
V The Potentialities of Industrial Development: Prof. V. G. Kale, *Professor of Economics, Fergusson College, Poona.*

Volume III ECONOMIC ISSUES

Ch. I Taxation and the Social Services: A. N. Maini, B.Comm. (London).
II Banking and Foreign Investment: Dr. B. Ramchandra Rau, Ph.D., *Lecturer in Economics, Calcutta University.*
III The Rupee and the £: Prof. Brij Narain, M.A., *Professor of Economics, Sanatana Dharma College, Lahore.*
IV The Boycott and the Ottawa Agreement: Prof. C. N. Vakil, *University Professor of Economics, Bombay.*
V Public Debt: Prof. K. T. Shah, *Professor of Economics, Bombay.*

Volume IV CONSTITUTIONAL

Ch. I The Growth of the Constitution
II The States and the Crown
III The Minority Problem
IV The Rule of Law?
V The Reality of the Round Table Conference

Among the contributors to this volume are: Prof. H. H. Dodwell, *Professor of History, London School of Oriental Studies, Joint Editor, "Cambridge History of India"*; Dr. Radhakumad Mookerji, *Reader in Indian History, Lucknow University*; A. Ranga Swami Iyengar, *Editor of "The Hindu," India*; F. W. Wilson, *Ex-Editor of "The Pioneer," India*; etc., etc.

INDIA ANALYSED

VOLUME I
INTERNATIONAL

BY

PROF. ALFRED ZIMMERN
Burton Professor of International Relations, Oxford

PROF. C. A. W. MANNING
Professor of International Relations, London School of Economics

DR. LANKA SUNDARAM
Director, Indian Institute of International Affairs, Bezwada, India

PROF. ARTHUR BERRIEDALE KEITH
Edinburgh University

C. W. JENKS
Legal Section, I.L.O., Geneva

LONDON
VICTOR GOLLANCZ LTD
14 Henrietta Street Covent Garden
1933

Printed in Great Britain by
The Camelot Press Ltd., London and Southampton

To

THE OXFORD UNIVERSITY GANDHI GROUP

IN WHOSE DISCUSSIONS THE NEED FOR
THIS SERIES WAS REALISED

F. M. H.
B. P. L. B.

EDITORS' PREFACE

The aim of the " India Analysed " series is to give in four volumes a picture of present-day India. The writers, English and Indian, who are best qualified to speak on the subject have been asked to contribute. The books do not seek to press any sectional point of view, but aim at producing a composite picture. Where the views expressed by the contributors differ from one another, it is left to the reader to appreciate the difference of opinion, to weigh the pros and cons as they are given to him, and to judge for himself.

We have attempted to provide an interesting and detailed account of the Indian situation to-day, and the forces that have gone to make it up, but an account that is neither too technical nor lacking in general interest. It is intended first and foremost for the man with an intelligent interest in Indian affairs who is not satisfied with the scrappy and often biased accounts he finds in the newspapers ; and secondly for the student who will only find such material by spending time he can ill afford among a pile of Indian journals. The series, in fact, attempts to give an integrated picture of India by bringing together the views of those Indians and Englishmen who can speak with authority.

In Volume I., International, the contributors have between them dealt objectively with the many facets of India's international life : her significance in the complex international situation to-day ; her

relationship with members of the British Empire ; her position as a member of the League ; her importance as one of the rich fields for the activity of the International Labour Office. One chapter in this volume has been devoted to an entirely original line of enquiry, i.e. the discussion of the provisions which must be made in the framework of the Indian Constitution, while it is yet in the process of being made, which may in the fullness of time enable India to enter into international obligations without constitutional friction. This volume might be called "India in perspective." No study of India has so far been attempted from the international point of view on the lines of this volume.

From the general we come to the particular : from the panorama to the objects in the landscape. Volume II., Economic Facts, is an attempt to depict actual conditions in India to-day. The contributors are, with one exception, Indian, as we have judged Indians themselves most competent to speak of the economics of their own country. We have tried to cover as many aspects of Indian economic life as possible in a short volume : the produce of agriculture and industry, the condition of the peasant and labourer, and the position of India in the world market. One chapter specially deals with the potentialities which India possesses for her future development.

Volume III., Economic Issues, deals with the economic problems which face India at present and will face her in the future : first, internal problems such as the burden of taxation in relation to the social services which exist in India, and the part

which foreign capital plays in the Indian capital market. In the second place, more than half of the volume is devoted to the study of the external issues between England and India, such as the public debt of India, the significance of the Ottawa agreements as contrasted with the forces of the boycott, and the effects of linking the rupee to the £ when England went off the gold standard. These are real problems which need careful study by those who intend to follow the course of Indo-British relationship.

The fourth and last volume (Volume IV, Constitutional) gives an analysis of the Indian constitutional situation. On its historical side, one chapter shows the reader the structure of the Indian constitution to-day, another the relationship of the States with the Crown, the third gives a statement and discussion of the Minorities problem. These chapters make the reader realise the immensity of the problem. The last two chapters show how the British Government has tried to meet the situation. The chapter on law and order describes how the Indian nationalist aspirations were dealt with by extra-constitutional methods. The chapter on the reality of the Round Table Conference shows how the firm hand was supplemented by consultation and efforts at constitutional advance.

We have edited this series in the belief that only by looking at the complexity of India from every side can a true idea of the immensity of the problem be achieved. If our efforts succeed in arousing both Indians and Englishmen to the gravity of the issues which are embittering the relationship of two

great peoples, and if this series helps them to have a better groundwork of knowledge with which to tackle the grim problems before them, the work would not have been undertaken in vain.

FREDA M. HOULSTON,

B. P. L. BEDI.

CONTENTS

Editors' Preface *page* 7

Chapter I. India and the World Situation 13
PROF. ALFRED ZIMMERN, Burton Professor of International Relations, Oxford

II. India and the League of Nations 30
PROF. C. A. W. MANNING, Professor of International Relations, London School of Economics

III. India and the International Labour Organisation 67
DR. LANKA SUNDARAM, Director, Indian Institute of International Affairs, Bezwada, India

IV. India in the Empire 91
PROF. ARTHUR BERRIEDALE KEITH, Edinburgh University

V. International Aspect of the Indian Constitution 125
C. W. JENKS, B.A. (CANTAB), Legal Section, I.L.O., Geneva

Bibliography 185

I. INDIA AND THE WORLD SITUATION

By PROF. A. ZIMMERN

Burton Professor of International Relations, Oxford

THE EMERGENCE of Federal India within the family of nations will be a considerable event in the field of international politics. It is true that India was admitted as an original member of the League of Nations—a striking example of that "intelligent anticipation" which has been described as one of the most valuable gifts of statesmanship. It is true also that, for some time to come at any rate, the new India will be under some limitations in the field of foreign policy. But the broad fact remains that, when the new constitution has come into being, India will stand before the world as an independent and self-respecting member of the international community. Whatever the mechanism for the transaction of her international relations, those who transact them will

be bound to follow the general direction of Indian public opinion. Indian foreign policy must inevitably be carried on according to Indian ideas. India will cease to be what she was, for instance, in the long diplomatic tussle between Britain and Russia in the nineteenth century, an object of foreign policy, a pawn—or something more valuable than a pawn—on the international chessboard. She will become a subject of policy, an independent agent, one of the participants in the never-ending process of mutual intercourse, interaction, and influence between the States of the world.

It would be premature at this stage to attempt to enumerate the special problems with which Indian opinion may be confronted, or to assess the particular interests of India in connection with them. In these days, when the foreground of international politics is subject to such rapid and bewildering changes, no useful purpose would be served by such an exercise in the art of prophecy. But it may perhaps be of value to draw attention to some general considerations arising out of India's international status : for it is India's attitude to these which will, in the last analysis, determine her public opinion and her detailed policy on the issues of every day. In international affairs, as in every other department of life, it is the underlying spirit which counts.

Federal India will start on her independent

career as one of the Dominions of the British Commonwealth of Nations. What does membership of the British Commonwealth mean to India, to the Commonwealth as a whole, and to the world?

No non-Indian has any claim to speak for India, except the "friendly right," in President Wilson's phrase, to try to view the international scene through Indian eyes. But a close student of international affairs has the right, and indeed the duty, to put forward an opinion formed many years since and confirmed more and more strongly by the movement of events.

India is the pivot of world politics in the coming generation. To put it more specifically, if India preserves her association with the British Commonwealth, and the Commonwealth, on its side, gives India the place in its system and in its counsels which is due to her, the prospects for world peace and general human progress will be immeasurably increased. If, on the other hand, the effort to establish an equal partnership between India and the other British Dominions should break down, the consequences would recoil, not simply on the parties immediately concerned, but on the whole human family. The stage would be set for an inter-racial conflict of incalculable dimensions.

The question of India's association with the British Commonwealth is generally considered

either from the standpoint of India or from the standpoint of Great Britain. Less frequently, the British Commonwealth as a whole is taken into account. But our present concern is with the problem from a still wider standpoint—that of the world as a whole.

The British Commonwealth numbers some 450 million inhabitants, or nearly a quarter of the population of the globe. Three-quarters of these belong to the future Dominion of India. Let these be cut away and the British Commonwealth would number little more than a hundred millions, of whom roughly sixty millions would be white and forty millions non-white. It would still be a far-flung political community, extending over all five continents. But it would be one amongst others, comparable with France, with her forty million "metropolitan" Frenchmen and her sixty million oversea Frenchmen, with Holland, with Portugal, with Belgium.

But figures only tell a part of the story. A rupture between India and the other members of the British system would not leave either India or the rest of the Commonwealth alone and without associates. Whither India would gravitate it is for Indians to say. No Englishman, least of all one who has never visited India, can venture to form a judgment as to the attraction that would be exercised upon Indian opinion, or this or that section of it, by

India's neighbours to the west and to the east —the Islamic world, the Soviet world, and the world of China and Japan. But an Englishman can predict with fair assurance that a predominantly white British Commonwealth would draw closer and closer to the United States, and that, in that process, the influence of Great Britain on the spirit and temper of policy would decline and that of the overseas English-speaking communities would be enhanced. In other words, there would be a tendency, probably an irresistible tendency, for the English-speaking peoples to come together, not indeed in an official alliance, but in a political and psychological *bloc*: and the driving force behind would, it is to be feared, be furnished by the colour question—that is to say, by the most irrational and therefore the most uncontrollable and the most mischievous type of political movement.

No greater disaster could befall the world than this. It would indeed strike at the very foundations of civilisation as we know it, as it has been built up, in the West and in the East, by the labours of generations of thinkers and practical statesmen since the earliest days of the science and art of politics. For it would mean that the most important alignment in world politics would be constituted upon a basis of physical difference—that is, upon a basis which is not, strictly speaking, political

at all, or applicable to a society of human beings. It would be a reversion to the groupings of the animal kingdom, in which purely external markings, such as pigmentation, take the place of the personal and social characteristics which are the expression of the mind and soul of man. Between groups aligned upon such a basis there would be no real possibility of co-operation. They would confront one another like packs of animals, watching for an opportunity to seize any available spoils. They might, indeed, remain quiet for a time within their respective cages. But sooner or later the barriers in the menagerie would break down : for it would be a menagerie without keepers, the custodians of human values having themselves surrendered to the spirit of the herd. The ensuing struggle would be at once the most savage and the most foolish conflict in history. It would let loose the vilest passions and it would settle nothing : for no political issue capable of being set down in a peace treaty or other agreement would be at stake. The number of cats and dogs would be diminished, but the bestial hatreds would remain—unless, indeed, it were intended to follow out the biological process to its uttermost limit up to the point of the complete extinction of the "less fit."

The reader may perhaps object at this point that the picture has been overdrawn, that, even

if political groupings should be formed upon racial lines, there would always be room for compromise on particular questions as they came up, and that there should be no need to fear anything so disastrous or so senseless as a large-scale inter-racial conflict.

Such an objection may appear well founded in the world as we know it to-day, where, despite the shocks of the last generation, political standards and values, enshrined by custom, still seem firmly established in men's minds—at least within the borders of the British Commonwealth. But we need to remember that what is transmitted by custom must be constantly revivified, if it is to survive as a reality. It is not by formulæ and incantations, but by the vigilant application of principles to current issues that the ideals of justice and freedom, for which the British Commonwealth stands, can be preserved. With the weight of India withdrawn from the balances, the principle of racial equality, traditional in the policy of Great Britain, would be exposed to attack, first in small things and then in greater, until by imperceptible degrees the bulwarks of civilisation were completely withdrawn.

The British Commonwealth as we know it is not perfect. Nevertheless, it is the best working model in the world, the best that history can yet record, of large-scale political co-operation between peoples of the most diverse

origin and culture. It was not, indeed, founded upon that basis. It represents the superimposition of a more enlightened ideal upon the product of maritime adventure, commercial enterprise, and military conquest. The task of transforming the seventeenth- and eighteenth-century empire into a realm not undeserving of the title of Commonwealth was not achieved in a day. But it could be destroyed in a day. What must be borne in mind by those who will be responsible for India's international relations is that the choice is not as to whether India shall remain associated or not with the Commonwealth as it now is, but as to whether the Commonwealth itself shall continue as an agency, however imperfect as yet, for equal co-operation between one quarter of the human race for the management of its common affairs.

In a truncated Commonwealth the apostles of racialism, hitherto held at bay by the traditions of British statesmanship and the engrained tolerance and good sense of the people, would raise their voices with renewed vehemence. And, in the world as it now is, they would find only too many examples to stimulate their propaganda.

For racialism, it must be remembered, is not an isolated phenomenon, an aberration peculiar to certain peoples confronted with Asiatic problems. It is the expression of a political philosophy, or pseudo-philosophy, which is

very prevalent in the world at the present time, which, indeed, but for the existence of the British Commonwealth, might by now have become the predominant doctrine in world politics. The grouping of political communities according to race is only the last and most logical extension of the principle of grouping according to religion and nationality which has been the most potent cause of war in Europe during the last four centuries.

What is a State? This is the central question which dominates international relations in the present age. Upon its right answer depends, not simply the issue between peace and war, but the survival of civilisation in the modern industrialised world. Two philosophies are in conflict, each of which touches deep chords in human nature. Upon India's answer, and the practical decision arising out of it, will depend which way the great debate will incline.

Is a State a grouping of human beings with distinctive characteristics, whether of mind or body? Or is it a grouping of human beings within a given territory in virtue of their human quality, irrespective of their idiosyncrasy? Is it a grouping of like with like? Or is it a grouping of like with non-like? That is the great issue, reduced to its barest terms. And, once it is so stated, it is obvious that a truncated and predominantly white British Commonwealth would be a State in which the first

outlook would tend to prevail, whilst a Commonwealth in which India was an equal partner would be a powerful and convincing expression of the second.

The significance of the question at issue can perhaps be brought out more clearly if it is restated in a different way. Is a State a territory in which men are living under a common law? Or is it a territory in which power is vested in a particular sovereign? It is the very nature of law to be no respecter of persons. Whatever view may be held of the origin of law, or of its "naturalness," of its relation to the moral universe and to the cosmos, even those who see in it no more than a crystallisation of social rules and customary decisions will readily admit that it has no concern with personal characteristics. The law is the same for the red head and the bald head, for the grey eye and the brown, for the stout and the slender. Whether all men are equal in their spiritual make-up it is not for the law to say. All that it knows is that all men are equal *in its own eyes*. It is concerned only with men as human beings in society, as civil persons: and, unless and until they transgress its rules and thus become subject to its penalties, they are all alike. Their dissimilarities are part of the freedom which it is the task of the law to render possible. Their similarity, that which binds them together, is their respect for

that law. The essence of Statehood, on this view, is *law-abidingness*, a common obedience to an impersonal authority, which is all the more respected because it asks for respect and nothing more—because it neither seeks nor cares for the passionate response which men reserve for those who have stirred the depths of their spiritual being.

A State established on this principle, a State which is a realm of law, may be astir with great teachings and noble movements : its young men may see visions and its old men may dream dreams. But its teachers and prophets will be in the pulpit and in the market-place, in the porch and in the grove. They will not be on the bench. Justice will sit unmoved, holding the scales even in her hands, whilst, under her protection, men and women labour to convert splendid ideas into enduring realities.

"Justice is the foundation of kingdoms." It is for the lords of the spirit to build on the firm basis that she provides. That is the meaning of that wisest of all political maxims uttered by the founder of Christianity : "Render unto Cæsar the things that are Cæsar's ; and unto God the things that are God's." And that surely is also the message of the great thinkers and teachers and saints of India from the earliest days, with their insistence on single-minded concentration upon the realm of the spirit and on the reality of the Unseen behind the tumult

of this world's affairs. Here, despite the differences of emphasis and diversities of temper which have kept lesser minds apart, Britain and India meet, on the deeper level, in a common philosophy of politics.

Let us glance briefly at the opposing philosophy, the full implications of which are not always understood either in Britain or in India. The State, it holds, is not the expression of law but of power. A given State is a territory under the control or, more strictly, in the possession of a particular sovereign. How he acquired this position of dominance we need not stop to ask : differing philosophies of sovereignty supply differing explanations, in which ingenious formulæ, such as a divine commission or some form of social contract, are devised to provide a show, not of law, but of legalism for a brutal reality. But, once in power, whether by the grace of God or by the surrender of the people, the sovereign is supreme. He is *rex legibus solutus*, a monarch freed from the restraint of law. He is not the servant of law, but the master and maker of law : or rather law, as an application of abiding principles to particular circumstances of time and place, has no place in his scheme ; for it is only by accident, if at all, that the arbitrary will of a sovereign can give expression to the ideals of justice and freedom.

Such was the state of political thinking, such the furniture of ordinary minds, when the idea

of democracy began to make way in the Western world. Common men, suffering beneath the rule of privilege and conscious of the force that could be exerted by organising the mass, stretched out their hands to grasp the sceptre of sovereignty. In North America and in France at the end of the eighteenth century, and far and wide in Europe and in the overseas world in the nineteenth, the sovereign monarch gave place to the sovereign people. His power, his glory, and his so-called "rights" were taken from him and divided into thousands and millions of fractions distributed amongst the uncrowned sovereigns of the mass.

The process through which this vast change took place is often described as a movement of nationality: some historians even write of the "rise of nationality," as though there had been no Frenchmen before 1789 and no Italians before Mazzini. In reality, nationality, in the sense of the common consciousness of a national group, was associated with it in varying degrees in different regions, the psychology of the New World being, for instance, in this respect quite different from that of the Old. Thus the Declaration of the Rights of Man and the Declaration of American Independence are two documents revealing an identical political inspiration; but French nationality could at that time look back over many centuries of life and activity, whilst American

nationality was still an aspiration of the future. The true description of the movement, which marks both its substance and its limits, is *the assertion of popular sovereignty*. The people succeeded to the powers of the individual sovereign. Democracy assumed the place, the attributes, and, of necessity also, the claims of monarchy. The people, through its representatives, whether by election or by plebiscite, direct or indirect, became the master and maker of law.

But who is this new sovereign when we look at him more closely ? What is " the people " ? How is it constituted ? Since there is no question of a single sovereignty over the whole world, or the whole civilised world, there are of necessity many sovereigns. How are their realms delimited ? Who draws the lines between them ? What constitutes a sovereign territory ? What is the distinguishing mark of this new popular sovereignty ?

It is here that we encounter the difficulty caused by the disappearance of the conception of law and of the political values associated with it. In the absence of political landmarks, the sovereign people can do no more than look within its own breast. The boundaries of its dominion are determined by its own will, by its own arbitrary, self-regarding view of the world and its " rights." The French sovereign determines the frontiers of France, the Italian

the frontiers of Italy, the German the frontiers of Germany. In each case, the voice of the people is the voice, not of God, but of what is conceived to be "national right." Self-determination, the right of each sovereign people to determine the limits of its dominion, becomes the political formula of each democracy in relation to its neighbours—indeed, far more than a formula, the expression of the collective emotion which has by this time been enlisted into the movement of popular sovereignty. Is it surprising, then, that national self-determination should have proved a cause of international discord or that the movement of popular sovereignty should have ushered in a period of warfare, not only over the regions where this false philosophy is prevalent, but over the many other parts of the world where the intellectual influence and material interests of these sovereigns extend?

Will the movement of popular sovereignty win the assent of the Indian people? Will the thinkers and statesmen of India couch their aspirations for justice and freedom in the phrases of a philosophy which, in seeking to cast off one form of tyranny, falls under the domination of another? Will Federal India be a citadel of power or a realm of law? On the decision between these two conceptions depends, not only the nature of India's external relations, but the quality of her own inner

political life. For India is not a home of one "people," in the Western sense, but of many: and, if the relations between these "peoples," these self-conscious social groups, find their expression through the philosophy of power, it is hard to see how, in the ensuing conflict of rights, endless and sterile conflicts can be avoided. There have already been hints of such a development in the introduction into Indian politics of ideas and devices borrowed from the arena of Continental Europe. Such expedients may be unavoidable at this particular juncture; but they need to be watched with the utmost care lest they spread a contagion in men's minds. It is not a question of establishing a "national State" on the European model, either within or without the British Commonwealth. The attempt to form homogeneous national States, based upon a common culture and the association of like with like, has been sufficiently difficult, and indeed disastrous, in Europe. It is surely not worth while attempting what could only be a caricature of such a system in India. The only practicable road is towards the alternative goal—towards an India which shall be a realm of common law for all those who dwell within her borders, enabling them, each and all, in the diversity of social circumstance, to live the life of their choice.

Such an India would be national in the

deepest sense, for it would embody the ideals of India's own thinkers and teachers. It would excite the pride and loyalty of all her citizens. But it would do more than that. It would stand as an example, a shining and, it must be added, a shaming example to other political communities where, in the name of the rights of the people, prejudice and discrimination still stir bitterness in men's hearts and delay the realisation of justice and freedom.

2. INDIA AND THE LEAGUE OF NATIONS

By PROF. C. A. W. MANNING

> *... Of all the States-members of the League of Nations, India is the one whose Government probably finds it the most difficult to justify the contribution which it makes. That contribution ... is higher than that of any of the States-members of the League which do not sit permanently on the Council, while the proportion of the work of the League which can be truly described as of special value or interest to India is far from corresponding to India's contribution to the expenses of the League. ...*
>
> *I must remind the members of this Assembly that the question is often being asked in India whether membership of the League is really worth the price.*
>
> THE EARL OF LYTTON (India),
> addressing the League Assembly, 1928

GOODWILL is a poor substitute for specialised knowledge. While not hoping to transfer to the importunate editors the responsibility for a promise which has proved easier to give than to fulfil, the writer feels bound to declare plainly that this chapter contains nothing more authoritative than some impressions collected, by one who has seen nothing of India, mainly from a most cursory survey of part of the published material on a subject which deserved, by its intrinsic importance, a more scholarly, not to say leisurely, treatment.

A diplomat would possibly open with a reference to the immemorial ties by which his own country was indissolubly linked in affection and friendship with India. A mere politician might produce from his heart a long-cherished yearning to visit, and, peradventure, to understand, that wonderful sub-continent. The writer is neither of these.

There once was—or there probably was—a professor who, being asked the time, answered, "Tell me, little boy, what do we mean by time?" Sceptics may ask whether India exists —otherwise than as a geographical expression. What, indeed, *is* India? What is France? What is Germany? What is the League? Evidence may be adduced of a growing national consciousness in India to-day; but the "India" which belongs to the League is the "India" which appeared in 1919 at the Peace Conference, and in 1917 at the Imperial War Conference. In so far as such "India" exists to-day, it existed then. In the theory, and for the purposes, of the League constitution, a unitary "India," embracing all that we see on the map, the Indian States included, is, and has from the first been, *deemed* to exist, not less fully than have its fellow members, France, for instance, or the British Empire. On this peculiar plane the question of national consciousness is neither here nor there. India was among the "original members"; and the Covenant's

phrases, "*se gouverne librement*" and "fully self-governing," whatever they may mean, apply technically to future applicants only and not to those who got in on the ground floor.

The reason India as a *whole* was represented at the Imperial War Conference was because, along with the Dominions, that country had been an important source of voluntary man- and money-power to the Allied cause. When, as attesting India's aptitude for service in Geneva, allusion is fittingly made to the pacificism declared to be widespread among her peoples, there is pathos in the reflection that, historically, her membership is an outcome of the martial spirit manifested among certain of her minorities.

"Very early in the meetings of the [League of Nations] Commission [in 1919]," says Mr. Hunter Miller, "it had been agreed that India should be a member of the League. Mr. Wilson had acquiesced and no one else seemed to care." Over the coming of the Dominions to Paris the French, after a struggle, had given way. Once the portals of Versailles, and hence of Geneva, had been opened to these ill-classified British hangers-on, what was one more among so many? Continental metaphysics will hardly in those days have been capable of arguing from the doubtfully intelligible distinction between Dominion status proper and the then position of India.

"No one by any stretch of imagination," says Mr. Hunter Miller, could say that India, like Canada, was "in all essentials" a self-governing country. "The answer," he adds, is that "India contains three hundred million people, and to say that those people should have no representatives of their own in the League of Nations would be carrying the logic of governmental representation very far." One may doubt, however, if the point was really approached in this manner. As between India and other non-self-governing parts of the Empire, the numerical test would have furnished no more than a difference of degree.

So much for history. Mr. Miller summed up India's membership as "an anomaly among anomalies." In a volume devoted to "analysis," we have now to examine in what the anomaly consists—and in what way it works.

Being aware that at present India is not a self-governing Dominion, still less an independent sovereign State, and being aware that the Secretary of State, a member of the British Cabinet, is technically the superior of the Governor-General in Council, a student may reasonably begin with the question : What in substance does India's "separate" membership mean except a second vote at the disposition of England ? Quotations can certainly be so selected as to support the simple answer :

"It is obvious that India, under her present constitution, cannot have a separate foreign policy of her own"—thus the India Office memorandum to the Simon Commission. In 1924 the Indian delegates remarked that in the discussions on the Geneva Protocol their part had "necessarily" been one of "subordinate" co-operation with the British Empire. And yet in 1921 we read that "the absolute independence of India"—at least in certain respects—"was fully recognised" at the Assembly; and, in 1929, the delegation refer to certain incidents as showing "the reality of India's independence as a member of the League." Are these ideas as difficult to reconcile as superficially they seem?

From a purely formal standpoint, a vote cast in the Geneva Assembly is simply that of a delegation—but it is assumed in some sense to reflect the attitude of the country represented. Each Government, through the person for the time being holding some appropriate office, appoints its delegates and, with respect to voting, gives them such instructions as it thinks fit. In India's case the competent officer is the Secretary of State, who, with the Cabinet as a whole, is, through Parliament, responsible to the British electorate. From a purely formal standpoint, therefore, it might indeed be supposed that the Indian vote was inevitably the expression of English views. Nevertheless, this

is not the whole story. Students of Indian affairs are familiar with what is termed "the fiscal autonomy convention," a principle of governmental practice whereby India's fiscal policy is related to the wishes of the Indian legislature. If, even in fiscal matters, the Secretary of State is responsible to the English public, we must notice also what it is that he is responsible FOR: and in fiscal matters his substantial responsibility is for giving effect to Indian wishes.

Voting in Geneva concerns a diversity of matters, and whether in regard to these there can or cannot be said to exist a "convention," there is undoubtedly an established practice. On some matters, but only on some, the British and Indian Governments are two minds with but a single thought—and that thought ultimately British. On such matters it may be said that, if an Indian delegate speaks, the voice is the voice of India, but the views are the views of London.

What, then, are these special matters? According to the India Office statement—and a reasonably thorough enquiry has merely confirmed it—such matters are limited to those affecting the interests of the Empire as a whole, including India. That was clearly the case with the Geneva Protocol, on which her delegates described their co-operation as "necessarily" subordinate. The sentimental inconvenience of

having perforce to " keep step " with " the mother country " is obviously not for an outsider to appraise ; but the matters in question at any rate appear to be such that in practice it is difficult to see how the system can cause any other sort of important inconvenience.

Meanwhile, on the great majority of questions—including all on which India would normally seem likely to have a special point of view—the Indian Government's responsibility is FOR giving expression through its delegates to specifically Indian, not to British, ideas.

That two Governments, constitutionally so related, can genuinely have two different standpoints may seem less strange if we reflect that this is perfectly possible even between separate departments of one and the same Government. Does a spending department in England always see eye to eye with the Treasury ? Yet, are not both of them merely instruments to execute the wishes of the same British public ?

The practical position seems well enough put by the 1927 Delegation : " The Indian Delegation is not constitutionally in the same position as those of the Dominions, but . . . in our view the actual liberty of the Indian Delegation to follow an independent policy corresponds to the liberty which the Indian Delegation would in fact exercise if the constitutional status of India within the Empire were different." For, in their belief, the obligation to make the

action of the Indian Delegation conform to that of the British Delegation was practically confined to those questions on which the Empire Delegations must of necessity, and in fact did, act together. These last words went perhaps a little too far, but it seems true that " those departments of the work of the League in which India has the greatest practical interest are scarcely, if at all, influenced by political and constitutional relations" and thus that " Indian policy is determined on independent lines in those matters in which India really possesses an independent interest." The 1928 Delegation declared that their experience on this point confirmed the views of their predecessors of 1927. At meetings of British Empire Delegates they " were always accorded treatment on a basis of practical equality and were entirely satisfied with the consideration" which was given to any views expressed by them.

In 1929, it is true, Mr. Ramsay MacDonald, as first British delegate, drew, we are told, " no distinction between India and the Dominions in speaking of the importance of voluntary and independent collaboration" ; but, as the constitutional position had not in the interval changed, one would hardly be wise to draw any novel deductions from this. Whereas, on big world issues, Canada and England do indeed

tend to behave like partners, India and England, on such issues, are a firm in which, while the partners regularly consult together, the man on the spot—and England is decidedly nearer to the spot in world affairs—has, so to say, a casting vote—and can in that sense be said to " run the show." The Secretary of State, though able to press the ideas of India in the Cabinet, is obliged on these imperial issues to bring the policy of the Indian Government into harmony with that of London—and to instruct India's delegates accordingly. On all other matters it seems that in settling their instructions he is in effect but a vehicle for the views of the Governor-General in Council. And the obvious business of Delhi, in this almost unlimited field, is simply to consider the interests of the peoples of India.

And have those peoples themselves no say? The Governor-General in Council, though an outsider cannot know with what certainty they are able to sense the true feelings of " India," are at least expected to try. On money questions, including tariffs and such projects as the Convention on Financial Assistance, the mind of the legislature can be ascertained: this was why Lord Lytton in 1927 refused to pronounce prematurely India's judgment on the resolutions of the World Economic Conference. The Indian delegates, moreover, have mostly, and since 1929 exclusively, been Indians born,

and presumably competent, where instructions left them liberty, to voice the ideas of their countrymen. It was natural and proper, for instance, that Dr. Hyder, in 1931, should have prefaced certain of his remarks by saying he would speak, not as a delegate representing a Government, but as a representative of the people to whom he belonged. The woman member of the British Delegation may hold forth in any of at least four capacities : as an individual, as a specimen of English womanhood, as an exponent of British public feeling, and as a delegate of her Government. Without intended disrespect to anyone it may be observed that an Indian prince may show a comparable versatility.

Meanwhile, we may endorse some further words of the 1927 Delegation. " It would, in our view," they wrote, " be a matter of great regret if the opportunities offered to India by the League towards the development of her status among the nations of the world were imperfectly realised through ignorance or misunderstanding of the facts. For this reason, and because representation needs to be based upon an informed and enlightened public opinion, we feel that great importance should be attached to publicity."

There, then, is our picture : two distinct Governments, concerned for the most part with two distinct sets of interests and for the most

part behaving just as if they were entirely independent of each other, yet having, on what are known as "matters of high policy," only a single attitude, in regard to which the Indian Government has, indeed, a voice, but not a determining voice.

One potential, if not actual, disadvantage in this relationship must in fairness be noted. There sometimes—though, happily for the Dominions and India, not very often—occurs a change of attitude in England. Every member of the League is liable to indulge now and then in a change of attitude, the sequel, as a rule, to a change of Government. While India never in the more familiar sense has a change of Government, she in a certain sense does have a change whenever Britain has one. In the Empire family it is not universally the rule that "when Father says 'Turn,' we all turn"; but, as has been seen, there are matters upon which India, under her present constitution, is bound to turn with Father. As it is, however, all the world can see to what matters this constitutional necessity applies, and seems to appreciate the reason. So on the rare occasions when, without changing the personnel of her Government at the Delhi end, India announces a change of attitude, nobody shows surprise. As yet the only important instance has been that of the "General Act." When, in 1928, the Indian Delegation, like the British, forbore to

move any amendments, this was upon the openly asserted ground that, whether amended or not, the instrument was unlikely to win the approval of " the authorities at home." A change of Government having thereafter taken place in England, both Britain and India eventually executed a volte-face. Though some may regret this position, it is as well to realise that at least in official circles abroad it seems to have passed without comment.

A more radical reason, however, why it is confusing to talk of " India's " absolute independence, even " as a member of the League," is that as between members of the League the question of their independence is technically not in point. The League deals with its members only through their Governments and governmental representatives. It is not concerned to know whether the various Governments, in arriving at their respective policies, are mutually independent or not. Those who have spoken of " absolute independence " have probably had in mind the position, not of the Indian Government, but of the Indian Delegation, in relation to the British. Neither, it seems, takes instructions from the other. Yet neither the Indian Delegation nor, in point of fact, the British, is independent—of instructions; for each is instructed by its Government. Each in this respect is in a similar, if not in the same, boat. It

follows that, in the Geneva forms and practice, no difference need be made between the delegations of India and of any other country. All alike are, not independent delegations, but just—delegations. The position of India in this sense is indistinguishable from that of Canada, and equally from those of Spain and Poland. Suppose she became to-morrow an independent sovereign State like France or Liberia or Sweden or Siam—what difference for formal purposes would it make to her "independence as a member of the League"? None that I can see. What difference would it make to the "freedom" of her delegates in Geneva? None that I can think of.

That her delegates are free enough, in all conscience, will have become particularly evident to the other "Empire" Delegations in early debates on the division of the League's expenses. In this connection, Sir Rennell Rodd and Mr. Stanley Bruce, in 1921, were none too lightly handled. Then, in 1922, poor South Africa was obliged to listen to certain remarks on mandates, which, if irritating, were entirely in order, and some still more troublesome observations on minorities, which, if not entirely in order, were too witty to be irritating. And, next year, it was Italy's turn. None who heard it will ever forget that speech delivered by the late H.H. the Jam Sahib of Nawanagar, after the Corfu incident.

During the first nine years this "free"

Delegation of India was invariably headed by a non-Indian. The change-over came when, in 1929, Sir Muhammad Habibullah, an Indian official, was first delegate. Since then H.H. the Maharajah of Bikaner, Sir B. L. Mitter and H.H. the Aga Khan have in succession filled the place. The change will doubtless have commended itself to their countrymen.

It should not, however, be supposed that India had been unique in her use of "foreign" talent. South Africa in the early years had employed Lord Robert Cecil and Professor Gilbert Murray; and New Zealand, Sir Arthur Steel-Maitland. Nor was India unworthily served. Two former Viceroys—as well as the Viceroy of to-day—were among her representatives. It is incidentally of interest, in view of his later prominence in another context, that it was for India that Lord Lytton made his début at Geneva.

Each year the Indian delegates have included one of the ruling princes. Technically he has come simply as a member of the All-India Delegation—not, that is, as a representative of his own State, or of the States collectively. It is said that the princes have not always themselves been very clear on this point. One does not know what happens in regard to Their Highnesses' expenses; but, anyhow, it seems to be the Central Government that foots the bill for India's annual contribution.

At the 1931 Assembly the Indian Delegation, according to their own statement, "found many outlets for their activity." This should not be understood as betraying that, in the eyes of these Indians, activity appeared attractive as an end in itself. The famous Assembly delegate who, knowing nothing of the subject he was being asked to take up, beyond that it was one on which a predecessor had "played a prominent part," replied promptly, "Oh, yes ; I'd like to play a prominent part," was not a representative of India.

However, though never seeking the limelight for its own sake, Indian delegates have almost always found plenty to do. In addition to factors already discussed, three distinct sets of preoccupations can be perceived to have governed their conduct. Firstly, and very properly, the special interests of India : it was their duty to ensure that she should be both righteously treated and justly understood. Secondly, the collective interests of the Asiatic, or, in general, the overseas members of the League. And, thirdly, the interests of all members as such, in a word, of the League itself.

In 1920, for example, there were signs of a possible movement with regard to poppy-cultivation, which it was felt might affect unfairly the position of India. There was an attempt, subtle, though not quite subtle

enough, to commit the Assembly, on raw materials, to views which India could not at that moment endorse. At that stage no Indian at all was as yet on the staff of either the League Secretariat or the International Labour Office. For the purpose of representation on the International Labour Office's Governing Body, she had not at that time been recognised as one of " the eight States of chief industrial importance " ; yet, for the purpose of contributing to the costs of Geneva, she was unreservedly classed among countries the most important of all ! As an Asiatic member she welcomed a Chinese suggestion for reserving one of the non-permanent Council seats for countries not in Europe or America. Finally, in constituting the Advisory Committees of the Health and Transit Organisations, some risk was apparent of undue preponderance being accorded to European member-States.

To all these matters, Sir William Meyer and his colleagues effectively gave their attention. Their most important work, however, in their own declared opinion, was done in the service of the League's own general interests, in the sense of influencing the principles on which the central organisation was to stand—such, for instance, as the principles of sound financial administration and control. Indeed, there can hardly have been a year when India's delegates did more than in 1920.

Human unfairness, in thought as in deed, is probably at least as often the fruit of misunderstanding as of ill will. If foreign opinion has not always done full justice to India, her delegates in discussing that failure have at all times been only too willing to ascribe it to ignorance. Never have they been weary in that form of well-doing which consists in apprising an unimaginative Western world of the special considerations affecting Eastern countries, and more particularly their own. Lord Lytton and other speakers have dwelt on the strategic circumstances of the North-West Frontier in their bearing on India's military needs. Constitutional details in regard to the " transferred " subjects, and to the status of the Indian States, have when necessary been given all appropriate emphasis. The facts of India's immemorial civilisation and cultural seniority have often been brought to the notice of the " authorities " of the Intellectual Co-operation Organisation. Reminders of the place of India's agricultural millions in the world's total economic life have not been withheld. And, when child welfare and other " social " questions have come up for discussion, the dangers have been shown of " planning everything on Western models," of seeking uniformity of practice in spheres where diversity of custom and religious tradition made advisable a more realistic approach. Nor has Geneva been

left in ignorance of recent remarkable progress. One speaker—an Indian prince—in connection with India's "share" in "the work of the League," went so far as to specify that, in his particular State, children were by law forbidden to smoke (not opium-smoking merely: just smoking). An inexperienced reader may wonder if, in giving the Assembly such homely particulars, India's delegates will not sometimes have exceeded the limits of what was relevant to the matters in hand. But a certain modicum of amiable discursiveness is fairly common form in Geneva speeches; and India's contributions have not been reluctantly heard. The Delegation, however, while returning thanks for the patience shown in such cases, have avoided demanding too much of their audience. Wistfully one speaker expressed the hope that the import of his facts would be appreciated—"at least by those" of his hearers who were "acquainted with the East." Finally, in accordance here too with what is common form in Geneva, the task has at all times been blandly confronted of verbalising the notions and emotions of those abstractions conventionally labelled[1] "India" and "the Indian."

For further examples of vigilant and vigorous service to India, reference may be made to Sir William Meyer's struggle for a reduction of India's share in the League's expenses; or to

[1] As, for instance, throughout the present chapter.

his successful demand for an assurance that, should there ever be a decision to publish the *Monthly Summary* in Chinese or Japanese, it should equally apply to some Indian tongue, such, for instance, as Urdu ; or, very far from trivial, the firm reservation entered by Sir William Vincent against the proposed use in the 1926 Slavery Convention of a phrase whose effect, however unintended, might have been to place Indian ships in a category different from, and inferior to, those, say, of Britain or France. In defending India's interests these Englishmen showed themselves, if anything, more Indian than the Indians. Their zeal and tenacity were sometimes such as, in an Indian born, might almost have bordered on the unbecoming.

As it would plainly not be possible, within the limits of this chapter, to follow the detailed doings of India's delegates through every varied phase of Geneva activity, no more will here be attempted than a brief glance at some of the subjects on which India's views have been heard with particular frequency and especial effect. Foremost among these are world economics, drugs, health, intellectual co-operation, and, not least important, the League's own organisation and finance.

In opium and connected questions, India is interested for more reasons than one. Most obvious, of course, is the fact that she herself is

"one of the principal sufferers" from the "scandalous traffic" in drugs. If mankind is ever at last to get the drug situation under real control, it will be by skilfully concerted measures on a virtually universal scale; and, were international machinery wanted for no other reason, some such means as the League provides would have to be created to this end. India's concern in what may yet prove a long and difficult matter is as direct as that of any country in the world. Had all Governments from the first set their hands to the common enterprise in the willing, even altruistic, spirit displayed on behalf of India, the outlook would be brighter than it is. In these matters, India claims to have gone far beyond the simple fulfilment of obligations solemnly assumed. The figure given as representing the fiscal sacrifice involved in her reduction of opium exports is as high as £72 millions, covering a period of eighteen years. The attendant loss to Indian cultivators will have been very much more.

From time to time, India has pleaded that certain other countries should in return give at least their full effect to the conventions already in force. On this point, Lord Lytton, in 1927, and Sir Venkata Reddi, in 1928, were particularly explicit.

The matter has yet a further side. Granted that all who take part in public debates be

perfectly honest, not everyone even in Geneva knows fully the relevant facts. India has her fair name to consider. Her representation by such spokesmen as Mr. Sastri and the Jam Sahib of Nawanagar, advised by such an expert as Mr. (now Sir) John Campbell, must in the early days have averted many an unwarrantable judgment. How many of the " ladies and gentlemen who stay at home and merely make public opinion " would have supposed that, for millions of the Indian people, opium eaten (not smoked) in moderate quantities was no poison, but " a solace, a sedative, a household remedy " ?

" India," wrote the delegates in 1922, " was on this occasion free from ill-informed attack and can apparently now enjoy the position which she deserves as a loyal and scrupulous observer in the letter and the spirit of the provisions of the Hague Convention." So much for drugs.

Like a policeman at a crossing, the League has its eye on more than one stream of traffic at a time. While its right hand is enjoining the illicit drug traffic to stop, its left hand is insistently signalling to almost every other kind of traffic to move on. In 1933 this latter facet of its work gains in urgency every day.

Let us trust that the past years of often apparently fruitless discussion may prove in the end to have not been altogether wasted. Talk

has its results, be they only of the negative kind. When new and often plausible proposals are constantly taking shape, it is well that they be set out on a table, their insufficiencies exposed, their merits, if any, acclaimed. India, in Geneva, has taken an appreciable part, both as critic and as dealer in constructive ideas. In 1925, the first World Economic Conference being at that time but a project, an Indian speaker, Khan Bahadur Shaikh Abdul Qadir suggested—too diffidently, alas—that the disparity between manufacturers' and agricultural prices was a portent deserving of study. In 1931, Sir J. C. Coyajee politely surmised that " it would have been better policy " for the conference " to have concentrated rather on the advancement of co-operation than upon a direct attack upon the tariffs." He submitted that the best way to lower tariffs was by organising consumers in each country on co-operative lines. " Once the consumers are organised . . . they will bring their pressure to bear on their Governments to lower their tariffs." Not that this was a particularly seductive argument to have offered to the Governments themselves !

Proposals on which the Indian Delegation, with the backing of representatives of other extra-European countries, felt justified in throwing cold water included the " Warsaw " scheme, in 1930, for Continental preferences

on European cereals, and an ambitious project, in 1931, for an International Agricultural Mortgage Credit Company. " As regards preferential projects," observed Sir J. C. Coyajee, " . . . if such a policy is carried out within the framework of the League it would tend to break up the economic solidarity of that body." And so said all the Dominions. " The important matter from the Indian point of view," wrote the delegates in 1931, " was that, for the first five years, the scheme is confined to European countries, and that provision for the entry of non-European countries after that period is subject to such conditions as the Council may impose." This, after all, is a world crisis, in which Asia is permitted to share : well for Asia that there are voices to make this known with the necessary combination of tact and technical precision.

One remembers also a word of warning spoken by India in 1928, on behalf, as it were, of the less-industrialised countries at large. " There must be no tendency," declared Mr. Mallik, " to stabilise the *status quo* as between manufacture and the production of raw materials." India claimed as legitimate " the right to adjust her tariff system so as to maintain the balance between agriculture and industry." He further indicated the necessity of " not allowing the impression to be created in any State that their material interests were being

overridden or neglected in a hurry to bring about an economic millennium." And Sir Geoffrey Corbett in 1929 was hardly less outspoken. He was aware, he said, that the resolution before them limited the proposed undertaking to "protective" tariffs but "any experienced person" (his actual words !) would admit that in practice it was not easy to distinguish definitely between a revenue and a protective duty. (And so on in the same strain.)

One of India's more positive contributions was her insistence on the need for scientifically established data as a condition of sound remedial action. It was this that led to the preparation, in 1931, of the League's invaluable report on "The Course and Phases" of the economic depression.

It is well to have touched here on the work of the Economic Organisation. For this is one of the three so-called "Technical" organisations (the other two being respectively concerned with Health and Transit questions) ; and ever since, by a neat bit of verbal wristwork, the Jam Sahib assured the Fourth Assembly that the "technical" efficiency of the League's work in all its departments would be jeopardised by illiberal budgeting for the "Technical" organisations, those particular portions of the League's establishment have been constantly noticed by India. Health

problems have plainly a world-wide distribution, with an incidence more serious, if anything, in the East than elsewhere. It is natural, therefore, that the League's "universality" should find plentiful expression in this field. Mr. Mallik, in 1928, paying on this account a special compliment to the Health Organisation, said he hoped that "other organisations of the League would be inspired to qualify themselves for a similar compliment in the near future." Actually the Indian Delegation was that year opposing a supplementary credit for the Transit Section (and international transit problems indeed have little peculiar interest for India). At the same time, of the Economic and Financial Organisation they wrote: It "is perhaps the most practical and efficient part of the League machinery. It has shown marked sympathy lately towards India." ("It"—in the distinguished person of Sir Arthur Salter—was later, under League auspices, to make a study in India of the question of economic councils.) One captiously wonders exactly who was being invited by Mr. Mallik to earn compliments, and exactly for what. Probably he was referring to intellectual co-operation. The fact, at any rate, is that both by its works and by its possibilities the Health Organisation has quite special claims on the sympathies of Indian delegates. Justice can hardly here be done to this very remarkable theme.

So too with intellectual co-operation—as contemplated by the League. Of this it is almost, though not altogether, accurate to say that it has had India's support from the first. Not entirely accurate because, at the first Assembly, India, along with the other "Empire" Delegations, opposed (albeit with signal non-success) the "nebulous resolution" on this matter—on the ground, if you please, that no attempt should be made to discriminate between manual and intellectual labour . . . and that, if and when intellectual labour was to be assisted, the Labour Office could take the matter up. But that was the end of that. Two years later, when the British, and three other delegations objected to spending anything at all on this subject, not only did India "revolt," but, against the strenuous resistance of the rest of the Empire, she helped in getting the vote doubled at the last moment, even without the acquiescence of the Finance Committee. The Jam Sahib—heedless of his reputation as the one-time "protagonist of the economy party"—declared that it was "no good spoiling the ship for a ha'p'orth of tar."

As one studies the numerous passages in which Indian speakers have treated of intellectual co-operation, one can only be struck by the faith they have shown in its future. India is frequently declared to feel a great interest in the subject. In 1931, Dr. Hyder

described it as " the essential element of the League " and " in consonance with the whole philosophy of India." Two great hopes have their part in this attitude. First there is a conviction that here, through a " disarmament of ideas," is the road to permanent peace. There is also the belief that from the present beginnings is destined to emerge the " cultural synthesis," the " international culture " of the future—to which Indian scholarship will rightly contribute a not unimportant ingredient.

If all the nations could show themselves equally imbued with the Indian eagerness to see the League produce " suitable literature " for educating " the masses " in its aims and objects, the problem of international appeasement would already be of different proportions. There is in Sir C. P. Ramaswami Ayyar's speech on this topic, in 1926, a splendid tribute to the Boy Scout and Girl Guide movements as well-proved agencies for internationalising the juvenile mind. Nowhere more vividly than in this series of speeches do we see how truly it had been said in the Assembly that " the Indian bows his head in worship of the ideals of the League."

A word may here be added on some of the principles for which Indian delegates have steadily contended in debates on the League's domestic affairs. To anyone conversant only with the tactics of the Fourth (Finance)

Committee in more recent years it must seem hardly believable that, in 1920, " the general attitude of the Assembly in regard to economies was . . . clearly apathetic." The Indian Delegation stood forth as a shining exception. From the first they have battled sternly for the sounder practices, including : the Assembly's assumption and exercise of a genuine say in the budget policy of Geneva (not forgetting the International Labour Office) ; a thorough sifting of annual estimates by a qualified outside authority, coupled with a not less thorough auditing of final accounts ; and, in general, an effective recognition of the Assembly's responsibility for keeping the League's total expenditure within reasonable limits and equitably distributed over its several spheres of work.

It is nowadays a commonplace that the Assembly has come to occupy in the Geneva structure a position far more authoritative than had at first been foreseen : in 1920 and in 1921 it was India that most jealously fought any tendency to circumscribe the Assembly's " rights." Nowadays, in the light of some sobering experience, the League has adopted the philosophy of *festina lente* in the framing of new international instruments : India could be pardoned if on this point she murmured, " I told you so." All the world agrees that for its uniquely important duties the Secretariat

has need of an international "spirit": India has contended that this can only be had along with an international "outlook," which she conceives as a "synthesis" of the standpoints of as many member-nations as possible. The higher posts, with their undisguisable influence on policy, must not, in her view, be reserved to the nationals of any limited group of countries: an element of rotation should rather be secured. Then, again, as regards the non-permanent seats on the Council, a mode of election should be sought such as will open to every member of the League a real prospect of being from time to time represented on that, the League's, "board of management." Sometimes India's evident interest in her own greater participation has been pressed on the simpler ground of justice, and she would perhaps have done better to rest her case consistently on this sufficient consideration. For the "synthesis" argument is calculated to convince only those persons who, too lightly perhaps, concede that the *non*-national, i.e. the specifically "*League*," standpoint at which the Secretariat should aim is necessarily the same as an *omni*-national standpoint. May it not be that a wholly Indian Secretariat, animated by India's lofty idealism, could serve the League even better than a bureaucracy recruited among the "die-hards" of every country in the world?

It is possible that old-fashioned people may still include some who consider that "children should be seen and not heard." Diplomatists, as a tribe, are said to be old-fashioned people. To European diplomatists the Dominions and India, when in 1920 they made their début in Geneva, may well have seemed children—diplomatically. In India's case some of them may even have had doubts as to whether—for diplomatic purposes—she could properly be considered to have yet been born. Humanly speaking, to be sure, her many hundreds—or was it thousands?—of years of history were an undeniable qualification. But, diplomatically speaking——?

As we have seen, however, Sir William Meyer and his colleagues were troubled by no such doubts. India, for them, was old enough and big enough, in every sense, to be both seen and heard, and even to take the lead, in a Geneva *milieu* which at that time was novel to all alike. She is certainly fortunate to have commanded, in 1920, the services of a delegate so alert and accomplished as Sir William. By his pioneering efforts he set a standard that his successors will all have been anxious to maintain.

As a League member, India's record is excellent. While punctually performing her obligations, she has not been backward in accepting new ones, provided only she could clearly see her way to their fulfilment. Her

representatives, with their buoyant faith in the League's ideals, have been an ennobling factor in the debates. Courage, dignity, and distinction have at no time been lacking in their speeches.

It is common knowledge that, when in Paris the Covenant was being drawn up, the Japanese made a proposal that in some form it should affirm the equality of races. The move was not successful. Though this has been widely regretted, one sometimes wonders whether, in the long future, certain nations would have been glad of such a monument to the fact that their equal status had formerly not gone without saying. How much immediate practical difference the gesture could have made no one of course can tell. Colour prejudice, though doubtless amenable to treatment, would hardly have been eradicated by a stroke of the pen. In the meantime, so far at least as India is concerned, it is hard to suppose that any grudgingly conceded formula could have done more to elevate her people in the world's esteem than has the now familiar spectacle of her delegates playing their part in active and beneficent association with Western statesmen in Geneva. That the individuals concerned have technically been nominees of a British Secretary of State has not at all prevented their performing a brilliant service to their country. No patriotic Indian will regret the things done

in India's name by such personalities as Sir C. P. Ramaswami Ayyar, Mr. Sastri, Mr. Bajpai, Sir J. C. Coyajee, Sir Atul Chatterjee, Their Highnesses of Nawanagar, Palanpur, Bikaner, Kapurthala, the Aga Khan—to mention at random only some of the more outstanding examples.

In 1924, after observing in its report that its part in the "Protocol" discussions had been relatively small, the Indian Delegation added the opinion that its presence had yet been a useful reminder to the European States of the magnitude of the problems in which they were involved. These modest words, of course, are very far from conveying all that India's membership has meant to the League. If, as some say, that membership had first been agreed to in virtual absence of mind, the other countries can have had no cause subsequently to regret their decision. And what has it meant to India? From certain of the League's activities, India derives, or stands to derive, direct and tangible benefits. In others, it is often observed that her interest is only of an "indirect" or "secondary" kind. This last remark is heard perhaps a little too often. There is no country whose interest in the League can be truly evaluated merely by totting up what it gets out of all the several activities. That is a crudely amateurish conception of the matter. In Europe one could find countries, firm supporters of the

League, for whom the answer so computed would amount to just about nil. A second, and sounder, criterion is the effect of her membership on India's "national" position and on the growth of a sense of unity among her as yet somewhat loosely integrated populations. Prestige and collective self-esteem, though easily overdone, remain realities in the modern world, even if they do not lend themselves to measurement with what in hackneyed language is known as a "yardstick." Lastly, it is conceivable that to many Indians these latter considerations will seem petty beside the knowledge that India has an interest in the future of mankind, a future which may partly depend on the extent of the authority and support accorded to the League in a critical period of history. "India," said Sir Muhammad Habibullah in 1929, "has experienced enough of the effects of the Great War to be able to visualise the havoc a new war would work, and she is as anxious as any other country to see peace perpetuated on a basis of disarmament."

India's thirteen years in Geneva have not, of course, been a uniformly very gratifying adventure. Disappointments have been common enough. Often an excellent suggestion from the Indian Delegation has come, for the moment, to nothing—though in some instances the same idea, revived in some other quarter, has ultimately been adopted with good results.

She has, on the other hand, had her share of successes.

One is led to consider : What, in this strange contest of arguments which so largely constitutes the Geneva game, are the particular cards on which India has been able to rely? Her population is bigger than that of any other member except China—so that she stands for the happiness of just so many more human souls. Is her influence in Geneva correspondingly great? The mention of China at this point reminds one that influence, in Geneva, is not in direct proportion to population. What, then, shall we say? On occasions, it is true, India's position has been potentially very strong. When, in the interests of the League, it was " vital " to supersede the Postal Union scale of payments, India's threatened intransigence certainly seems to have caused a flutter. But that was a rather exceptional matter. In reporting to the Secretary of State, the 1927 Delegation quoted, with concurrence, M. Motta, a Swiss delegate, on the *de facto* difference, as regards influence, between the Great and the Small Powers. Members of the League, you may say, can be classed in four categories : Great and Small Powers, British Dominions, and India. If there be any status that is as fraught with anxieties as is that of a Small Power, it is that of a Great Power. The Dominions and India—happily, no doubt, for

them—escape some of the inconveniences of both these positions, while sharing in some of the amenities of each.

One asset India has of her own : namely, a grievance, well-advertised and presumably solid enough, against her present assessment in regard to contributions. When, in 1928, Lord Lytton made his challenging Assembly speech on the budget, nobody can have felt : Who are these Indians, to complain of the League's extravagance ? It must have been seen that, with so few of her nationals in League employment, with a faultless record for the prompt payment of a contribution greater than that of any other member not permanently on the Council, said to be directly interested in only a few of the League's activities, never elected to a Council seat, India had a quite special claim that her protest should not be cavalierly brushed aside.

Apart from this, India, like any other member, draws strength from the support of her friends. Sometimes we find her contentions underlined by a Japanese or a Chinese delegate ; sometimes she heads a movement of many extra-European countries. But, if we study the speaking and voting on matters especially affecting India, we shall notice that the best of her backing has been within the Empire group. This, for example, particularly applies to the help of the British Delegation in

opium debates. The words of the 1927 Delegation, "the delegations of the British Empire exercise a very great influence in the League so long as they are united," are not open to dispute. The formal independence of Siam or Persia, for instance, may look very large on paper beside India's mere partnership in the Empire ; but, save perhaps for purely sentimental reasons, it is probably better to be a moderate-sized gunner associated with a large-sized gun than a giant brandishing a toy. Through her voice in the "Empire" group of delegations, through her peculiarly intimate liaison with the Delegation from Britain, and through the Secretary of State as her ambassador within the British Cabinet, India's interests can often obtain the protection of a relatively influential gun.

Meanwhile, she is all the time building up in the Assembly, by her day to day work in the League, an independent moral influence of her own.

It has not been the purpose of this chapter to offer unsolicited recommendations. The series is ostensibly concerned with the "analysis," not with the transformation, of India. One word, however, may perhaps be excused. To whatever intensity Indian national consciousness may deepen ; however world-minded the average Indian may become ; whether the India of to-morrow remain within or quit the

British Commonwealth,—the Indian Government, whatever its form, will do well, in determining its Geneva policies—though paying all possible heed to the broad aspirations of the Indian public—to go on relying very largely, as the British do, on expert official advice. At present that specialised advice is afforded partly in Delhi, but mainly in London, in the India Office and in the British Foreign Office. On paper the system may seem less than ideal, if only to the sentimental mind. But, while it persists, the true test of its goodness is to be found, not in its form, but rather in the results it secures. The function of any present or future Indian Government is to look after the interests of the peoples of India : the existing system, while it lasts, may reasonably expect us to judge it according to this test.

3. INDIA AND THE INTERNATIONAL LABOUR ORGANISATION

By DR. LANKA SUNDARAM

A STUDY of India's place in the International Labour Organisation involves consideration of two important aspects. The first is the status of India in the industrial and social councils of the world. The other relates to the actual co-operation of India with the work of the Organisation and the benefits derived by her in the common task for the acquisition of social justice to the vast millions of our country. I propose to discuss these two points separately.

I

The position of India in the I.L.O. is of immense interest both from the national and the international points of view. From the purely territorial standpoint, India's permanent place on the Governing Body of the Organisation was fraught with momentous consequences in so far as her constitutional and quasi-political relationship to Great Britain is concerned. In effect, a dependency of the

British Empire, and actually legally governed from Whitehall, though enjoying a rudimentary type of representative government, India, by achieving this unique position, demonstrated the fact that a new yeast is leavening the constitutional fabric of the British Commonwealth. India's distinct and healthy individuality in the I.L.O. justified the hopes and stimulated the efforts of the people of our land to attain nationhood, external and internal.

It is true that India's place in the League of Nations is teeming with numerous anomalies. While not being a self-governing country, she is an original member of the League. One of the strongest complaints in India is that our international status is based on paper-equality with other States. Indian delegates to the League Assembly and its various technical organisations are nominees of a Government which is still "a subordinate branch of H.M. Government in Great Britain." In fact, such delegates are not national in character, while their briefs are actually prepared in London. This is true on the political side.

But, when we consider the position of India in the I.L.O., the picture is radically altered. Defective might have been and still is India's membership of the League, which automatically entails adhesion to the Organisation. Actually, and quite in keeping with the autonomous traditions of the I.L.O., India was

able to carve out for herself a distinct and independent position in the Organisation. It cannot be gainsaid that, on the purely League side, Indian delegations normally conform to the formulæ evolved by the informal enclaves of the delegations from the various parts of the Commonwealth under the guidance of Great Britain. But, in the I.L.O., India's independence of action has never been questioned. After an arduous fight she has established her claim as one of the world's eight chief industrial States, and thus obtained a place on the Governing Body of the Organisation. This is no small achievement in the international sphere. Her loyalty to and steadfast co-operation with the I.L.O. during the past fourteen years has given her numerous opportunities to give a lead to the work of the Organisation. In 1927, Sir Atul Chatterjee was unanimously elected President of the annual International Labour Conference, and in October 1932 he was elected Chairman of the Governing Body of the I.L.O. These are no mean distinctions for India that one of her sons has scored several personal triumphs. Instead, they are indices of the manner in which India is rising in international estimation. To a nation which is under the yoke of foreign domination, these events give scope for animated discussion about the possible future which is in store for it in the comity of nations.

A cursory survey of India's efforts to stabilise her position in the I.L.O. is at once illuminating and helpful in our present study. The long-drawn out fight in the Paris Peace Conference for the inclusion of India in the list of original members of the proposed League of Nations resulted in a positive manner. Even before the League Covenant was ready and the list of original members settled, the Peace Conference appointed on January 25th, 1919, a Commission of International Labour Legislation on which, unfortunately, India did not secure representation. It was only during the later stages of the Peace Conference that the late Lord Sinha and the Maharajah of Bikaner intervened on behalf of India.

The British Empire Delegation, which was responsible for the draft scheme for the I.L.O., originally pressed for membership, alongside of the Dominions, of India in the Organisation as if she were an independent State. But foreign opposition to the constitutional anomalies of the British Commonwealth procured a modification of Article XXXV of the draft Convention wherein these countries were treated "as if they were separate High Contracting Parties." Thus, from the beginning, India's position in the I.L.O. was based upon the consideration that in matters connected with industrial and social welfare the peculiar position of the country ought to be given its due

weight. As Lord Balfour stressed on September 22nd, 1922, an exaggerated importance was placed by foreign States on India's claim for a place on the Governing Body of the I.L.O. His lordship observed : " If it had been a political discussion, the point raised by M. Hanotaux [France] concerning the preponderating influence of the British Empire would have been extremely important, but this was not a political question in any sense. It was an industrial question, and there was no more connection between Great Britain and India in commerce than between Great Britain and any other country. It was surely important that, in her labour organisation, India should be brought as far as possible into line with Western ideas." But, unfortunately, during the earlier stages in the existence of the I.L.O., this important fact was not recognised by foreign States, and Belgium strenuously opposed the extension of this privilege to the colonies and protectorates of the Imperial Powers. Actually, the drafting committee finally passed this resolution without prejudicing the final claims of the British Dominions and India for equality of treatment with full nation-States for places on the Governing Body.

When once the question of membership on the basis of parity of status was settled, the composition of the Governing Body was taken up. Due to foreign opposition, again, to the

effect that, if the original twelve Government seats out of the twenty-four which ought to constitute the Governing Body were freely elected by the Government representatives, Great Britain would obtain far too many places for the Commonwealth, the British Government submitted a proposal to the effect that of these twelve Government seats eight "shall be nominated by the High Contracting Parties which are of chief industrial importance." The acceptance of this formula created a very important opportunity for India to ultimately stabilise her position in the industrial councils of the world.

On July 8th, 1919, the organising committee of the Washington Labour Conference sitting in London drew up a list of *certain States* which were deemed to belong to the list of the eight States of chief industrial importance, in which India was not included. At the Washington Conference, Sir Louis Kershaw, on behalf of India, endeavoured to secure justice; but, when the irregular proceedings of the London committee were approved by the conference, India's representatives walked out of it in protest. Apprehending this situation, Mr. Montagu, then Secretary of State for India, sent a strong dispatch dated October 7th, 1919, to the Secretary-General of the League of Nations even before the Washington Conference met, indicating the justice and prudence of giving

India a place on the Governing Body. The Washington Conference being barren of result, Mr. Montagu further stressed India's claims in his dispatches of January 13th, and April 14th, 1920, followed by a weighty memorandum urging the Secretary-General of the League to help India to obtain the relief she is entitled to under the provisions of the Covenant. But the question was shelved on the consideration that the proceedings of the Washington Conference could not be negatived and that, when the contemplated reorganisation of the Governing Body took place, India's claims could be pressed to a successful conclusion.

When the International Labour Conference of 1920 at Genoa did not give India any chance for satisfaction, Mr. Montagu obtained an assurance from the Secretary-General of the League that the Council could be moved to adjudicate India's claim in accordance with the procedure laid down. At the second session of the League Council held at San Sebastian in July 1921, India's claim was considered, but on technical grounds the Council refused to alter the Washington arrangements, until the appointed period of office of the Governing Body expired in 1922. But the *rapporteur* of the Council got approved his suggestion that the question of the eight States of chief industrial importance be scientifically studied for further action.

Since the San Sebastian resolution, the India

Office moved the Assembly of the League itself in this behalf, but found that its efforts were blocked by foreign suspicion and technical considerations. The committee of experts appointed by the Council could not decide the list with any semblance of scientific exactitude, while the doubtful eighth place was vigorously claimed by Switzerland and Poland along with India. On September 13th, 1922, Lord Chelmsford secured permission to appear before the League Council itself and examined the Ishii Report, which was proved to be entirely in India's favour. In his second report, Viscount Ishii, the *rapporteur*, submitted a resolution which finally accorded the eighth place to India. Meanwhile, the fourth International Labour Conference itself went on with the scheme for the enlargement of the size of the Governing Body from twenty-four to thirty-two seats, and on October 30th, 1922, India took possession of her Government seat on the Governing Body which she has since continued to occupy. Thus ended a heroic chapter in India's international effort.

We have reviewed the events of 1919–1922 with a fair amount of detail in order to emphasise one or two points of importance which are seldom remembered both in India and abroad. To an important group of nationalists in India, her membership of the League is an expensive farce intended to aid Great Britain in her fight

for supremacy in the Geneva organisations. This *may be true* on the purely political side of the League's activities. But, in the I.L.O., substantial opportunities have been given to India to pursue an independent line of action. The other point is that, even while the country did not as yet secure the qualified benefits of the Montagu-Chelmsford reforms, the India Office, which is one of the departments of H.M. Government in Great Britain, strenuously fought for justice and equal rights for its ward. Mr. Montagu's presence on the *gadi* of the Great Mogul must be said to have been responsible for this important result.

In a subtle manner even the cumbrous machinery of the India Office and the I.L.O. reacted favourably towards advancing the constitutional and political position of India *vis-à-vis* the British Commonwealth and the comity of nations. Even though the Government representatives to the various International Labour Conferences during the past fourteen years have not been national or political representatives of a sovereign Indian Government, situations arose when they were cheerfully willing to cross swords with purely British delegates whenever specific issues intimately affecting India came into conflict with British interests. This is a question of tremendous import to the operative side of India's status in international law. Thus India took an

independent line at the Washington Labour Conference of 1919 (hours convention), the Genoa Maritime Conference of 1920 (employment of Indian seamen), and the International Labour Conference of 1921 (weekly rest-day). Even more, these precedents were further extended when other international conferences were faced by India's delegates in juxtaposition to British. In regard to the Barcelona Transit Convention (1921), the Conventions for the Suppression of Traffic in Women and Children (1921) and of Traffic in Obscene Publications (1923), and the Convention on Opium and Dangerous Drugs (1925), besides the important question of disinfecting Indian wool exported to Great Britain, India pursued an independent line of action. In the first committee of the first Assembly of the League of Nations, India and Australia voted against Great Britain and other Dominions on such an important question as the method of selection of four non-permanent members of the League Council, while India voted against the whole of the British Commonwealth in regard to the second part of the resolution in question. These and other numerous precedents were extremely helpful in justifying India's membership of the Geneva organisations even under the existing political disabilities to which the country is subject. When the Indian government ultimately devolves upon the people of India,

these important achievements would form the bed-rock upon which the sure foundations of India's international status is to be built.

In an even more subtle manner, India's membership of the I.L.O. gave her opportunities for successfully raising important questions connected with nationality law. There are two distinct employers' organisations in India : the Federation of Indian Chambers of Commerce, an entirely Indian concern, and the Associated Chambers of Commerce of India and Ceylon, its European counterpart. The former came into existence in 1927. The Government of India and the I.L.O. were faced with the objections of the Indian commercial and industrial interests in 1926 and 1929 against the nomination of Sir Arthur Froome and Mr. P. H. Browne as representatives of India at the International Labour Conferences of those years. Even though Indian objections failed to get these nominations invalidated by the credentials committees of those conferences, it was subsequently demonstrated that India possesses a distinct nationality and that Europeans cannot, in all equity, claim to represent her at such conferences, which claim amounts to be a double vote for Great Britain. Of late the Government of India have accepted the convention that only nominees of the Federation should be appointed as India's delegates, while sufficient justice

could be done to European interests in India by tagging on a nominee of the Association as adviser to the employers' group of the Indian Delegation, thus justifying the hopes expressed by Lord Balfour eleven years ago. It is gratifying to remember here that, with a growing international appreciation of India's position in the I.L.O., substitute membership has been accorded recently to Indian employers' and workers' delegates on the Governing Body of the Organisation.

So far, we have left out consideration of the Indian States in their relation to the Geneva organisations. It has been the practice ever since the inception of the League, to include an Indian prince in the annual delegations from India to the League Assembly, in order to justify in practice the juridical unity of India which was defined by the Interpretation Act of 1889 (s. 18, sub-s. 5) as including "British India, together with any territories of any native prince or chief under the suzerainty of Her Majesty." But these princely delegates have no mandate whatsoever to commit the 562 Indian States to any conventions agreed to by India in the various Assemblies of the League of Nations. In fact, they are unspecifiedly immune to such agreements.

But in the case of the conventions of the I.L.O. they are specifically excluded from their operation. For one thing, the Princes do not

find a place in the Indian delegations to these conferences. For another, the application of Article 405 of the Treaty of Versailles makes it obligatory that all conventions agreed to by any country should be brought before " the competent authority within whose competence the matter lies for the enactment of legislation or other action." These States possess varying degrees of legal sovereignty, and in most of them a competent legislative authority is usually absent, unless it be the sweet will and pleasure of the prince concerned. Failure to secure all these 562 ratifications, besides that of the legislature at New Delhi, would preclude application of any convention accepted at Geneva by the Indian Delegation. This was the attitude taken by the late Lord Birkenhead, as Secretary of State for India, in his dispatch to the Secretary-General of the League of Nations on September 26th, 1927, which exempted Indian States from the operation of the international labour conventions. This is perfectly sound from a purely legal point of view.

But the federation idea is fast becoming a reality in India. There is, further, a growing feeling both among the employers' and the workers' organisations in the country that exemption of the States from the obligations of the international labour conventions accepted by India would give, and have given, an undue advantage to Indian India over its British

counterpart. It has been the practice in some federal constitutions that labour legislation is vested with the federal Government. When India adopts a federal constitution the States must be brought into the pale of the Geneva resolutions and thus given equal treatment with British India. If this is achieved, the International Labour Organisation would have worked a fundamental change in the constitutional and political fabric of India. There is no doubt that such a change would be agreed to in the impending constitutional reforms which the country is to receive. One is justified in erring on the side of optimism. As a useful beginning it is high time that a representative, not necessarily a prince, is attached to the Indian Delegation to the forthcoming International Labour Conferences as a delegate or as an adviser in order to associate the States in the common task of uplifting industry and labour in Indian and British India on a uniform basis.

II

In the preceding section we have examined in detail India's effort to attain stability in the international sphere. Incidentally, we have seen how India's position in the I.L.O. reacted favourably upon the internal political situation. In my opinion, this is perhaps the most important achievement which India's adhesion to

the Organisation has made possible. But there is another side to this international effort of India. It concerns the thirteen years of co-operation of our country with the Organisation and the beneficial results which accrued therefrom in regard to the progressive realisation of labour and industrial advancement in India. In this section we shall deal with this place of India's local and international activity.

Of all the Asiatic countries, not excluding Japan, which are members of the League of Nations, India's co-operation with the I.L.O. has been remarkable both in its sincerity and results. In a friendly passage-at-arms between the Government delegates from India and Japan in the 1926 Labour Conference, with reference to Japan's non-ratification (which India felt to be inimical to her interests), of the Washington Hours Convention, the Japanese delegate M. Mayeda paid a tribute to our country in the following manner : " I pay great respect to India for the sincerity with which she has applied the conventions ratified by her." It is recognised on all hands that India's adhesion to and ratification of international labour conventions have produced tremendous results in the field of our industrial and labour national legislation. The reports of the Royal Commission on Indian Agriculture, the Royal Commission on Labour in India, and the Franchise Committee, respectively known as

the Linlithgow, Whitley, and Lothian Reports, of recent years, have been more or less the direct results of India's place in the I.L.O. Legislation has still to take place on the recommendations of these reports, but ample justification of the nation's hopes and aspirations has been found in the earnest supplied by these enquiries. There is no doubt that as a result of this there has been, during the past decade, an upward tendency in the Government's effort to secure, with the co-operation of the nation, social justice for the teeming millions of India. Mr. C. F. Andrews, an ardent friend of India, has observed in 1928 : " If advantage is taken of the world position of immense importance which the I.L.O. has, there can be no doubt whatever that labour conditions in India will be improved in the most rapid manner possible. I have said more than once in public, and I would again repeat the fact, that the amelioration of labour conditions in India by direct legislation has gone forward more quickly in the last ten years since the I.L.O. was established than what was possible in the fifty years before the establishment of the I.L.O. Every one of the great landmarks in Indian labour legislation has been put up since the establishment of the I.L.O. While up to the year 1919 it seemed quite impossible to obtain any more humane conditions with regard to labour in mines, factories, and mills,

after 1919 every door seemed to be suddenly thrown wide open, and we have been pressing from one act of factory legislation to another, and all these have been on the whole in the right direction."

It is difficult to indicate exactly the direct beneficial results which accrued to India as a result of her participation in the work of the Organisation. Quite a good number of international labour conventions and recommendations have been evolved at Geneva during the past fourteen years. It is doubtful whether any exact correlation can be established between an accepted convention or recommendation and national industrial and social legislation in any country. A convention may be ratified and still no national legislation may take place. A convention may, according to the present loophole, be accepted by a country as a recommendation only, in which case no obligation rests upon the State concerned for direct national action. In any case, there is no plenary obligation, in such acceptance, upon any of the members of the Organisation that they should be in a position to submit annually tabulated accounts indicating the actual manner in which national effort is correlated to international effort as planned out at Geneva. A defaulting State need not have any pangs about *penalties* to be incurred for slackness or for direct violation of obligations undertaken. Further, in a country

like India, a substantial portion of the territory, as in the case of the States, may be outside the pale of the Geneva resolutions. At best, international labour conventions are expressions of faith in human nature, but are none the less instrumental in influencing national legislative effort. A Geneva resolution has this much in its favour, that it represents the largest measure of world co-operation upon specified matters whose lead had better be observed by the world States which are members of the Organisation. In the case of India, among all the oriental countries, such an influence is extremely remarkable. A statistical exposition of conventions ratified by a country—and India has a record of thirty-five per cent of international conventions in her favour—cannot, as such, serve as a fitting index to this international co-operation.

But it is extremely interesting to note the conventions so far ratified by India. In addition to the Berne Convention on white phosphorus, which was upheld by the I.L.O. in 1919, India has already ratified the following nine conventions: convention limiting the hours of work in industrial undertakings (1919); convention concerning unemployment (1919); convention concerning employment of women during the night (1919); convention concerning the night work of young persons (1919); convention concerning the rights of association and combination of agricultural workers

(1921) ; convention fixing the minimum age for the admission of young persons to employment as trimmers and stokers (1921) ; convention concerning workmen's compensation for occupational diseases (1925) ; convention concerning equality of treatment for national and foreign workers as regards workmen's compensation for accidents (1925) ; and the convention concerning the simplification of the inspection of emigrants on board ship (1926). Quite a good number of these ratifications have been deposited with the League Secretariat indicating or foreshadowing the nature of legislative action taken by India in translating the spirit of these conventions into practical action. Other conventions, which have not been ratified for technical or other special reasons, but which have been instrumental in stimulating Indian legislation, are the following : convention on the employment of women before and after child-birth (1919) ; convention on the minimum age for admission of children to industrial employment (1919) ; convention on the minimum age for admission of children to employment at sea (1920) ; convention on unemployment indemnity in case of loss or foundering of ship (1920) ; convention on facilities for finding employment for seamen (1920) ; convention on white lead in painting (1921) ; convention on workmen's compensation for accidents (1925) ; convention on

seamen's articles of agreement (1926); and convention on repatriation of seamen (1926). Questions concerning the protection of the interests of salaried employees and the suppression of forced labour are now engaging the attention both of Geneva and New Delhi.

As has been adverted to above, it is not scrupulously possible for us to link up each of these ratifications with Indian labour and industrial legislation. But the general impression is clear that each of our national enactments has some bearing or other upon "international labour legislation" as arrived at at Geneva. To compile a list of post-war Indian legislative enactments is not a difficult matter. The following constitutes a fairly comprehensive list of such of the Indian Acts which have some relationship or other to the conventions ratified by our country: the wholesale revision of the Factories Act in 1922, with subsequent amending Acts; the Act regulating child labour in ports, passed in 1922; the new Mines Act in 1923, with an amending Act relating to shifts, passed in 1928; the Workmen's Compensation Act of 1923, with two amending Acts passed in 1926 and 1929 respectively; the Act of 1925 repealing the Workmen's Breach of Contract Act and the provisions of a similar kind in the Penal Code; the Trade Unions Act of 1926, with a minor amending Act which was passed in 1928; Act XXVII of 1927 amending

the Indian Emigration Act of 1922 ; the Trade Disputes Act of 1929 ; and the Act of 1930 amending the Indian Railways Act of 1890. Dr. Pillai, Director of the International Labour Office at New Delhi, further stresses the importance of provincial legislation specially intended to meet local problems. In this connection, mention must be made of : the Coorg Act of 1926, which gave an extension of five years to the system of criminal punishment of breaches of contract by the workmen ; the Madras Act of 1927, which repealed the older Madras Planters' Act which provided penal sanctions to workers' breach of contract ; and the two Maternity Benefits Acts adopted by Bombay in 1929 and by the Central Provinces in 1930.

It is really interesting for us to pursue a method of enquiry to establish the parallelisms between the Geneva conventions and Indian legislation. Such a method is sure to yield us important results. But it is sufficient for our purpose here to note the general impress which Geneva has left upon Indian legislative activity of the past decade in regard to the progressive realisation of social and industrial justice in the land. The above parallel schedules are sufficient for the present to establish a certain amount of definite relationship between Geneva and New Delhi.

From the preceding pages it is evident that,

in the renascent India of the present generation, Geneva has given us considerable inspiration in our national effort. In this task of social amelioration the Government, the employers, and the workers have worked in triple harness towards reaching the appointed goal. This does not in any sense mean that India has attained the acme of perfection in industrial and social legislation. Far from it. There is still a lot of uphill work to be accomplished before India can attain a standard comparable to that of the Western countries. There is still a vast hiatus between agricultural and industrial India. These two Indias must be brought together and social justice accorded to the former. What with the primitive methods of agriculture still in vogue in the country, the peculiar tenancy laws in currency, and the general lack of competent leadership, Indian agricultural labourers are deplorably lagging behind as regards enlightened co-operation towards achieving common benefit with the industrial workers. But let it be said to the credit of the Government of India that they have given ample proof for constructive leadership in these matters, deriving inspiration, in their turn, from Geneva. The employers have been magnificent in their toleration of the workers' demands, and the workers, with a few exceptions, were extremely generous and legitimate in their expectations. On, many an occasion

the Government have intervened as a helpful buffer between capital and labour and helped to bridge the gulf existing between the two. There has been fighting all along the line, and the Government have remarkably well succeeded in coalescing these two natural sets of divergent demands.

Before 1918 no trade unions as such existed in India. As a result of the Geneva Organisation's influence, the Indian Trade Union Movement has made rapid strides and to-day there are nearly a million members of organised trade unions in the country. This is not a big achievement in a country like India ; but, when it is remembered that illiteracy, lack of experience, general timidity, and the colossal barrier of vested interests are all in the way of labour organisation in the country, these results cannot but be viewed with considerable satisfaction. Organised labour is now forging ahead and, with the coming reforms, larger opportunities would be given to Indian labour to discharge its inherent civic and political rights than has hitherto been possible. In the expected scramble for legitimate power, Indian labour ought to be able to stand for its rights, and sheer insistence upon their due need is bound to succeed in the long run. Given proper and competent leadership, there is no doubt that, in the future delimitation of India's socio-economy, labour would find its proper

place as an influential and indispensable agent in the common national co-partnership. In this triumph of labour, India's place in the I.L.O. would play a very important part.

And in yet another direction India's co-operation with the I.L.O. has remarkably advanced her position in the industrial comity of the world. By reducing international competition to manageable and reasonable dimensions, the Organisation has helped India to find increasing possibilities for fair trade and competition in the world markets. The gradual drawing together of the world, both in the industrial, commercial, and labour spheres, has helped the country to think and act internationally. This is no small achievement of the I.L.O., since the intimacy with which India has now to deal with sister States of the world has rendered it essential for her to understand international economic programmes of action in order to bring her purely national ones into line with them.

Judged from a comprehensive general point of view, the balance of advantage has accrued to India by her adhesion to the International Labour Organisation. It is to be hoped that, when India's national aspirations have been fully met with, this co-operation would be further extended for the mutual benefit of the comity of world States and of our country itself.

4. INDIA IN THE EMPIRE

By PROF. ARTHUR BERRIEDALE KEITH

LIKE THE United Kingdom, India occupies a position apart in the British Empire. Just as the United Kingdom is not merely a Dominion, so India, even when her full status is achieved, will be more than a Dominion. Since the reign of Henry VIII the claim of England to be an Empire has been consistently maintained and recognised, and India enjoys the imperial style, and a heritage of imperial history. The similarity holds good in another essential feature inseparably connected with empire. The United Kingdom, apart from the Dominions, remains at least the equal of the greatest of naval Powers in the world, nor is her trained Army negligible. If India still relies on the British Navy for her defence, in accord with the Dominions, unlike them she maintains powerful armed forces capable, it still seems, of repelling any attempt at foreign invasion. There is little chance that India will ever be fortunate enough to be able to lay aside precautions against aggression, and this fact inevitably confers upon her a characteristic of imperial status which is foreign to the Dominions.

That India's destiny is Dominion status has been asserted by the Government and Parliament of the United Kingdom in formal terms. But such a status was from the first implicit in the declaration of August 1917, when self-government was held out as the goal of Indian aspirations. It has, indeed, become fashionable to adopt the suggestion that between the promise of 1917 and Dominion status there is a wide difference. Responsible government, it is argued, meant control of internal issues only by Ministers responsible to local Parliaments ; control of external matters was a later development, and those who determined on the policy of 1917 had no intention of including the wider powers in their assurance. The suggestion is plainly untenable. It is forgotten that on no occasion had any attempt been made, up to 1917, to discriminate between Dominion status and responsible government. The term Dominion status was not in current use at that time, and what was promised was a definite system existing in the Empire, whose character was well known as exemplified in the position towards the United Kingdom of the Dominions, the name given by the Colonial Conference of 1907 to the self-governing colonies. It was impossible for the British Government of 1917 to foresee the remarkable development of formal autonomy in external affairs of the Dominions, as a result of the creation of the

League of Nations and the grant to the Dominions of distinct membership of that body. But that it never entered the head of the Government responsible for the promise of 1917 to seek to limit India to the measure of authority of the Dominions in 1917 is sufficiently proved by the demand of the Government in 1919 that India should be accorded the full position of a Dominion as a member of the League of Nations. There is no more convincing proof of the real meaning of a promise than the steps taken thereafter, by the party which made it freely, to give it effect. It cannot for a moment be claimed that the grant to India of a distinct position in the League was demanded by the Government of India or by popular opinion in the United Kingdom. The only explanation of the step, which caused some surprise even to the Secretary of State, was that the promise of 1917 bound the United Kingdom to take precautions to secure that India should enjoy to the full in the course of time the status of a Dominion. Manifestly it might have proved much more difficult later on to induce the other Powers to accept distinct membership of India in the League. After the great sacrifices by India for the Allied cause, such objections would be overruled, as they were overruled for the case of the Dominions. The argument is conclusive, and it need only be corroborated by the parallel instance of the Irish Free State.

The treaty of 1921 assured that country the same position as the Dominion of Canada. Nothing in the treaty expressly contemplated whether the promise referred to the status of Canada in 1921 or to such further developments in Canadian status as might be brought about in course of time. But equally from the first the British Government never suggested that it in any way dissented from the view of the Free State that it was entitled to the enjoyment of every concession made to the Dominion, and, in fact, the Free State was the first to exercise the right of legation which Canada had been promised in 1920, but of which she availed herself only in 1926, two years after the Free State had shown the way by stationing a Minister Plenipotentiary at Washington. It is clear, therefore, that the promise of 1917 has only been made precise, not enlarged in scope, by the later assurance of Dominion status.

One possible objection may be met. The promise of 1917, it has been said, refers to responsible government within the Empire, while Dominion status implies the right of secession at the pleasure of any Dominion. But that conception of Dominion status is one for which there is no authority of binding character. It is true that General Hertzog, before the Imperial Conference of 1930, pledged himself to secure admission by the conference

of the validity of the assertion of the Union Parliament that the Dominions had inherent in their position the right of secession. Moreover, General Hertzog has informed the Union that the conference discussed and took note of his assertion of right. But the conference sedulously excluded from its official report any allusion to the topic, and it was clear that it had no possible authority to deal with the issue. The Prime Ministers of Canada, the Commonwealth, New Zealand, and Newfoundland were quite unable to go back to their Parliaments and to confess that they had admitted a right which their Parliaments have never claimed, and the Irish Free State was precluded from claiming the right to secede at pleasure by the terms of the treaty to which she owes her existence. It remains clear, therefore, that the right of secession is a chimæra and a dangerous one. From it must be distinguished sharply the admitted fact that the United Kingdom and the Dominions as a whole would not actually use armed force against a Dominion which desired to secede, and in which the majority of the people clearly favoured that course. What would happen if a bare majority endeavoured to secede against a powerful minority, and civil war ensued, must be left to conjecture, in the assurance that British statesmanship is perfectly competent to prevent such an impasse arising.

The true doctrine of the imperial relation is that expressed in the preamble to the Statute of Westminster, 1931, which requires the assent of all the Parliaments of the Empire to any change in the royal style and titles and in the succession to the throne. The union between the Dominions and the United Kingdom rests on a common allegiance which cannot be laid aside at the mere pleasure of any Dominion, and with the attainment of Dominion status the Indian Empire will be in precisely like case. Whether or not such a limitation is desirable is a matter open to discussion ; that the limitation is inherent in Dominion status as at present conceived is clear. But, of course, there is no ground against the widening of the content of the conception of Dominion status by the common accord of the United Kingdom, the Dominions, and India.

The most valuable of the results of the doctrine of the distinct identity of India as potentially an equal member within the Empire on the same footing as the Dominions has been the treatment of India pending the full achievement of that status on the analogy of the Dominions. The earliest and most signal expression of this tendency was the acceptance in 1921 of the doctrine that in matters of tariff policy the British Government would yield to the united views of the Government of India and the Indian legislature. This point again is

but should act with the same freedom from considerations of this order as the Dominions acted in their relations among themselves. In the past the British Government had endeavoured by use of its influence and its reserves of legal power to modify Dominion policy in the interests of the Indian people. In the main, its struggle had been unavailing, and it was always hampered by the fact that there was ever present to its mind the paramount necessity of maintaining close and friendly relations with the Dominions in view of the many important issues which had to be dealt with by common consent. A much more normal and healthy condition of affairs resulted when the Dominions and India were allowed to enter into direct communication, and to deal with one another as distinct and autonomous members of the same empire. Unquestionably the Indian people have gained largely in prestige as a result of this change of position. This is not to deny the earnest character of the efforts made by Mr. Chamberlain, for instance, to stem the rising tide of Dominion hostility to Indian immigration, but the course of events had proved adequately that the Imperial Government, with the best will in the world, had ceased to be capable of controlling Dominion action, and that it must be left to India, freed from restrictions on her action, to counter as effectively as possible the

difficulties for her people created by the Dominion attitude.

Before India thus attained a position of independent action—and in this matter the Government and the legislatures have long seen eye to eye—the situation had steadily become more and more difficult for the Indian people. Chance rather than set purpose frustrated the many tentative suggestions for the introduction of Indian indentured immigrants into Australia, and the closing of the Commonwealth to Indian immigration was in a considerable measure due, not to feeling against Indians, but to objections to the Chinese and Japanese as races essentially unwilling to intermingle with the Australian nation and to become integral parts thereof. Many motives induced the demand for a White Australia, but unquestionably, in addition to racial prejudice, there operated most powerfully the economic motive. The fact was set out with incisive brilliance by Lord Crewe at the Imperial Conference of 1911, when he denounced the attempt of New Zealand to exclude the employment of Indians on any vessels trading to the ports of that Dominion. " There is nothing morally wrong," he argued, " in a man being a vegetarian and a teetotaller, and his wife and family also, and being able to live very much more cheaply than people who adopt the European standard of comfort. . . . If a man is content to live on rice

and water, and does not require pork, beef, and rum, he naturally is able to support his family on a very much lower scale." It is useless to ignore this fact. A standard of life which is sufficient for an Indian is rejected by the working man of the Dominions as inadequate, and it is clear that, even if it is admitted that the higher scale of diet is productive of higher efficiency, there is strong pressure on employers, for economic considerations, to prefer the Indian worker. The belief that Asiatic workers in general either force out the white workers, or compel the latter to adopt the Indian scale, is widespread, and in large measure it is justified. Elementary principles of economics are sufficient to show that, even if less efficient, a low-paid worker, who is less devoted to the right to strike for higher wages than is the average Australian, would enjoy wide preference if competition were legal. In their decision that only by preventing Indian competition could they secure for themselves the high wages which they desired, together with reductions in hours of labour and the best conditions of work, Australian workers were no doubt correct, so far as their personal interests were concerned. The same absorption in personal advantage has resulted in the systematic exploitation of the rural workers of Australia in favour of the town workers, in whose hands lies the voting power of the country.

How fervently the belief in the policy of a White Australia is held is proved conclusively by the fact that any hint of the mere possibility of opening up the Northern Territory to Asiatic immigration is deeply resented, and the deliberate policy of the Commonwealth is to postpone exploitation and development indefinitely rather than in the slightest relax the strictness of the exclusion principle. Happily, since 1904, there has been a welcome recognition of the right of Indians who desire to visit Australia for purposes of pleasure or business, as opposed to settlement, to be admitted to the Commonwealth on conditions which are not humiliating nor discourteous. Moreover, it must be remembered that the objections to immigration are not confined to Asiatics. While European British subjects are normally admitted if they pass the strict health tests and other regulations, the influx of Italians in recent years caused as deep feeling as the entry of Asiatics, and the issue was hastily adjusted by a rigid limitation of Italian emigrants carried out by the Government of Italy by agreement with the Commonwealth. Subject to the rule of exclusion, the Commonwealth has not hesitated to express its anxiety to act on the doctrine of reciprocity enunciated at the Imperial Conference of 1917 and worked out in further details by the conferences of 1918, 1921, and 1923. The grant of the Commonwealth

franchise to Indians and their admission to old age pensions, and the concession of the franchise in Queensland, are matters of minimal practical importance, for the whole number of Indians in Australia does not exceed 3,000, but as a token of Dominion goodwill it is of distinct value.

In New Zealand the movement against Asiatic immigration, directed against Chinese and Japanese and only in minor degree Indians, was contemporaneous with that in the Commonwealth. It became specifically anti-Indian only in 1919, when a considerable number of Indians were stated to have begun to come to the Dominion from Fiji, and stringent steps were adopted by the Immigration Restriction Act, 1920, to control all immigration on the basis of requiring any would-be immigrant to obtain permission for entry before sailing for the Dominion. The number of Indians in the Dominion is negligible, under 1,200, and the gravamen of the opposition to immigration is clearly economic. No country has been so anxious to build up high standards for workers and others than New Zealand, and it cannot be denied that the pressure of competition from Indians would be of the most serious kind. To demand, and by legislation to enforce, the rule of Indians living on the standard appropriate to New Zealanders would be absurd, and in the circumstances it is not

surprising that public opinion is unanimous in opposition to Indian immigration. It must be remembered also that, in the recent economic depression, objection has even been taken to the free immigration of Australians, and legislative measures were taken to deal with competition even from this source, though normally communication between the Dominion and the Commonwealth is freely open and deliberately encouraged. As in the case of Australia, New Zealand is not opposed to the principle of reciprocity of treatment, and, except as regards old age pensions and family allowances, has refrained from discriminations on racial grounds against resident Indians.

Canada, unhappily, has had an unfortunate record in her dealings with the problem. In this case, again, it was Chinese and Japanese penetration which aroused the keen anxiety of the people of British Columbia, who as usual made common cause with the United States citizens on the Pacific coast. The motive again was predominantly economic. In the lines of occupation taken up by them, the white population of the province soon found itself unable to compete, and, great as was the economic advantage to the country as a whole of these busy and effective workers, it has long waged war with the end of extinguishing the competition they create. As against the Chinese, though the struggle is not over, the

province has in the main been victorious, for China has no treaty with Canada to impose restrictions on Canadian federal or provincial action. As regards the Japanese the matter is different, for Canadian need for trade outlets has rendered it necessary to seek as much as possible to secure Japanese goodwill, and the stationing of a Canadian Minister at Tokyo and the reception of an envoy from Japan at Ottawa are significant proof of the deep concern of Canada with the maintenance of friendly relations. Japan for her part has acquiesced in the decision of Canada that immigration on any large scale is banned, but she has insisted that her subjects shall not be treated as they are in the United States and denied absolutely the right to settle or to be naturalised. Hence, up to a maximum of 150 a year, Japanese of certain specified types can be admitted to enter and to remain permanently, if they so desire, in the Dominion, the whole matter being regulated by the grant of Japanese passports duly visa'd by the Canadian representative at Tokyo.

Indians have fared worse than Japanese, and this fact has unquestionably been the cause of serious friction. It was in part the recognition that the immigration regulations under the Act of 1910 were more unfavourable to British Indians than to Japanese aliens that prompted the effort to coerce Canada into admitting the

ship-load of would-be immigrants in the *Komagata Maru* in 1914. There was, of course, no excuse for this systematic effort to defy the Dominion law, and the action was manifestly intended to embarrass and discredit alike the Governments of Canada and of India. Nor, in its unhappy sequel, can it be denied that this end was achieved. But the result was not wholly favourable to the position of Indians in the Dominion, nor, of course, did it in the least effect the purpose of compelling the Dominion to facilitate entrance. At the Imperial Conferences the attitude of Canada has been at once courteous and conciliatory in tone, but in action it has been adamant against concession of the right of immigration save in the case of the wives and children of *de facto* monogamous marriages of Indians themselves lawfully resident in the Dominion. Nor has the Federal Government succeeded in persuading the legislature of British Columbia to abandon the rather needless exclusion of Indians from the right to acquire the franchise. This attitude is adopted as part of the general provincial rule excluding naturalised Japanese or Chinese from the suffrage, but its retention cannot be regarded as compatible with the good feeling requisite between parts of the Empire. The Federal Parliament has not itself adopted the exclusion policy, but its grant of the franchise excludes from its terms persons who under

provincial legislation may not vote for provincial elections. It is admitted in the Dominion that the preference existing under the present arrangements for Japan is open to objection, but the possibility of relaxation of restrictions may be deemed negligible.

While the small numbers of the Indians in Canada render the issue one of academic rather than of practical importance, the issue in the Union of South Africa involves large numbers of Indians, and deeply affects inter-imperial relations. The essential fact, of course, is that in Natal the Indian population was deliberately introduced in order to build up the prosperity of the country by the use of indentured labour at a time when no other form of labour was obtainable, and that by now the Indians of Natal are largely descendants of those who stayed on with the permission, if not encouragement, of the Natal Government after the expiry of their indentured service. In the Transvaal the issue is complicated by the fact that the Government of the South African Republic took measures to restrict the activities of Indians as early as 1885, when was passed the famous law preventing their holding of land and in vague terms providing for their residence or trade in locations. The British Government at the time contended that such treatment was a negation of Article 14 of the Convention of 1881 under which the Transvaal was granted

a modified form of independence, but an arbitral award of 1885 and a decision of the Supreme Court of the republic in 1898 denied to the Indians the rights which seemed to be assured by the convention. The British Government, however, continued to regard the republic as in default by reason of its attitude, and the issue was at times referred to as justifying hostile action. Unfortunately the conquest of the Transvaal resulted in a régime which deliberately aimed at the reduction to the minimum of the Indian population and the restriction of their competition with Europeans. Checked for a time by the dissent of the British Government, which under Crown colony régime could prevent any further inroads on Indian rights, it was given full play by the grant of responsible government in 1905. Whether the concession of this form of government ought not to have been accompanied with safeguards for Indian rights may be discussed ; at any rate, responsibility for failure to secure any such safeguards rests with the Government of the day. Inevitably the attitude of the Transvaal strengthened the objection of Natal to the presence of Indians not under indenture, and, with the determination of the Government of India in 1911 to terminate the system of Indian emigration to Natal under indentures, the way was laid open for the decision of the Union on its formation to

strengthen the immigration laws so as wholly to terminate the entry of Indians. Nor was this all. The policy of the Government became increasingly dominated by the desire to induce the Indians resident in the Union to leave the territory, and for this purpose a series of measures were devised. The object to be attained was to be promoted by restricting drastically the possibility of the grant to Indians of licences for petty trade in which they largely engage, and by secluding Indians in locations where they would in effect be restricted to trade with one another. The opposition of the Indians, under Mr. Gandhi's leadership, in some measure countered the efforts of the Government, and the British Government in the pre-war period was active in urging on the Union Government the claims of imperial solidarity, with the result that certain concessions were made and a measure of agreement achieved in 1913–1914. The close of the war revealed the existence in the Union of undiminished opposition to Indian claims, contemporaneously with the growth, in India and among the Indians in the Union, of a sense of national self-respect which rendered the position of Indians anomalous and humiliating. Fresh legislation was enacted in 1919 with the aim of restricting Indian holding of land, the existing law having been evaded by the perfectly legal device of forming companies under Indian control, to

which, as corporate bodies, the prohibitions under the Transvaal Gold Law and other measures on Asiatic residence or ownership were not applicable. But the Government of General Smuts, under constant pressure from the public feeling of those who suffered from Indian competition, was compelled to go further and to contemplate carrying out a measure of segregation. Though General Smuts was strongly pressed, both in 1921 and 1923 at the Imperial Conference, to adopt a more generous attitude in accordance with the views of the Dominions other than the Union, he refused to make any concessions, and protested in 1923 against any resolution being carried without complete unanimity. Before his plans for Indian restriction were carried into effect, he fell from office in 1924, and the new Government resumed with even greater vigour the effort to solve the difficulty by the process of excluding Indians from the Union. Indians were included in the scope of the measure known as the Colour Bar Bill, which, as passed into law, enables the Government to exclude Indians with other non-European peoples from any form of skilled occupation if it so decides. It was also proposed to restrict Indians to certain defined areas, a measure which resulted in urgent representations by the Indian Government, and finally, in January 1927 at a conference at Cape Town, in an agreement of great importance. Under

it the representatives of the Indian Government accepted the right of the Union to maintain Western standards of life, thus rendering it necessary for India to accept the principle that permanent residence in the Union could be permitted only to those Indians who were willing and able to accommodate themselves to Western standards. Those Indians who preferred their own standards were to be aided to emigrate to India by the Union Government; those who emigrated would lose, after three years absence, Union domicile and would be unable to re-enter the Union, while any who wished to return to the Union before the expiry of the period of three years would be permitted to do so only on condition of refunding the sums granted to them for emigration. In order to permit of the smooth working of the new arrangement, the Union Government dropped the Bill for the reservation of areas and further restriction as to immigration and registration of Indians, and it at last agreed to the desire of India to station an officer in the Union to act as an intermediary between the Indians and the Government, an office assumed by Srinivasa Sastri with decidedly satisfactory results. The plan, however, failed to secure the aims of the Union to anything like the extent anticipated. The fact, of course, was that Indians born in the Union had no connection of an effective kind with India and could not

be expected to seek to go to a strange country rather than remain in the land of their birth where they were certainly able to support themselves in reasonable comfort if they were permitted to exercise the trades for which they were best qualified in fair competition.

By 1931–1932 the issue had again assumed a serious aspect, for the Government, finding that emigration was on so limited a scale, and confined so largely to those who had recent connections with India, that substantial relief through this means was out of the question, determined, under pressure from the electorate, to limit further the areas available for Indian activity. Indian objections again brought about a conference at Cape Town, at which a new settlement was achieved. It was recognised that economic and climatic conditions in India, and the fact that eighty per cent of the Indians in the Union were born there, precluded further perseverance in the idea of settling Indians from the Union in India, and, instead, the Government agreed to promote the settlement of such Indians as did not desire to adopt a European standard of life, in territory outside India, with the assistance, if they so desired, of a representative of the Indians in the Union. Certain concessions were made as regards the proposed setting aside of areas for Indians and a promise made to consider on equitable grounds any cases where hardship would be caused by

enforcing the clauses of the Gold Law prohibiting the presence of Asiatics in certain areas. The net result, it will be seen, is peculiar. The right of Indians to remain in the Union is denied unless they determine to reach Western standards. The ground, of course, is primarily economic. Competition by Indians with lower standards of living has proved the difficulty for certain classes of Europeans to make a living, and it is hoped to eliminate this pressure by the removal of those Indians whose competition would be formidable. The Indians, on the other hand, have been compelled to dissociate themselves from the native population and to aim at attaining at some undefined period the status of equality with Europeans. The difficulties in the way of emigration are formidable, and, if this does not prove possible, it is practically certain that further efforts will be made by economic pressure to drive Indians to emigrate.

It is, of course, idle to ignore the grave barrier interposed in the way of imperial solidarity by the attitude of the Dominions towards the immigration of Indians and the Union demand that only such Indians shall be permitted to remain there as are willing to adopt a cultural standard different from their own. The difficulties of the Union are undeniable. It is pressed by the problems of a native population with increasing aspirations for a more just share of economic and political power, it has also a

large coloured population whose position General Hertzog is prepared in principle to assimilate gradually to that of the white race. The desire to avoid complicating the question by the presence of a fourth element, of a distinctive culture and standard of life, is easily intelligible, but that this attitude should be resented in India is inevitable. It is certain that the feeling of solidarity between the United Kingdom and the Dominions and of the Dominions *inter se* is greatly promoted by relative ease of entry and settlement. Checks to immigration are always resented, however clearly due to economic causes, and in the case of India it is impossible to ignore that race feeling co-operates with economic grounds in bringing about the attitude of the Union.

Nor, unfortunately, is friction absent from British relations with India on this score. It is true that the United Kingdom and the Irish Free State place no difficulties in the way of Indian visitors, nor do they hinder permanent settlement, though that is not very often desired. But the Government of the United Kingdom is necessarily answerable for the position in Kenya, and its whole power of suasion has failed to satisfy Indian opinion that the Indians in that colony have received treatment on a just footing. The issue is complicated by the fact that in the adjacent territory of Tanganyika, under mandate—as opposed to

sovereignty—the Indians stand on a perfect footing of equality with immigrants of every other country which is a member of the League of Nations, and differential legislation against them is contrary to the spirit of the mandate and even to its terms. In the colony, on the other hand, British policy has followed two inconsistent aims. Indian immigration was at one time definitely encouraged and much valuable service has been rendered to the development of the area by Indian immigrants. On the other hand, formal assurances were given to British settlers that they should have reserved for them certain highland areas which were deemed suitable for permanent occupation by a white race. Inevitably, on the model of South Africa, the European settlers have put forward the claim to be entitled to dictate policy and to be granted responsible government. They deny the right of Indians to any share of power proportionate to their numbers, and they equally contest the right of the British Government to maintain effective final control. On the other hand, the British Government, not without inconsistencies and hesitations, has maintained the principle that the interests of the native races must be deemed to be paramount, so that both European and Indian immigration should be regulated by considerations of the welfare of the native population. In the case of Tanganyika, of course, the terms

of the mandate make this doctrine clear, and the mandate was claimed by the British Government merely to express formally the traditional British practice in the treatment of native races. Between the contending views a Parliamentary Committee has endeavoured to mediate by recommending a policy involving no vital changes such as would be involved by the proposal to federate Kenya, Tanganyika, and Uganda. It maintains the necessity of the British Government retaining final control of policy, and thus negates the demand of the white settlers for responsible government. It has left open the issue of the Indians' claim to a share on equal terms with the Europeans in the work of legislation. The idea of a common roll with a reasonably high qualification for the franchise has often been discussed, but for it the time is not yet ripe, and the situation has been prejudiced by the unwise decision to accord the suffrage on too easy terms to the settlers. Projects of reservation of town areas for Europeans have fortunately not been sanctioned; all that is needed can effectively be secured by the wise and impartial carrying out of general sanitary regulations for the protection of health and amenity.

Apart from Kenya, relations with British colonies and protectorates are in the main satisfactory. Southern Rhodesia, of course, follows the exclusive policy of the Union of

South Africa, but the absence of any substantial resident Indian population precludes the emergence of a serious ground of difficulty. The decision to terminate the system of permitting the emigration of indentured labourers to the colonies was long overdue. It was a grave drawback to the recognition of the importance of India in the Empire, and the conditions of the workers were often far from satisfactory. No more happy result can be attributed to the awakening sense of Indian national dignity and honour. Even under the indenture system, Indians, on the expiry of their term of service, frequently profited themselves and benefited the colony by permanent settlement, such as has created the powerful Indian populations of Mauritius and Fiji. In the latter the principle of separate representation in the legislature has been adopted, but not without distinct objections by the community.

The closer relations of comity which exist between the colonies and protectorates and India are shown in the terms of the Ottawa Agreement of August 20th, 1932. The British Government and the Indian Government therein contracted to maintain their existing policies of conceding automatically to the other any preferences granted to the Dominions, and the British Government undertook to urge the colonies to adopt the policy of extending to India any preference granted to any part of the

Empire, while India agreed to extend to the colonies any preferences granted to the United Kingdom, reserving liberty of action in cases where the territory concerned gave no preference to India, or refused India a preference granted to some other part of the Empire. In this, as in other matters, relations are inevitably closer and more cordial than can be the case with the Dominions.

In these issues with the Dominions, the Government of India acts essentially as the means of carrying out the views of the Indian legislature. No doubt it has the benevolent sympathy of the British Government, but the policy already is essentially devised in India and is carried out on Indian authority. In relations with foreign countries, there intervene other factors, and Indian autonomy is less complete. With foreign countries the Dominions decide on their own authority their line of action in matters of trade. Under the resolutions of the Imperial Conference the Dominions are under obligation to communicate their proposed line of procedure to the British Government and to the Governments of all the other Dominions. But, if they disagree with any suggestions made or objections brought to their notice, the final decision rests with the Dominion. Thus the famous German agreement with the Union in 1928, which had to be modified in 1932 in order to enable the Union to carry

out the Ottawa Agreement of 1932, was concluded despite the representations of the British Government against the departure of the Union from the salutary rule that preferences between members of the Empire should be treated essentially as domestic issues and not be granted to foreign countries under the terms of treaties containing most-favoured-nation clauses. No such right of final decision has been recognised as appertaining to India, and the spirit of the Ottawa Agreement is opposed to the assertion by India of a policy which would deliberately prefer any foreign country to the United Kingdom. Formally, however, the conclusion of treaties for India does not differ in essentials from the conclusion of compacts for parts of the Empire other than the United Kingdom, including the Dominions. Full powers to sign, and ratifications of, treaties are obtained from the King on the advice of the British Government, but in the case of the Dominions the British Government has, by convention, abrogated the right to use this formal intervention as a means of control, while it still maintains the right finally to supervise the external relations of India. As in the case of the Dominions also, the United Kingdom claims the right to stipulate in its commercial treaties for benefits to India, if the Indian Government desires to take advantage of them, such as the right to adhere separately to and to

withdraw from treaties of commerce concluded by British representatives.

As is inevitable, pending the attainment of full Dominion status, the Statute of Westminster, 1931, was not made applicable to the case of India, and the Prime Minister made it clear that the statute could only be brought into operation in respect of India by fresh legislation expressly for that purpose. But it must be borne in mind that it is an essential feature of a federal constitution, such as is inevitable for India, that it shall be rigid, and, despite the Statute of Westminster's general purpose to increase the freedom of the Dominions, it was necessary to exempt from this principle the whole question of the Canadian constitution, which thus still can be changed only by an imperial Act, passed on the request of the Canadian Parliament. In India, also, the constitution must rest on an imperial Act, though it may be possible to permit a greater elasticity of minor change than exists in Canada. Unlike the Dominions before the Statute of Westminster, India has long possessed a measure of power of extra-territorial legislation, including wide authority over Indians outside India, and there is no pressing need for the grant of exemption from the doctrine of repugnancy of Indian legislation to imperial Acts. The one issue of prime importance in this matter is the question of merchant shipping

legislation, and India was made party to, though she did not sign, the Commonwealth Merchant Shipping Agreement of December 10th, 1931. That agreement is based on the essential principle that in all matters of vital importance there must be a common law of shipping for the Empire, though each part may regulate in its own fashion such issues as the coasting trade and the fishing industry and fisheries. It is clearly imperative that on this head there shall be reciprocity of action. The Dominions in the past have sought so to legislate as to render it difficult for ships manned in part by Indian crews to carry on business in their ports, and it will doubtless require from India steady maintenance of pressure to secure that the wider measure of freedom lately accorded shall not be used to her detriment. The difficulty raised in these cases is that the Dominions themselves have comparatively little shipping which in India might become the object of retaliatory action, if steps were taken to penalise vessels manned by Asiatic crews in the trade of the Dominions.

The statute accords to the Dominions recognition of the principle observed for many years that no Act is passed by the British Parliament to bind a Dominion save with the assent and at the request of the Dominion Government. It is in full accord with this principle that the procedure has been adopted under which the

new constitution of India shall rest virtually on an agreement between the British Government and Parliament and representative spokesmen of the various communities and interests in India. The nearest parallel is the constitution of the Dominion of Canada. It was devised in Canada itself in its main outlines, but only the United Province of Canada formally approved of the resolutions reached by its spokesmen with those of New Brunswick and Nova Scotia at Quebec in 1864. The final form of the measure was arranged, without the sanction of the local legislatures, by the representatives of the Governments of these provinces in London in 1866–1867 in close discussion with the spokesmen of the British Government; nor is it uninteresting to note that, in the deliberations which ended in federation, a subject of common interest was the arrangement made for the maintenance of Canadian security by the strengthening of the fortifications at British expense, and the maintenance, pending the organisation of Canadian defence, of British military forces. Nearly forty years were to elapse before the final withdrawal of British troops from the Dominion.

It must be remembered that, though Dominion status has been rendered more definite by the statute, there is no agreement among the Dominions as to the wisdom of accepting its operation. In Australia, protests were voiced

by the States, and the final decision of the Commonwealth to ask for the passing of the measure in the terms agreed to by the Imperial Conference of 1930 was conditional on the insertion of a clause which renders the statute inoperative in the Commonwealth, unless and until it is adopted by the Commonwealth Parliament whether in whole or in part. A like demand was made by New Zealand and Newfoundland, so that the statute operates automatically only in Canada, the Union of South Africa, and the Irish Free State. This is a significant sign that, even in the view of the Dominions, it is unwise too abruptly to sever the formal bonds of connection between them and the United Kingdom. Their desires are fully satisfied by the potentiality of claiming fuller powers. For practical purposes the existing constitution is deemed to assure a more abiding connection of interests with the British Government as the centre of the Empire.

This attitude on the part of Australia, New Zealand, and Newfoundland is essentially bound up with their recognition of their dependence on the British fleet for immunity from foreign aggression. In this regard, India is in like condition, and indeed, relatively to her importance and resources, her efforts at naval defence have fallen much short of those of either Australia, which once had a powerful unit, or New Zealand, which has made a

relatively handsome contribution to the cost of the naval base at Singapore. Fortunately, India can continue to rely on the protection of the British fleet, and thus can avoid the burden of naval construction and maintenance, from which, after contemplating it, the Union of South Africa recoiled in alarm. The Irish Free State has likewise contented itself with leaving to the United Kingdom the burden of such defence, and even Canada, with its enormous resources, is willing to rely on the protection of the British fleet, and the security of the Monroe Doctrine, which virtually forbids European or Asiatic attack on American territory or on territory in close proximity thereto. The advantages to India, in its advance to Dominion status, of the doctrine that the United Kingdom assumes responsibility for naval defence of the whole Empire, save in so far as any part thereof desires voluntarily to assist in securing its safety and the freedom of transport on the seas, are of the most solid character. Nor is the presence of British forces on Indian territory, pending the development of the military power of India from her own resources, in any way inconsistent with the process of evolution—of which, rather, it forms the essential condition—for it would be impossible for India to add to the great task of working self-government the immediate provision of an effective substitute for the use of British forces. In like manner the

South African colonies and the Union developed their self-government under the protection afforded by the maintenance, until 1921, of the British forces in the Union.

5. INTERNATIONAL ASPECT OF THE INDIAN CONSTITUTION

By C. W. JENKS

THE THEME of this chapter is the importance of ensuring that the new Indian constitution does not represent an addition to the dead-weight of nationalistically inspired constitutional systems which at present encumbers the world in its struggles towards international government. The extent to which almost every branch of human activity has assumed an international aspect, and come to require international regulation and co-ordination, is one of the most characteristic features of modern life. There are those who find this a ground for considerable merriment and greet with hilarity every new attempt to legislate internationally upon some topic—political, economic, or social—which lies beyond the fringe of their immediate experience. Yet, despite the frequency of such criticism, the process of bringing into existence a body of treaty law, designed to furnish a basis for the orderly development of the economic and social life of the world, proceeds apace. The post-war era has a considerable achievement to its credit. Some three hundred international

conventions of a legislative character—codes of law regulating all the varied interests of modern life—have been concluded since 1919, and the number is rapidly growing. Communications of all kinds are now regulated by a body of treaty law large in bulk and elaborate in detail. The protection of common economic interests has received considerable attention. The unification of private law, and more particularly of commercial law, is a field in which there have been notable advances. There have been steps forward, albeit but tentative ones, towards the formulation of world standards of colonial policy, while the efforts of the International Labour Organisation have brought into being a new world code of social legislation. Simultaneously with this progress in international legislation there has been built up a new collective system of mutual guarantees against war, based upon the Covenant of the League of Nations and the Pact of Paris, the efficacy of which is still upon trial. Permanent machinery has been set up for the handling of international disputes, and for the first time in history a world judiciary, the Permanent Court of International Justice, has been created. Such developments are clearly among the most significant of our time and there can be no doubt that they merit every possible encouragement, but the difficulties to be overcome if they are to have full

scope for growth are numerous. Some of these difficulties are inherent in any attempt to co-ordinate internationally rules and interests which have taken shape under diversified national conditions. Others, being primarily attributable to defective machinery, will be removable in the course of years if our leading statesmen show sufficient vision and breadth of outlook. To this latter class belong the constant difficulties created by the effort which the world is at present making to live internationally, while the various political units into which it is divided are still living under political and constitutional systems built up without any reference to the requirements of organised international co-operation. Rarely has new wine been poured into old wine-skins on so colossal a scale. We can only build up an effective system of international government if we are prepared to adapt our various systems of national government for their new rôle, that of pillars of the international structure instead of isolated pyramids. In this chapter an attempt is made to consider what this implies so far as the new constitution of federal India is concerned, the question being considered under two heads: the responsibilities of the federal State in an age of international legislation, and the constitutional substructure of the collective system of mutual protection against war.

I. THE RESPONSIBILITIES OF THE FEDERAL STATE IN AN AGE OF INTERNATIONAL LEGISLATION

India is about to become a federal State, and federal States are particularly liable to be handicapped in the conduct of their international relations by defective constitutional machinery. For the distinguishing characteristic of federalism is the division of the functions of government into matters of national interest controlled by the national legislature and matters of local interest controlled by the legislatures of the component parts of the federation. The line of division between the two classes of subject is differently drawn in different constitutions, but the distinction is present in every truly federal system. The existence of constitutions in which such a distinction appears involves the internationalist in a dilemma. An increasing number of social and economic interests are becoming of international concern. Labour questions are but one illustration of the type of question which can no longer be regulated satisfactorily on the national scale. International co-ordination is required : partly because social progress may at times be a handicap to economic competition and a self-denying ordinance has little chance of acceptance unless all potential competitors become parties to it ; partly for

other reasons, such as the physical impossibility of introducing certain reforms except by international agreement. But some federal constitutions are so drawn as to make difficult or impossible, not only international, but even national co-ordination of these interests. They date back to periods when matters now of international importance could fairly be considered of purely local interest, and, by leaving such questions under the exclusive control of local legislatures, prevent the federal Government from unifying even national legislation.

Doubtless the picture can be, and sometimes is, painted in too sombre colours. In some federations the rights of local legislatures are so limited that constitutional limitations of its authority rarely prevent the national Government from assuming international obligations. The German Republic, where the Reich enjoys very wide legislative power, is a convenient illustration. In other cases the local legislatures have wider powers ; but political difficulties, rather than any absolute constitutional incapacity, prevent the assumption of international obligations. Canada presents a typical illustration of this position. Section 132 of the British North America Act gives the Dominion power to legislate to give effect to treaty obligations even upon subjects normally under provincial control, but the Dominion has shown considerable caution in the exercise of

this power. Two recent decisions of the Privy Council have placed upon the power a broad construction which may encourage a bolder policy in the future,[1] but hitherto, largely as the result of an advisory opinion given by the Supreme Court of Canada in 1925 in answer to certain unfortunately worded questions submitted to it by special reference,[2] it has not been interpreted as authorising legislation enabling ratification of international labour conventions. The result has been that, of the thirty-one conventions adopted by the International Labour Conference during the years 1919–1932, Canada has only ratified four, all of which regulate conditions of work at sea, a subject at all times within the legislative jurisdiction of the Dominion. The position in the United States is similar. Supreme Court decisions leave no doubt that Congress is competent to legislate upon questions normally within State jurisdiction when the purpose of such legislation is to give effect to a treaty,[3] but this was so little understood in 1919 by the American Commission to Negotiate Peace that they acted consistently upon the assumption that the United States would be constitutionally incompetent to ratify international

[1] *In re* the Regulation and Control of Aeronautics in Canada, [1932] A.C., at pp. 54–78 ; and *In re* the Regulation and Control of Radio Communication in Canada, [1932] A.C., at pp. 304–317.

[2] International Labour Office, *Official Bulletin*, Vol. II., No. 1, pp. 16–18.

[3] Particularly *Missouri* v. *Holland*, 252 U.S. 416.

labour conventions and were responsible for the inclusion in Part XIII. of the treaty of a paragraph designed to secure preferential treatment for States in such a position.[1] Difficulties of this nature are less serious because likely to be more easily removable than an absolute constitutional incapacity, but their occurrence in a number of States, which is illustrated with particular force by the failure of Australia and Canada to ratify any appreciable number of international labour conventions, affords emphatic proof of the importance of ensuring that any federations which may be created in the future have quite clearly expressed powers to give effect to all types of international engagements. An illustration of a provision which leaves nothing to be desired in clarity is Article 16 of the Austrian constitution, which obliges the provinces to take any measures which may be necessary to give effect to treaties, and authorises the federation to enact any necessary legislation in the event of a province defaulting. The existence of such a general power to give effect to treaty engagements will normally be found the most satisfactory solution of the difficulty, but it is a device which may not be acceptable where local sentiment is strong. In such cases there will be a tendency to prefer procedures which rely upon securing the assent of local

[1] Article 405, paragraph 9.

legislatures to the acceptance of international obligations on their behalf. Such efforts, if the tentative attempts made in Canada to secure agreement upon the ratification of international labour conventions can be taken as any test, are not destined to be particularly fruitful of results. In the light of the experience which has been acquired elsewhere it would be the height of folly to launch India upon her federal career inadequately equipped to participate in the development of international legislation.

Such folly would be the more inexcusable since the experience of other federations is amply confirmed by that of India herself during recent years. If the partial devolution of responsibility to the Provinces involved by the 1919 reforms has not prevented the Government of India from undertaking international obligations—partly because most subjects of international importance are classified by the Devolution Rules either as central subjects or as provincial subjects subject to legislation by the Indian legislature ; partly because the Government of India Act draws no rigid or statutory distinction between central and provincial subjects, but leaves both central and provincial legislatures free, on obtaining the previous sanction of the Governor-General, to legislate upon the subjects assigned to the other by rules made under the Act—there is quite another story to be told of the Indian

States. There is no doubt that it is India inclusive of the States which enjoys membership in the League of Nations and International Labour Organisation and is bound by the Covenant and the Pact of Paris. To quote a memorandum submitted by the India Office to the Statutory Commission :

> "It is India, and not British India, which is a member of the League, and 'India' as defined in the Interpretation Act includes the Indian States."[1]

But this does not imply that it has been possible to include the States in ratifications of League of Nations conventions which treat subjects under State control. The position is well stated in a further extract from the memorandum already quoted :

> "32. Another fundamental question is how far the British Government binds the Indian States when it undertakes international obligations. The general principle seems to be clear. The Paramount Power exercises some of the attributes of sovereignty on behalf of the States, and in respect of those attributes His Majesty's Government can bind a State absolutely and by its own authority. The most conspicuous case is that of the control of foreign relations, in

[1] Indian Statutory Commission, Vol. V., p. 1636

exercise of which His Majesty's Government can presumably bind a State in any matter which brings it into direct relations with other States outside India, e.g. the traffic in arms, suppression of slave trade with foreign countries, and the export of opium. Where, however, the matter is one of purely domestic concern, belonging to the sphere within which the States enjoy by treaty or usage varying degrees of sovereignty, the position is different, but the British Government can still use its influence to secure the effective observance by any or all of the Indian States of an engagement, the provisions of which might be applicable to conditions obtaining in the territories of the States.

"33. The Government of India was often ready to accept League conventions so far as British India was concerned, where it was uncertain whether rulers could properly be asked to enforce them in the Indian States. But a technical difficulty arose from the fact that these conventions were drawn up in a form which involved their acceptance for the whole of India if they were ratified. In connection with the preparatory discussion of the Slavery Convention of 1926, careful consideration was given to the general question of devising means by which the obligations of League conventions could be assumed for British India without

necessarily committing the States. An article enabling contracting parties to 'contract out' for parts of their territories (such as colonies, etc.) normally appears in League and other conventions, and a solution of the technical difficulty referred to was found by adapting this article so as to permit a contracting party to exclude territories under its suzerainty. League conventions now contain an article in this form.

"34. It was not, however, possible to apply this solution to draft conventions adopted at International Labour Conferences, which, if ratified, must be accepted without reservations. Further, the procedure described by Article 405 of the treaty would be difficult to follow in the case of each Indian State; and it would be absurd if a single dissenting State could prevent ratification of a convention for British India. It was therefore decided in 1927, after discussion with the Government in India, to explain the practical difficulties to the Secretary-General of the League and to inform him that when a draft convention is ratified for India its obligations are accepted as applying only to British India, though the Government of India would, so far as necessary, use their influence to secure its observance in the State also."[1]

[1] Indian Statutory Commission, Vol. V., pp. 1649–1650.

The questionable regularity of the solution of the difficulty adopted in 1927 for certain international labour conventions is by no means the most serious objection to the position thus described. Ratification of international labour conventions for India exclusive of the States can be made perfectly regular, for future conventions, by the insertion in each convention of a provision limiting the effect of ratification to territory under the legislative authority of the Government of India. Precedents for such provisions are to be found in some of the earlier conventions in the form of clauses granting India, on the ground of her imperfect industrial development, the benefit of less exacting conditions than those accepted by other members of the International Labour Organisation.[1] Some of these clauses are so worded as to exclude, or to permit the Government of India to exclude, the States from the obligations incurred by India by ratification. The only objection to them is that, while removing all technical obstacles to ratification on behalf of India exclusive of the States, they make no contribution to the solution of the more substantial problem of extending to the States the effect of ratifications. This it is essential to do unless the States are to remain uninfluenced by an

[1] e.g. Article 10 of the Hours of Work (Industry) Convention, 1919, and Article 5 of the Night Work (Women) Convention, 1919.

important part of international legislation. The importance of the matter has been emphasised, so far as labour questions are concerned, by the Whitley Commission.[1] Its more general bearings are well illustrated by a reference to the League of Nations conventions which India has only been able to accept subject to the exclusion of the States. These include the Slavery Convention, the Convention relating to Economic Statistics, the three Protocols relating to Military Obligations and Statelessness adopted by the Conference for the Codification of International Law, and, among instruments signed by Indian plenipotentiaries but not yet ratified on India's behalf, the Convention for the Abolition of Import and Export Prohibitions and Restrictions, the Convention for the Suppression of Counterfeiting Currency, and the Convention on Certain Questions relating to the Conflict of Nationality Laws.[2] Nor is there any reason to suppose that the difficulty is confined to League of Nations conventions. The ratification of conventions concluded under the auspices of public international unions and adopted at conferences summoned by particular Governments must involve similar

[1] Report of Royal Commission on Labour in India (Cmd. 3883), at pp. 472–474.

[2] List of Ratifications of Agreements and Conventions concluded under the Auspices of the League of Nations, published periodically in League of Nations' *Official Journal*.

difficulties. In some such cases—the 1928 revision of the International Copyright Convention suggests itself as an illustration—the existence of a provision that the convention does not apply to " colonies, protectorates . . . or any territory under suzerainty," unless special notice of inclusion is given, has facilitated ratification by India by exempting her from any obligation in respect of the States, but here again it is cold comfort that the exclusion of the States has been possible without technical irregularity. The real problem is that of bringing the States within the scope of necessary international arrangements not that of excluding them in a legally irreproachable manner.

Their inclusion will often be important, for a number of reasons. The case of international labour conventions is only the most striking of many possible illustrations. If British Indian industrialists can invoke, as an objection to the ratification of these conventions, the unfairness of their being burdened with social charges not shared by their competitors in the States, there will be, throughout India, a slowing down in the rate of social progress, while the effects of the falling off in the number of Indian ratifications which this will involve will be certain to extend to China and Japan, where the same argument of unfair competition abroad will be taken full advantage of by industrial interests

hostile to ratification. These are far from theoretical dangers. At the Twelfth Session of the International Labour Conference, Mr. R. K. Shanmukham Chetty indicated clearly the views of Indian employers upon this point. "It is in the interests of the International Labour Organisation," he said, "that steps should be taken to see that the conventions are applied in the Indian States, and, if that is not done, let me tell the Director and the International Labour Organisation that we, as employers, would be forced to resist their ratification in British India itself. Our record during the last ten years shows that we have readily co-operated with the Government of India and the International Labour Office in ratifying a number of conventions ; but, if in our own country and in the adjacent territories of the Indian princes there are to exist working conditions which will mean serious competition to us, then we, as Indian employers, shall be compelled to resist the application of conventions to British India itself."[1] All who are familiar with the notable stimulus which the ratification of international labour conventions has given to the development of labour legislation in India—a topic fully discussed in Dr. Pillai's recent book on *India and the International Labour Organisation*[2]—will appreciate

[1] International Labour Conference, Twelfth Session, Vol. I. of *Proceedings*, at p. 126.
[2] pp. 101–167.

how great a disaster this would be to the cause of Indian social progress.

It would appear that a policy designed to enable India to undertake the widest variety of international engagements for all parts of her territory should combine the three methods of approach which have been adopted in other federations : that of giving the federal legislature full powers of legislation over all subjects likely to be of international importance ; that of giving it full power to implement international engagements, existing or proposed, while leaving certain questions of international importance under the jurisdiction of local legislatures for all other purposes ; and that of developing consultative machinery designed to make possible the acceptance of international engagements relating to subjects over which the federation has no legislative authority. Under Indian conditions neither of the first two alternatives is likely to meet with complete acceptance, and some combination of all three is therefore essential. There is no precedent for the formation of a federation by the combined process of decentralisation in the Provinces and centralisation *vis-à-vis* the States which is now contemplated in India, and the result of so unusual a process is likely to be unique. In a federation formed by decentralisation, one would expect the central authorities to retain very wide powers. In a federation formed by

bringing together units so diverse and so jealous of their independence as the Indian States, the opposite result is to be anticipated. The compromise which was inevitable in the circumstances is the now generally accepted understanding that, while certain subjects are federalised and others are left within the authority of States and Provinces, there will be a third class of central subjects, over which the federal legislature has jurisdiction in respect of the Provinces but not in respect of the States. This distinction between federal and central subjects was originally intended to be a clear-cut one defined in the constitution itself, and at the First Session of the Round Table Conference a provisional allocation of powers, suggested by a joint committee of the Federal Structure and Provincial Constitutional Sub-Committees, was approved in principle. Since that time the difficulty of adopting this method under Indian conditions has become apparent. The States are only prepared to join a federation on terms agreed to in their individual instruments of accession, and different States may be prepared to join upon different conditions. Preoccupation with this difficulty led the Sub-Committee on the Distribution of Legislative Powers, of the Third Session of the Round Table Conference, to point out that the inclusion in the constitution of a statutory classification is not the only possible method of distinguishing

federal from central subjects, and that it would be equally possible for the constitution to contain a single list of subjects under the exclusive jurisdiction of the federal legislature and to leave it to the States to contract out individually in respect of certain subjects. The sub-committee, the proposals of which were approved by the conference, preferred the second method, but qualified its recommendation by endorsing the view which had been expressed by States' representatives that, even though it be adopted, it would be desirable, in order to facilitate the drafting of States' instruments of accession, that the list, though a single list, should be divided into two parts. The same sub-committee re-examined the method of distribution of legislative powers between the Centre and the Provinces, but not the allocation of particular subjects. The most interesting of its various suggestions upon this topic was that the federal legislature should be empowered, at the request and with the consent of two or more Provinces, to enact, for those Provinces alone, legislation which would not otherwise be within its competence. Out of such material is the federal constitution to be constructed. The problem of enabling the federal Government to enter into all types of international engagements is clearly not one which can be disposed of by any *simpliste* solution.

There is little probability of any appreciable number of States accepting either of the first two suggested solutions. Over some questions which are or may be the subject of international discussions—the law of personal status is an illustration—they will certainly decline to surrender legislative jurisdiction, and their insistence in the past that international conventions ratified by India do not apply to their territories *proprio vigore* is likely to be reflected in refusal to accept the solution of giving the federation unlimited power to implement treaty obligations. This does not make it any the less important that some combination of these two solutions should be adopted for India exclusive of the States. If the constitution contains some clause similar to, but more clearly drafted than, Section 132 of the British North America Act, empowering the federal legislature to give effect in the Provinces to all types of international engagements, the Government of India will continue to be in a position to co-operate freely, in respect of all of what is now British India, in the development of international legislation. Unless the Government of India has such a power, the restriction of its influence implied in the development of provincial autonomy will create, in this field, difficulties by which India has not been embarrassed in the past. If, in addition to its power to give effect to treaty engagements, the

federation has ordinary, though not necessarily exclusive, legislative authority over all or a wide range of subjects likely to be of international importance, the probability of a fear of offending the Provinces creating a reluctance to resort to the power to implement treaty engagements will be reduced.

Only more tentative steps can at present be taken to facilitate the co-operation of the States in international life. It will be of some value to keep to the forefront of public attention, when their instruments of accession are being drafted, the international implications of the decisions which are being taken, while, if the single-list system of enumerating subjects under the jurisdiction of the federal legislature is adopted, it will be possible to draft that list in a way which will give the utmost encouragement to the States to facilitate international co-operation. The list might include, as one of its principal items, power to give effect to all types of international engagements. Even though the majority of States contracted out of such a provision, its existence would be distinctly valuable. It will presumably be provided in the constitution, if the States are to come in upon such terms as they individually agree to, that, while no State may contract out in respect of any subject for which it has once contracted in, any State may contract in for new subjects at any time. If there exists a provision which

States may accept when so disposed, conferring upon the federation a general power to give effect to treaty engagements, the seeds of growth will be present. Meanwhile, their inclusion in international engagements, other than those which the Paramount Power is entitled to accept on their behalf, will continue to be possible only after consultation and agreement with them. The experience of countries where attempts have been made to rely upon informal consultation as a means of securing common action, whether for national or international purposes, by the parts of a federation, suggests that it is important that such consultation should have a regular institutional form and that some means should exist for giving legal effect to its results by some other method than that of concurrent legislation by legislatures each of which may be inclined to wait for another to take the first step. The proposal that the Indian federal legislature should have power, at the request and with the consent of two or more Provinces, to enact for those Provinces legislation not otherwise within its competence, would appear to be capable of extension to cases in which a State or number of States request inclusion in the scope of legislation intended to give effect to a treaty. Such a device would have the advantage over concurrent legislation in the States that, while enacted at their request, it would not be subject

to repeal by them, a factor of particular importance if the proposal to be made shortly for invalidating all municipal legislation incompatible with treaty obligations is not adopted.

The consultation which would naturally precede such requests would require careful organisation. It might take different forms for different subjects. So far as labour legislation is concerned, the Whitley Commission has made an interesting suggestion. It proposes the establishment of an Industrial Council for India intended to play a large part in the development of social policy, and suggests that " those States in which there is appreciable industrial development " might be prepared to co-operate in such a council.[1] For other subjects, preparation of the ground by functional bodies might be less appropriate. Possibly an initial discussion in the federal legislature, a reference back to the States for their consent to the enactment of legislation, and the enactment of legislation by the federal legislature on behalf of such States as had assented within a reasonable time-limit, would be the most appropriate normal procedure for the acceptance of international engagements on their behalf upon subjects lying outside the federal sphere. What is essential is that there should exist some organised procedure for such cases.

[1] Report of the Royal Commission on Labour in India (Cmd. 3883), at pp. 467–472 and 474.

Otherwise it will be necessary to rely upon haphazard improvisation—which spells, in a large percentage of cases, failure.

It is difficult, in the absence of any up-to-date and detailed proposals for the allocation of subjects to the different legislative authorities, to define the requirements of international co-operation in other than these general terms, but a brief criticism of the proposals of the 1930 joint committee may have some value as an indication of the preoccupations which I have in mind, even though those proposals were framed upon the assumption that the distinction between federal, central, and provincial subjects would be more clear-cut than is now intended. The joint committee's proposals[1] were not unattractive. They classified as federal a number of subjects of international importance—in a few cases for all purposes ; in others only for policy and legislation, the units of the federation remaining responsible for administration. The list of subjects to be completely federalised included : emigration and immigration ; aircraft ; lighthouses, beacons, lightships, and buoys ; port quarantine, so far as international requirements are concerned ; posts, telegraphs, trunk telephones, and wireless installations, subject to adjustment with the States in matters of detail ; and currency and

[1] Indian Round Table Conference, November 12th, 1930–January 19th, 1931, *Proceedings of Sub-Committees* (Part I.), at pp. 282–288.

coinage, subject to adjustment, with the States concerned, of such rights as are not already conceded by them. The federal list for policy and legislation was more comprehensive, and included : shipping and navigation ; commerce (including banking and insurance) ; trading companies and other associations ; the cultivation and manufacture of opium, and its sale for export ; inventions and designs ; copyright ; and the control of arms and ammunition. A federation with legislative jurisdiction over this range of subjects would be better equipped for international co-operation than the India of to-day. It would, for instance, be in a position to unify commercial law throughout India and thereby to prepare the way for Indian participation in the process of international unification, an initial stage in which has already been achieved, under the auspices of the League of Nations, by the codification of the rules governing cheques and bills of exchange in the Continental though not yet in the common-law system. On the other hand there are some regrettable lacunæ. The adoption of these proposals would not enable the federal authorities to accept international labour conventions on behalf of the States or to bind the States by obligations such as those of the Slavery Convention. Under them the federation would not have authority to create an Indian citizenship comprising certain British subjects and

the subjects of the States, and in respect of which it could accept, on behalf of all India, conventions designed to avoid conflicts of nationality laws. There are even cases in which the joint committee suggests the withdrawal of the existing central control over the Provinces in respect of subjects of potential international importance. The control of mineral development is a field in which international co-operation is clearly desirable, and is probably realisable within a few decades ; but the committee recommended that such control should be entirely a provincial subject, instead of being exercised by the Governor-General in Council in so far as reserved to him by rules made or sanctioned by the Secretary of State—the present position. That the present formula would be inappropriate in the new constitution may be freely admitted, but some power of co-ordination which would facilitate an international control of production should surely be entrusted to the federation. In like manner the view of the majority of the joint committee, that the Central Government should not retain its present power to control the production, supply, and distribution of any articles in respect of which control by a central authority is declared, by rule made by the Governor-General in Council or by or under any legislation of the Indian legislature, to be in the public interest, shows a lack of sympathy

with modern collectivist tendencies. There will be many cases in which such control cannot be applied effectively on a provincial scale, and a growing number of cases in which it would be desirable to apply it internationally. Another question which merits particularly close examination is whether the co-ordination proposed by the committee will be an effective substitute for the legislative authority over infectious and contagious diseases at present vested in the Centre. International co-operation in the control of epidemics has made great advances since the creation of the League of Nations Health Organisation. Its further development may require legislation in various countries, and it would be well for India to be in a position to pass such legislation for as large as possible a part of her territory. One would like to feel that considerations of this kind will be given the fullest weight before final decisions are taken upon the allocation of subjects to the different legislative authorities.

Restricted power to undertake treaty obligations has not been the only disability from which federal States have suffered in the conduct of their international relations. The limitations of its authority are liable to prevent a federal State from fulfilling its obligations under customary international law. Every international lawyer is familiar with several *causes célèbres*. Cases of denial of justice—i.e.

cases in which foreign nationals are not granted the standard of protection by the courts to which, if duly admitted to the territory of another State, they are entitled under international law — have been particularly common. It is clearly of the highest importance that India should not be handicapped in her international life by inability to assure foreign nationals, in all parts of the territory for which she is internationally responsible, adequate protection by the courts in all types of cases. A suggestion which is interesting in this connection was made to the Federal Structure Committee by Mr. Jayakar during the discussion of the federal court.[1] Mr. Jayakar thought it desirable that the federal court should have original jurisdiction in both civil and criminal cases in which foreign nationals are concerned. He submitted that "it would ease considerably situations like those which arise with regard to extraterritorial rights, and which are even now causing a considerable amount of difficulty in places like China, if we could agree at once that all questions which arise with reference to foreign nationals shall be heard by the federal court; and it would inspire more confidence." Later, speaking with special reference to criminal jurisdiction, he added: "You will thus get rid of the

[1] Indian Round Table Conference (Second Session), September 7th, 1931–December 1st, 1931, *Proceedings of Federal Structure Committee and Minorities Committee*, at p. 280.

difficulties which European criminals in India at present introduce, in regard to the jury being composed of so many Englishmen or so many Frenchmen, and so on. I see a possible way out of the difficulty if you transfer to the criminal side of the federal court all cases in which foreign nationals are concerned." Whatever be thought of these reasons, the adoption of Mr. Jayakar's suggestion would remove the danger of the federal authorities being powerless to prevent a denial of justice for which they are liable to be held internationally responsible. There is doubtless some force in the criticism, made by Sir Muhammad Shafi at a later stage of the discussion, that to give the federal court original jurisdiction in cases affecting foreigners would be to burden it unnecessarily with business which could easily be done by other courts,[1] but this criticism can be met without abandoning the principle of Mr. Jayakar's suggestion. Since there will be no subordinate or district federal courts in India, it would be preferable to confine the suggested special jurisdiction in cases affecting foreigners to a right of interference, possibly by some procedure analogous to the issue of a prerogative writ, in cases in which a denial of justice is alleged. So restricted, the suggestion should not be unpalatable to the States, for even so unyielding a champion of their rights

[1] Ibid., at p. 293.

as Sirdar D. K. Sen admits that the Paramount Power is entitled to intervene "when the person or property of British subjects, or the subjects of foreign States in alliance with the Crown, are in direct and immediate danger" and in which no redress can be obtained from the local courts[1]—a definition which substantially covers the cases comprised in the idea of "denial of justice." To transform this right of intervention into a supervisory jurisdiction of the federal court would be to the advantage of all parties. The States would become subject to a judicial instead of an arbitrary control, that control would not lose in international effectiveness, and it would become a part of the regular machinery of the federation instead of an unorganised attribute of paramountcy. It is therefore regrettable that the Federal Structure Committee did not appear impressed by Mr. Jayakar's suggestion, and that no allusion to it is made in the committee's report upon the federal court.

II. THE CONSTITUTIONAL SUBSTRUCTURE OF THE COLLECTIVE SYSTEM

The problem of the international relations of the federal State is only one of the aspects of the Indian constitutional problem which is of international importance and in connection

[1] Sirdar D. K. Sen, *The Indian States*, at p. 175.

with which the experience of other countries may be of some value to India. Students of comparative constitutional law are at present devoting much attention to the desirability of harmonising the various national constitutions —most of which date back to the period of the international anarchy or are inspired by models dating back to that period—with the Covenant of the League of Nations and the Pact of Paris. It is quite common for existing written constitutions to begin with some recital of the sovereignty and independence of the State, to continue by conferring upon one of its organs a right to declare war which is not limited by any reference to the Covenant or to the Pact of Paris, and to prohibit the delegation of authority by any organ of the State in terms which, though originally designed as a safeguard for an internal balance of power, have acquired an unpleasant international importance as an obstacle to the relaxation of the unanimity rule which is at present so effective a brake upon the development of international law and government. The existence of provisions of these types, and of others which, though of less far-reaching importance, are equally with them positively harmful in character, is not the only ground upon which an internationalist may legitimately criticise the bulk of existing constitutions. Not less important are the omissions which he notes upon examining

almost any constitution, written or unwritten, now in force, for few indeed are the cases in which adequate provision is made for ensuring the fulfilment of obligations resulting either from treaties or from customary international law. In a word, the international orientation which should dominate everything in modern life is entirely lacking in the constitutional instruments under which the greater part of the world is at present governed.

Naturally enough there are varieties of light and shade. Where, as in Great Britain, the constitution is not a distinguishable instrument, the problem is different in character from elsewhere ; and even in the land of the *lex scripta*, constitutionally speaking, one is constantly reminded of the dictum of Bryce : " Constitutions are the expression of national character, as they in their turn mould the character of those who use them." Many countries have never been troubled by restrictive provisions which prevent the delegation of authority to international bodies. Others, not having adopted their constitutions immediately after a struggle for national freedom, have been spared grandiloquent assertions of their sovereignty and independence. In still others, articles referring to the declaration of war have been redrafted in such a way as to limit the right to declare war to cases in which arbitration has been refused

by the other party or has been a failure, or, more recently, in which such a declaration would not involve a violation either of the Covenant or of the Pact of Paris. Several countries have included in their constitutions provisions requiring their municipal courts to respect the rules of international law, while in a number of cases an attempt has been made to formulate constitutional rules which will ensure conformity between municipal law and treaty obligations. A detailed account of these innovations would be out of place here, but it is essential to sketch their significance in general terms as an introduction to proposals for giving the Indian constitution an appropriate international orientation.

The constitution which reveals most traces of internationalist influence is that adopted by the Spanish Republic on December 9th, 1931. It is not, as some have suggested, a profoundly original instrument. In technical workmanship it is extremely defective. Most of its more valuable provisions have been imitated from elsewhere, and it suffers from a certain wordiness, love of vague principle, and lack of procedural sense. Yet, even when these reflections have been allowed to temper our enthusiasm, it remains a remarkable document. Article 6 declares that Spain renounces war as an instrument of national policy, and Article 7 that she submits to the universal norms of

international law. Article 65, in defining the effect upon Spanish law of ratified treaties, prohibits the enactment of any law inconsistent with a ratified treaty which has not been denounced in a manner provided for therein. Article 76 requires the registration with the League of Nations, in conformity with Article 18 of the Covenant, of all treaties concluded by Spain, and the submission to the Cortes, in accordance with Part XIII. of the Treaty of Peace, of all draft conventions adopted by the International Labour Conference. Article 77 limits the right of the President to sign a declaration of war to cases in which such a declaration will not involve a violation of the Covenant, and in which all means of defence not amounting to war, and all judicial or conciliatory procedures set up by treaties to which Spain is a party, have been exhausted, while Article 78 forbids the President to give notice of withdrawal by Spain from the League of Nations without the previous approval of the Cortes given by a special law voted by an absolute majority.

Interesting and valuable as these provisions are, some of them are unquestionably obscure. The consequences in municipal law of the renunciation of war are left undefined. A last-minute amendment to Article 7 has made it doubtful whether some future act of incorporation is necessary to secure municipal force for

the universal norms of international law. The phrase " universal norms " does not err on the side of clarity, and whether customary international law is to have constitutional force, and so to prevail over incompatible ordinary legislation, is not free from doubt. Whether the ratification of a treaty so expressed as to be self-executory is sufficient to bring municipal law into conformity with its provisions, or whether implementary legislation is necessary for this purpose, is another question to which the constitution gives no satisfactory answer. It is to be hoped that, in the course of time, all these questions will be judicially considered and that the Tribunal of Constitutional Guarantees, which Article 121 of the constitution empowers to pass upon the constitutionality of legislation, will, by interpreting these provisions in a manner which will make them fully effective, deprive of importance their defective draftsmanship.

Meanwhile, other countries, while taking the Spanish model as their inspiration, will be well advised to avoid similar pitfalls. Widespread imitation of the Spanish example at an early date is doubtless improbable, but wherever constitutional revision is in progress the desirability of giving an international orientation to the international law of the future deserves most serious consideration. The chances of it receiving such consideration are far from

negligible. The Interparliamentary Union has been discussing the question for some time, and it is upon the agenda of the World Disarmament Conference, which may well make some general recommendation destined to be the starting-point of a world-wide movement of reform in which it would be pleasant to see India take a pioneering part.

If such a movement is to achieve anything of value, and is not to degenerate into a process of imitating freak provisions for no other reason than that they are novel, some clear formulation of objectives is essential. It would appear that there are four things which can be achieved by giving national constitutions an international orientation. Such a process, particularly if it led to a widespread constitutional renunciation of war, would have an educative value which is not to be despised. It would be emphatic proof that the Governments so limiting their historic powers consider the Covenant and the Pact of Paris to be no mere scraps of paper, but the unquestioned basis of the political structure of the modern world. It would help to enlist patriotism in the service of pacificism, and no more important service could be rendered to our generation than the transformation of patriotism into a national pride in international-mindedness. These factors, defying as they do any precise evaluation, would none the less be of far-reaching

importance, but the process contemplated would also have more measurable results.

The fundamental weakness from which the peace machinery of the world at present suffers is the extent of its reliance upon reason and goodwill. If these were always present, peace machinery would have only a minor part to play. It is where they are lacking that the League of Nations is so vitally necessary, and it is the contribution which it can make towards strengthening the hand of the League in such cases which gives its importance to the movement for world-wide constitutional reform. A Government which does not scruple to overstep its international obligations can now do so with the confidence that the internationally illegal character of its conduct will not affect the municipal validity of whatever legislation or administrative action it relies upon to give effect to its sovereign will. The Government may have violated the Covenant, but that is no excuse for the individual citizen who refuses to comply with a mobilisation order or be in any other way an accomplice in its illegal conduct. If war be prohibited constitutionally as well as internationally, and if the prohibition be couched in terms which deprive of legal effect, on the ground of incompatibility with the constitution, all legislation or administrative action forming part of the preparation for or conduct of a prohibited war,

the strength of the national State, its unbridled authority within its own territory, even when engaged in a course of conduct which is internationally illegal, will be sapped at the source. The case of war is but the most striking of many possible examples. Other instances of the internal validity of acts involving the violation of international engagements might equally well be cited. Constitutional recognition that the legality, even in the domestic forum, of all forms of national action is subject to such action being compatible with international obligations would be a most important step towards bringing the State completely within the pale of law.

With the constitutional prohibition of war should be coupled constitutional provisions empowering Governments to take whatever measures may be required to give effect to their obligations under Article 16 of the Covenant. This article, which requires in certain circumstances the severance of all economic and financial relations with States in breach of covenant, is a fundamental, if unpopular, feature of the existing embryo of world government. Unless moral suasion is to be relied upon as the sole safeguard of world public order, it is imperative that world police action in restraint of aggression should be effectively organised. Such action can only achieve its object if taken promptly, and it will

only be possible for it to be taken promptly when the majority of Governments enjoy powers enabling them to comply with Article 16 without waiting for the passing of special legislation. Few Governments are at present in that position. It is therefore one of the leading objectives of the movement for constitutional reform to secure for all Governments power to implement international obligations which, like those of Article 16, can only be complied with by positive Government action for which existing municipal law rarely makes suitable provision. Here, again, the importance of the matter is not confined to issues of peace and war. Some Governments may require special powers to enable them to give effect to other obligations to co-operate in international action, but the case of Article 16 is unique in urgency and in the universality of its importance.

Constitutional reform can also be of value as pioneering work intended to prepare the way for international engagements more far-reaching than those now in force. Of the "gaps in the Covenant" we have heard much, but the most serious of them has rarely been described by that name. It is the power to withdraw from the League on giving two years' notice. There is good reason to think that the existence of this right of withdrawal will hamper the League seriously whenever there is a major

political crisis in which a Great Power is involved. Suggestions of withdrawal are, of course, made somewhat freely by a certain section of the Press, and the seriousness of the danger can certainly be greatly exaggerated. For, though a State may withdraw from the League on giving two years' notice, there are many obligations of which it cannot thus disencumber itself. It must first discharge its obligations under the Covenant until the date on which its withdrawal takes effect, and instruments independent of the Covenant will continue to bind it after that date. The Kellogg Pact is binding in perpetuity. Acceptances of the Optional Clause and General Act of Arbitration, though in many cases subject to a time-limit, would not be terminated merely by withdrawal from the League. Lapse of League membership would have no effect upon a State's obligations under disarmament treaties, and difficult questions would arise as to the effect of abandonment of membership upon the rights and duties resulting from the mandates and the minorities treaties. Conventions of an economic and social character concluded under League auspices would in most cases remain binding. Inevitably, as the unity of our civilisation becomes ever more pronounced, States become caught in a web of treaty commitments which will ultimately make withdrawal from the League as unthinkable

as withdrawal from the Universal Postal Union already is. Yet, when due allowance has been made for all these factors, the danger of the League being paralysed by threats of withdrawal is no imaginary one. *Experientia docet.* The ideal solution of the difficulty would be the deletion from the Covenant of all provision for withdrawal, but the Covenant bids fair to rival the law of the Medes and Persians in unchangeability. An amendment only comes into force when it has been ratified by all the States occupying seats on the Council at the date of the deposit of the last ratification required, and by a majority of the States represented in the Assembly. Since three new members of the Council are elected every year, the process is a more tiresome one than even appearances would suggest. Many years are sometimes required to bring into force amendments of a comparatively non-controversial character. To propose now the deletion from the Covenant of all provision for withdrawal would be to court defeat, but, meanwhile, something of real value can be done by widespread imitation of the article of the Spanish constitution which requires the President to secure the prior approval of the Cortes, given by a special law voted by an absolute majority, before giving notice of withdrawal from the League. It would be pleasant to see States venture further in this

direction than Spain has done, and to declare in their constitutions the permanence of their membership of the League, thus making constitutional revision an essential preliminary to the giving of notice of withdrawal. The general adoption of such provisions would have a twofold value. Veiled threats of withdrawal could less easily be made by a Covenant-breaking State if it were pledged by its constitution to permanent membership of the League, and the danger of precipitate withdrawal by a Government not genuinely representing public feeling would be countered by the existence of a constitutional provision depriving such withdrawal of legal validity.

The extent to which these various objectives of constitutional reform can be realised under differing sets of national conditions will naturally be far from uniform. Constitutional traditions differ, from one country to another. Differing views are held as to the appropriateness of including in constitutions broad declarations of principle as well as detailed rules for the organisation of the State. The procedural mechanisms available for making effective the reforms suggested, or which it may be possible to devise for the purpose, may be expected to exhibit a considerable variety. Doubtless there are certain general conditions —such as the existence of written constitutions; of a tradition that constitutional law is

distinct from, and has controlling force over ordinary legislation; and of an independent judiciary which can assert itself in opposition to both executive and legislature—which will facilitate the effective subordination of the national State to the international commonwealth. Where any one of these conditions is absent, no more than a partial success can be achieved in any near future. Yet these difficulties are no justification for either pessimism or inaction. International organisation, like applied science, is in its infancy. Neither current dogmas of parliamentary sovereignty, where such dogmas are held, nor current standards of judicial independence, where these standards are low, have any necessary permanence. Even in Great Britain the doctrine of parliamentary sovereignty, in the absolute form in which it was proclaimed by the late Professor Dicey, can scarcely survive the passing of the Statute of Westminster of 1931. On Diceyan principles, as they are commonly taught, Section 4 of that statute, which declares that no future Act of Parliament of the United Kingdom shall extend to a Dominion as part of the law of that Dominion, unless it is expressly declared in that Act that that Dominion has requested and consented to the enactment thereof, would be inoperative to affect the validity of a subsequent act which, without repealing Section 4 of the Statute of

Westminster and without reciting that the consent of a Dominion parliament had been obtained, was in terms expressed to be applicable in that Dominion. So forced a conclusion casts doubt upon the validity of the premises from which it is drawn. It may be logically impossible for a sovereign parliament to limit its own sovereignty, but "the life of the law has not been logic, it has been experience." In terms of pure logic, sovereignty may be incapable of effective self-limitation or self-termination, but from so artificial an impasse we are rescued by the historical approach. The doctrine of parliamentary sovereignty was a natural product of a given stage of British political evolution. Its validity does not extend indefinitely into the past and cannot extend indefinitely into the future. Its essential foundation was the existence of a general willingness to treat Parliament as sovereign. With the disappearance of that general willingness, Parliament will cease to be sovereign, *willy-nilly*, and will be spared the necessity of attempting the logically impossible feat of limiting its own omnipotence.

The applicability to Great Britain, in view of her peculiar constitutional traditions, of the reforms under discussion has only been touched upon here in view of its possible repercussions upon the Indian position in the event of its being thought desirable that certain reforms,

more particularly those relating to the constitutional status of war, should be adopted simultaneously throughout the King's dominions. The difficulties to be anticipated in India are of a different order, for in India the technical conditions of effective reform are likely to be fulfilled in a remarkable degree. There will be a written constitution and, whatever be the means provided for its modification, whether an imperial Act remains necessary for any amendment or whether some other procedure be provided for the amendment of all but certain reserved articles, it is likely, in view of the position of the States, to be a constitution of singular rigidity, while its federal character will involve the application of the *ultra-vires* principle by the courts to all legislation or administrative action incompatible with its provisions and will tend to secure for the federal court a position of great authority and independence. India is therefore singularly well placed for playing a pioneering part in the movement for building national constitutions into the framework of international government. More detailed discussion of how and why she should play such a part can conveniently be grouped under two heads: an enumeration of provisions suitable for inclusion, with such adaptations as local circumstances may require, in all new constitutions; and a statement of the reasons why the

problem, urgent everywhere, is of very special interest to India.

Every constitution adopted hereafter by any member of the League of Nations should contain, in the initial article in which most constitutions proclaim the form of government which they embody, a declaration that membership in the League of Nations is an essential feature of the national constitutional system. With such a declaration should be coupled a provision invalidating any purported withdrawal from the League while the constitution remains in force, and any form of national action incompatible with the Covenant and with the Pact of Paris, the texts of which might fittingly be reproduced as an annex to the constitution. General provisions of this kind should be supplemented by more detailed articles dealing with recourse to war, with the application of sanctions, with the municipal effect of treaties, and with the application of customary international law by municipal courts. All articles relating to war should be so expressed as to make unconstitutional and invalid all legislation and administrative action in furtherance of an internationally prohibited war, and all possibility of equivocation should be removed by defining, as the test of whether a war is internationally prohibited, the view taken of the matter by the Council of the League of Nations acting

without the concurrence of the parties. Some procedure should be provided for ensuring that questions arising under these provisions are the subject of a final decision by the highest judicial authorities within the shortest possible period, and the constitution itself should confer upon the Government full power to give effect to its obligations under Article 16 of the Covenant. In democratic States it may be thought desirable that the exercise of such powers should be subject to some degree of parliamentary control ; but, even if this view be taken, Governments must have power to anticipate parliamentary approval if they are to fulfil their obligations in the prompt manner which is so essential, while the relaxation of parliamentary control in this sphere would be of value, in that it might prepare the way for an international relaxation of the unanimity rule.

No less important than provisions designed to cope with international emergencies would be others likely to be applied more frequently and designed to secure the supremacy of international over municipal law whenever cases in which the two are in conflict come before municipal courts. The municipal effect of treaties requires definition in three respects. Registration with the League of Nations is now a condition of the international validity of any treaty concluded between members of the

League. It is important that unregistered treaties should never be treated as valid by a municipal court, and to avoid this danger it would be desirable for all constitutional provisions referring to the municipal effect of treaties to mention registration as a condition of their validity, even where the matter is impliedly covered by some more general article incorporating in the constitution all the obligations of the Covenant. The second essential is that the ratification of an international convention and any modification of municipal law required to give effect to it should always coincide. This can most conveniently be done, so far as self-executory treaties are concerned, by associating the legislature with the act of ratification and considering ratified treaties a part of municipal law. Not less essential is a provision giving treaties once ratified constitutional force until they are denounced in some manner for which they provide or which the Permanent Court of International Justice has recognised, in the particular case, to be legitimate under the general rules of international law. In many countries it will be useful to require the prior sanction of the legislature for all or certain classes of proposed denunciations. A clause specifying that any interpretation of a treaty handed down by an international tribunal, in proceedings binding upon the State introducing

the reform, shall thenceforward be binding upon its courts, and one expressly authorising the treaty-making power, acting with the approval of the legislature, to delegate to international bodies the right to amend treaties by procedures defined therein, would also be most useful innovations.

The municipal status of customary international law requires less elaborate definition, there being only two essentials of a good recognition clause. Customary international law should be recognised as having constitutional force and as invalidating subsequent legislation incompatible with it, and the definition of what constitutes customary international law should be more happily worded than in the constitutional provisions now in force in Austria, Esthonia, Germany, and Spain. References to "universally recognised rules of international law," to quote a favourite formula, are equivocal, and may be interpreted as meaning that proof must be given of previous consent to the rule in question by the State in the courts of which it is sought to have it applied. Since international law is less a set of well-defined rules than a body of principles only partly worked out in detail, such a wording of a clause acknowledging it to have municipal force is likely to have unfortunate results. If "justice, equity, and the reason of the thing" are to have the influence in the development

of international law which is to be desired, it would be well for municipal tribunals to have the same freedom to develop its principles as international tribunals already exercise, while at the same time being bound by authoritative international interpretations of those principles. The preparation of appropriately drafted constitutional provisions will be a delicate task, but the difficulties are not insuperable.

These general proposals must now be related to the peculiar conditions of India. At first glance a *milieu* more unfavourable for their adoption can scarcely be imagined. The preparation of the new constitution has now reached an advanced stage. The position is complicated by the intention that external affairs and defence shall be reserved departments, responsibility for which will rest personally upon the Viceroy ; while the doctrine of the common belligerency of all the King's dominions, of the impossibility of any part of them remaining legally neutral in the event of any other part being at war, may appear to be a further obstacle to the most important of the reforms here suggested ; the deprivation of constitutional validity of an internationally prohibited war. Nor is the state of public feeling in India a favourable factor. Though the evolution of her international status has been an important factor in the constitutional progress of India, this is not generally realised, and there

are many quarters in which ill faith will at once be assumed as soon as suggestions involving any restriction of India's freedom are found over the signature of a non-Indian name. This raises a fundamental question. If Indian nationalism means the cult of self-sufficiency, of uncontrolled national arrogance, and of all the dead dogmas of the past, no internationalist will care two straws for it ; but, as interpreted by Mahatma Gandhi, and even more conspicuously by Rabindranath Tagore, it has meant no such thing. It has been a claim for equality of status, a claim compatible with an organised world, and not, despite *khaddar*, a rejection of international co-operation. A national movement with this as its inspiration should welcome the opportunity of taking the lead in a world movement to create a constitutional substructure for international co-operation. Doubtless men rarely, in circumstances so complicated as those which constitute the Indian constitutional problem, feel disposed to add to their difficulties for the sake of making a generous gesture ; but the adoption in India of a programme of reform such as that sketched above would be more than a gesture and would, taking a long view, assist in the solution of some of the most stubborn difficulties of the Indian problem. Technical conditions, as has been noted, will be singularly favourable. There will be a written constitution, not subject

to amendment by ordinary legislation, and a federal court accustomed to pass upon the constitutionality of legislation.

The preliminary objection that external affairs is to be a reserved subject loses much of its force when examined more closely. It is not intended that the reserved subject of external affairs should include questions affecting Indian participation in international legislation of a technical character. The following extract from the fourth report of the Federal Structure Committee is of capital importance :

> " There is, however, a difficulty in connection with External Relations which hardly arises in the case of Defence, viz. that of defining the content of the subject. The reserved subject of External Relations would be confined primarily to the subject of political relations with countries external to India and relations with the frontier tracts. Commercial, economic, and other relations would fall primarily within the purview of the Legislature and of Ministers responsible thereto ; in so far, however, as questions of the latter character might react on political questions, a special responsibility will devolve upon the Governor-General to secure that they are so handled as not to conflict with his responsibility for the control of external relations. There will accordingly be need for

close co-operation, by whatever means may prove through experience most suitable for securing it, between the Minister holding the portfolio of 'External Relations' and his colleagues the 'responsible' Ministers."[1]

There would appear to be two ways in which the handling of technical problems may react upon political questions. Technical commitments may interfere with political freedom, a danger which can only be avoided by the executive supervision of the Governor-General. Clearly he must have power to prevent negotiations for a commercial treaty with a Government which he, acting in accordance with the Stimson Doctrine, has refused to recognise on the ground that it has been set up by means involving the violation of the Pact of Paris; and this is but one of many possible illustrations. The other type of case in which the handling of technical questions may assume political importance is of quite a different character. India may, at a given time, be bound by commercial treaties which pledge her not to raise certain tariff rates. The Minister in charge of tariffs may propose legislation which would involve a breach of such a treaty. The Governor-General, though not personally responsible for tariff questions and not entitled by

[1] Indian Round Table Conference (Second Session), September 7th, 1931–December 1st, 1931, *Proceedings of Federal Structure Committee and Minorities Committee*, at p. 486.

assuming international engagements to modify Indian tariff rates, must clearly, unless alternative machinery is provided, be in a position, in such a case, to prevent the passage of legislation which will involve the violation of international engagements. Either the sections of the Government of India Act which at present forbid the introduction in either the central or a provincial legislature, without the previous sanction of the Governor-General, of any measure affecting the relations of the Government with foreign princes or States must be retained—in which case popular control of the technical side of international relations will be unreal—or the Governor-General must freely exercise the rights of veto and reservation—a prospect which can give little satisfaction to anyone. The presence in the constitution of provisions defining the municipal effect of treaties would completely alter the position. A recognition that international law and the fact of participation in international life impose certain inevitable restrictions upon a State's freedom would take the place of a partisan wrangle between supposedly Indian and supposedly British interests. The case of legislation involving a violation of customary international law is a very similar one. Assume that it is proposed to confiscate property rights held by foreigners under conditions which involve the violation of some rule of international law.

Responsibility for vetoing such a measure should not rest upon the Governor-General. He should be in a position to warn his Ministers that their proposals are *ultra vires*, and, if they disregard his warning, to leave it to the courts to satisfy them that he was right. To govern India under the new constitution will be no easy task. Great tact and forbearance will be required on both sides if the existence of reserved subjects is not to result in deadlocks. In the circumstances, it is imperative to take out of the sphere of possible conflict between the Governor-General and the legislature all questions which can be disposed of by the application of constitutional provisions by the courts. The position of the States only emphasises the importance of the matter. It will have to be made clear that only treaties duly accepted on their behalf have constitutional force in their territories, but, subject to that reservation, it is essential that the Government responsible for their international relations should be protected against the possibility of States' legislation involving it in international responsibility. Local conditions, so far from weakening, very much strengthen the general internationalist case for giving constitutional force to both conventional and customary international law.

Similar considerations apply to the suggestion that special powers should be given in the constitution for the application of Article 16

of the Covenant. It may be that the Governor-General will have other powers which would enable him to take action under this article, but the existence of such powers would not make it any the less desirable that action under Article 16 should be taken in virtue of powers specially conferred for the purpose. Any more general special powers which the Governor-General has will almost certainly be unpopular, and may be expected to become, in the course of time, obsolete.

The constitutional prohibition of war raises more delicate issues. Nowhere is this reform more necessary than in the British Commonwealth, but in many quarters it will probably be felt that it is the type of change which can only be introduced on an all-Commonwealth basis. If so introduced, it would be a contribution towards clearing up the position of the Dominions in respect of war. At present a declaration of war by the King-Emperor, even though made in violation of the Covenant and of the Pact of Paris, would involve all parts of the King's dominions in technical belligerency, though it would not oblige any Dominion, which did not approve of the declaration, to take an active part in hostilities. The position of those parts of the Empire which are separate members of the League of Nations would be particularly embarrassing. Either their technical belligerency would constitute a resort to

war within the meaning of Article 16 of the Covenant—in which case they would be joint aggressors with Great Britain, assuming her to be the original aggressor, and as such liable to all the penalties of that article—or it would not constitute such a resort to war, and being bound by that article they would be under an obligation to apply sanctions against Great Britain. The British mind may love anomalies, but this particular anomaly can give little satisfaction to even the most self-righteous of the slipshod school. The only factor which in any way clarifies the situation is that all parts of the King's dominions are equally bound by the Covenant and by the Pact of Paris to refrain from acts of war and are under the obligations defined in Article 16 to succour any member of the League which is the victim of aggression. Those stout imperialists who object to that article, and to any commitment which may involve Great Britain in responsibility for enforcing the peace of the world, little realise that it is their obligations under the Covenant, and not any rule of British constitutional law, which place all parts of the King's dominions under a legal obligation to assist each other in the event of any one of them being a victim of aggression! Some measure purporting to deprive of legal validity throughout the King's dominions any measures taken in any part of them in breach of the Covenant or of the

Pact of Paris would be a further step towards clearing up the position. It might take the form of a Statute of Westminster II (Modern Series), and, if it were incorporated in the constitutions of India and of all the Dominions and passed by the Imperial Parliament in the form of an Act reciting that it had been approved by India and all the Dominions, that it was effective throughout the King's dominions, and that it was not subject to repeal, even in its application to any one part of them, without the approval of all parts represented in the Imperial Conference, it is difficult to believe that the courts would deny it, even in Great Britain, the validity and overriding force of a fundamental law.

The value of such a measure would be twofold. It would remove any doubt which there may be that the technical belligerency resulting from resort to war by another part of the King's dominions is not a breach of covenant by Dominions which are involved in it. This result would be accomplished in the most satisfactory of all ways—by the complete disappearance of technical belligerency. Acts of war in violation of international engagements would be constitutionally *ultra vires* throughout the King's dominions. They would be a resort to war in the sense of Article 16 of the Covenant, just as forcible measures not amounting to war may be, but, being *ultra vires*, they

would not involve all the King's dominions in a state of war. Responsibility for acts both internationally and constitutionally irregular would rest solely upon those participating in them. At the same time all real danger of one part of the King's dominions being called upon to apply sanctions against another would be avoided. The constitutional invalidity of its conduct, and the impossibility of enforcing respect for its will through the courts, would prevent any of the Governments of the Commonwealth from carrying warlike conduct to a point at which the application of sanctions would be necessary. The constitutional prohibition of war would be a real safeguard against the disruption of the Empire in the event of a serious international crisis.

Yet, even if the question cannot be treated on an all-Commonwealth basis, it still retains a special interest for India. The power of the Governor-General in Council to declare war or commence hostilities is at present defined by Section 44 of the Government of India Act. Except in certain cases of self-defence defined in that section he may not take such action without the express order of the Secretary of State in Council. The substitution for this section of a constitutional prohibition of war —which would not, any more than does the equivalent Spanish provision, apply to police operations in unsettled districts—would have

the effect of a set of reciprocal guarantees exchanged between India and Great Britain. It would be an assurance to India that British control of her foreign policy would not be liable, during the transitional period, to involve her on the British side in disputes in which Great Britain is in breach of covenant. It would be of equal value as an assurance to Great Britain that India, when she becomes mistress of her own foreign policy, will conduct it in accordance with the Covenant and with the Pact of Paris. Doubtless issues of peace and war, when they have reached the stage at which they become issues of peace and war, are not the only ones in respect of which Great Britain will desire some co-ordination between her foreign policy and that of India, but to have cleared up this issue would none the less be an achievement of no little value. It might be a factor of importance both in reconciling India to British control of her foreign policy to-day and in reconciling Great Britain to the relinquishment of that control at a reasonably early date. There will of course be those who will argue that the existence of such a rule in the Indian constitution might be a source of embarrassment to Great Britain. To them the answer is clear-cut and unqualified. It can only be a source of embarrassment if Great Britain is in breach of covenant—in which case the greater her embarrassment the better.

Such are the more salient of the many features of the Indian constitutional problem which are of international interest. Elaboration of the topic could be carried to almost infinite length. Here no more has been attempted than to indicate a possible line of vision. Sir Samuel Hoare will perhaps pardon the quotation in defence of such proposals of a phrase which he used at the First Session of the Round Table Conference : " I am sure the project in which we are engaged is so big and so enthralling that we cannot look back to a distant mid-Victorian past, but must look forward to what is actually happening in the world at the present time."

See page 189 for important postscript.

GENERAL BIBLIOGRAPHY

Besant, A. : *India, Bond or Free* (1926).
Bose, S. : " Some Aspects of British Rule in India," *Bulletin of the State University of Iowa*, Vol. V., No. 1 (1916).
Bulkerly, J. P. : *The British Empire* (1921).
Carthill, A. C. : *The Lost Dominion* (1924).
Chirol, Sir V. : *India* (1926).
Cram, J. A. : *The Origins and Destiny of Imperial Britain* (1915).
Curtis, L. : *The Commonwealth of Nations.*
Demangeon, A. : *The British Empire* (1925).
Dutcher, G. M. : *The Political Awakening of the East.*
Guest, L. H. : *The Labour Party and the Empire* (1926).
Hall, H. Duncan : *The British Commonwealth of Nations.*
Hall, W. P. : *Empire to Commonwealth.*
Holland, W. E. S. : *The Indian Outlook* (1926).
Jebb, R. : *The Empire in Eclipse.*
—— : *Studies in Colonial Nationalism* (1905).
Keith, A. B. : *The Constitution, Administration, and Laws of the Empire* (1924).
—— : *Selected Speeches and Documents on British Colonial Policy, 1750–1921* (1922).
King-Hall, S. : *Imperial Defence.*
Lajpat Rai : *The Political Future of India* (1919).
—— : *England's Debt to India* (1916).
—— : *Unhappy India.*
MacDonald, J. R. : *The Awakening of India.*
Mahan, T. A. : *The Problem of Asia* (1900).
Nevinson, H. : *The New Spirit in India* (1925).
Porritt, E. : *The Fiscal and Diplomatic Freedom of the British Overseas Dominions.*
Rice, S. P. : *The Challenge of Asia.*
Sharma, B. M. : *The Indian Federation* (1932).

Viallate, A. : *Economic Imperialism and International Relations.*
White, Sir F. : *India—a Federation?*
Woolf, L. : *Economic Imperialism* (1920).
Zimmern, A. : *The Third British Empire.*

CHAPTER I

Bentwich, N. : *The Religious Foundations of Internationalism*, chap. viii. (1933).
Close, U. : *The Revolt of Asia* (1927).
Das, T. : *India in World Politics* (1923).
Harris, N. D. : *Europe and the East.*
Hearnshaw, F. J. C. : *King's College Lectures on Colonial Problems*, Lecture I. (1913).
Hobson, J. A. : *Imperialism.*
Indian Statutory Commission : Vol. V., pp. 1631–1650 : *Memorandum of the India Office on the International Status of India.*
Moon, P. J. : *Imperialism and World Politics.*
Problems of Peace, Third Series, pp. 231–235 (1929).
—— Sixth Series, pp. 253–278.
Rowell, N. W. : *The British Empire and World Peace* (1922).

CHAPTER II

Alwar, Maharaja of : *India and the League* (1923). League of Nations' Union Pamphlet.
Coyajee, Sir J. C. : *India and the League of Nations* (1932).
Sen, J. M. : *India and the League of Nations.* An article in *Welfare* (1925).
Problems of Peace, Third Series (1928).
—— *The League of Nations and the British Commonwealth*, by C. Delisle Burns.
Pole, D. Graham : *India in Transition* (1932). pp. 9, 265.
Reports of the Indian Delegation to the Sessions of the League Assembly.

The following may also be consulted :
Moore, Prof. Sir William Harrison : *The Dominions of the British Commonwealth in the League of Nations* in *International Affairs* (May 1931), pp. 372–392.

Manning, Prof. C. A. W.: *The Policies of the British Dominions in the League of Nations* (1932).

(We are indebted to the League of Nations Union (Oxford Branch) for useful suggestions.—E.D.S.)

CHAPTER III

Sundaram, Dr. Lanka: "India and the I.L.O.," *The Asiatic Review* (October 1931 *et sqq.*).

——: "India's International Status," *Transactions of the Grotius Society* (1931).

Pillai, Dr. P. P.: *India and the International Labour Organisation* (Patna University, 1931).

Lall, S.: *Memorandum for the Royal Commission on Labour in India* (Government of India, 1930).

Clow, A. G.: *The State and Industry* (Government of India, 1928).

India and the International Labour Organisation, Pamphlet No. 235 of the League of Nations Union, London.

Report of the Royal Commission of Labour in India, particularly chap. xxv.

CHAPTER IV

Elliot, W. Y.: *The New British Empire*, chap. vi. (1932).

Fiddes, Sir G. V.: *The Dominions and Colonial Offices* (1925).

Hall, H. Duncan: *The British Commonwealth of Nations* (1920).

Hall, P. W.: *Empire to Commonwealth*, chaps. x., xi. (1929).

Hurst, Sir Cecil J. B.: *Great Britain and the Dominions*, chap. i., Harris Foundation Lectures (1927).

Keith, A. B.: *War Government in the Dominions*, chap. xii. (1921).

——: *British Constitutional Law*, chap. xii. (1931).

——: *Speeches and Documents of the British Dominions, 1918–1931* (1932).

CHAPTER V

For the Constitutional Substructure of the Collective System:

(i.) GENERAL:

Wehberg: *Outlawry of War*, especially pp. 108–117.

Proceedings and Documents of the Moral Disarmament Committee of the Conference for the Reduction and Limitation of Armaments, particularly memorandum by M. V. V. Pella upon "The Adaptation of National Laws to the Present Stage of Development of International Life" (Conf.D./C.D.M./20).

Compte Rendu de la XXVIIIe Conference Interparliamentaire—Documents Préliminaires: 2. "Les Problèmes de la Sécurité"—"L'Harmonisation du Droit Interne des États avec les Nouveaux Principes du Droit de la Paix," par M. V. V. Pella.

(ii.) THE SPANISH CONSTITUTION OF DECEMBER 9TH, 1931:

English Translation of Text in *Annual Register* (1931).

Posada, A.: *La Nouvelle Constitution Espagnolle—Le Régime Constitutionel en Espagne.*

Serrano, N. P.: *La Constitucion Espanola.*

Asua, J. de: *Constitucion de la Republica Espanola.*

For the Effect upon the Relations *inter se* of the Members of the British Commonwealth of Nations:

Toynbee, Arnold: *Conduct of British Empire Foreign Relations since the Peace Settlement*; especially pp. 1–3 and pp. 46–52.

Baker, P. J. Noel: *The Present Juridical Status of the British Dominions in International Law.*

For the Indian Constitution:

The Report of the Simon Commission on Indian Reforms.

The Proceedings of the Round Table Conference.

The Government White Paper on India (1933).

N.B.—The responsibility for compiling this bibliography mainly lies on the editors, but they acknowledge with thanks the helpful suggestions sent by Dr. Larka Sundaram and Mr. Wilfred Jenks.

POSTSCRIPT TO CHAPTER V

THE ABOVE chapter was in page-proof before I had an opportunity of reconsidering it in the light of the White Paper, "Proposals for Indian Constitutional Reform." The latter contains nothing which affects the essentials of the argument, but renders necessary some restatement of its bearing upon the suggested scheme. The White Paper includes, in an appendix, three lists of exclusively federal (List I.), exclusively provincial (List II.), and concurrent (List III.) subjects. The so-called exclusively federal subjects are subjects legislation upon which will be operative throughout British India, and in States in so far as the ruler of each State has by his instrument of accession accepted the subject with which the law is concerned as a federal subject. The concurrent list consists of subjects upon which the federal legislature and provincial legislatures are to have concurrent powers, federal legislation prevailing in the event of conflict, unless the provincial law has received the special assent of the Governor-General. The federal legislature is not given unqualified power to give effect to treaty engagements, but will have a limited power under List I., item 8: "External Affairs, including International Obligations, subject to the previous concurrence of the units as regards non-federal subjects." Its possession of a power so defined will be an improvement upon the present position in the States, but will involve regression in respect of British India. The federal Government will no longer have its present general power to give effect to international engagements in

British India, and the exclusively provincial list includes subjects of international importance, notably those referred to in the discussion above of earlier proposals and health insurance and invalid and old age pensions, which now appear in the provincial list, although they are a leading pre-occupation of the International Labour Organisation, and some aspects of them, particularly the insurance rights of migrants, cannot be adequately dealt with except on an international basis. The position would be particularly serious if this requirement of concurrence by the units in the acceptance of international obligation upon non-federal subjects were construed as requiring the concurrence of the Provinces in the acceptance of obligations upon subjects in List III. This List includes a number of subjects of considerable international importance, notably : marriage and divorce, a subject in respect of which conflicts of law cause considerable hardship at the present time and some international co-ordination is obviously necessary ; commercial arbitration, the international importance of which is well illustrated by the existence of League of Nations agreements upon the recognition of arbitration clauses in contracts and the execution of foreign arbitral awards ; the criminal law, which it may often be necessary to call in aid to implement international agreements ; and most of the heads of jurisdiction covering the subject matter of international labour conventions. Provincial concurrence is not required for municipal legislation upon these subjects, and there is no reason for requiring it for the acceptance of an international obligation. This does not appear to be the intention, but the wording used in the White Paper is not entirely clear.

The requirement of concurrence will extend to a larger range of subjects in the case of the States. It does not appear that they will at present be invited to accept

concurrent federal jurisdiction over the subjects in List III., though there does not seem to be any reason why the door should be closed to such acceptance should any State be prepared to go so far, now or in the future. Nor are many States likely to accept federal jurisdiction in respect of all the subjects in List I. It is believed, for instance, that naturalisation and aliens, a subject now in the federal list, will be excluded by most instruments of accession. On the other hand, it must be assumed that all States will accept the item referring to international obligations. The Crown is to reserve to itself power to refuse any accession proposed on terms incompatible with the scheme of federation set forth in the Constitution Act, and acceptance of this item is clearly an essential of federation. There will thus be a twofold improvement in the present situation. There will be a list of subjects in respect of which international engagements cannot now be accepted on behalf of the States except with their special consent, which under the new constitution will be federal for a considerable number of States. The length of this list will depend upon the terms of individual instruments of accession, and there is no reason why the list should not be a growing one. There will also be a recognised procedure for enacting and maintaining in force federal legislation valid in the States upon non-federal subjects in respect of which they have individually consented to the acceptance of a particular international engagement. This will make it possible to avoid the difficulties referred to on pp. 145–146 above. The organisation of consultation is not discussed in the White Paper and still requires detailed consideration.

The White Paper is also silent upon Mr. Jayakar's suggestion with reference to jurisdiction over foreigners. This question is doubtless complicated by the intention that the constitution shall set up only a federal court with

jurisdiction in constitutional cases, as distinguished from a supreme court with an appellate jurisdiction in certain other classes of both civil and criminal cases which the federal legislature is to be empowered to establish at a later date. But, even given this position, there would seem to be no reason why the federal court, though it might be illogical to give it a general jurisdiction in all cases affecting foreigners, should not have at least an appellate jurisdiction in all cases in which questions of international law, whether of customary international law or of the interpretation of treaties, are involved. There are precedents for giving a federal court such a jurisdiction in both Switzerland and the United States of America.

Other happenings since the above chapter was written have included the constitutional changes in Germany, which the reader will bear in mind when reference is made to the Weimar Constitution, and the publication in Europe of the Siamese Constitution of December 10th, 1932, Article 54 of which limits the right to declare war to cases in which such a declaration will not involve violation of the Covenant. The international reorientation of Asiatic constitutions has begun !

C. W. J.

DATE OF ISSUE

This book must be returned within 3, 7, 14 days of its issue. A fine of ONE ANNA per day will be charged if the book is overdue.