

TREATMENT OF INDIANS IN THE UNION OF SOUTH AFRICA

(Item 20 of the Provisional Agenda of the Second Regular Session)

REPORT OF THE GOVERNMENT OF THE UNION OF SOUTH AFRICA IN CONNECTION  
WITH THE RECOMMENDATION OF THE GENERAL ASSEMBLY OF  
8 DECEMBER 1946 (RESOLUTION 44 (I))

The following letter, dated 15 September 1947, has been received from the Permanent representative of the Union of South Africa.

New York, 15 September 1947

"I am directed to transmit to you herewith the attached statement by the Government of the Union of South Africa, in connection with the recommendation of the General Assembly of 8th December 1946, relating to the Treatment of Indians in the Union of South Africa.

(Signed) H. T. ANDREWS  
Permanent Representative"

STATEMENT BY THE GOVERNMENT OF THE UNION OF SOUTH AFRICA,  
IN CONNECTION WITH THE RECOMMENDATION OF THE ASSEMBLY  
RELATING TO THE TREATMENT OF INDIANS IN THE UNION

1. In making this statement to the United Nations, the Government of the Union of South Africa desire to make it clear at the outset that they do so without prejudice to the position taken up by them at the last session of the General Assembly, in regard to the domestic nature of the matters involved and the consequent lack of jurisdiction on the part of the Organization.
2. Notwithstanding this the Union Government, anxious that normal friendly relations with the Government of India should be restored, desired to avail themselves of the opportunity presented by the recommendation made by the Assembly. They found, however, that there were certain obstacles in the way, and these have not as yet been overcome.
3. In pursuance of the policies announced by the two Governments in 1927, the Indian Government appointed a High Commissioner in the Union, who has for many years been the normal channel of communication between the two Governments. Although he was recalled for consultation in 1946, there was no formal rupture of relations between the two Governments, and his office in the Union remained and still remains open and staffed.
4. The Union Government anticipated and expected that, as a result of the recommendation of the Assembly referred to above, and in order to restore the recognized ordinary means of communication between the two Governments, the Indian Government would arrange for the return of their High Commissioner. As admitted by the Government of India, the subject matter of the dispute is of a highly contentious nature and, as will be more fully indicated, the Union Government consider that the precise implications of the recommendation of the Assembly are by no means clear. In these circumstances it was felt that the necessary preliminary discussions, inter alia to devise a mutually acceptable basis of approach, could best be carried on through the High Commissioner, rather than by the less effective and less expeditious means of cabled communications. When therefore the Indian Government approached the Union Government on 14 April 1947, for the purpose of initiating discussions, the Union Government suggested that the High Commissioner should be sent back to the Union. The Indian Government declined to entertain this suggestion, stating that they considered such a step unnecessary. They pointed out at the same time that the reason for his recall still continued and requested the Union Government to accept the implications of the resolution of the Assembly of 8 December 1946, as a common basis for discussion.

5. The Natal Indian Organization, representing the Indians who have broken away from the South African Indian Congress because of the latter's pronounced communistic tendencies and extremist attitude, and also the South African Indian Congress itself, were deeply concerned that the High Commissioner should return, and regarded his reinstatement in the Union as being in their own interests. In fact, the Congress had on its own initiative made representations to that end to the Indian Government. These organizations urged the Union Government to renew their request. On 18 June 1947, the Union Government did so, drawing attention to the desire of these organizations and pointing out, inter alia, that the return of the High Commissioner would be the proper course under international practice.

6. In reply to this the Government of India intimated that they would only accede to this request if the Union Government accepted the implications of the resolution already referred to, as a common basis for the discussions. From this, taken with the previous request of the Indian Government to the same effect, it was apparent that the Union Government was being expected to express its readiness to submit to some general or specific condemnation implied in the resolution. In effect, they were required, as a condition precedent, to abandon their attitude in regard to the jurisdiction of the United Nations Organization, and not only to accept that there has been a finding by the Assembly to the effect that they have broken agreements between the two Governments which are legally binding according to international law and that they have violated principles of the Charter, but also to adopt that finding as a basis, and indeed as the only possible basis for negotiations. This they were not prepared to do. They have broken no agreements, internationally binding or otherwise, and have violated no principles of the Charter.

7. If, moreover, the recommendation made by the Assembly were to be taken to imply a positive finding that they have in fact been guilty of such breaches and violations, that implication would, in relation to the many charges made by the Indian Government and the various possible verdicts on those charges, be of so vague and uncertain a nature, that it could in any event not possibly serve as a basis for the discussions contemplated, without prior agreement between the two Governments as to the precise meaning of that resolution.

8. This vagueness and uncertainty arises from the following considerations:

- (a) The complaint made by the Indian Government, as set forth in document A/68, related to a variety of legislative and administrative matters ranging from the parliamentary franchise to the regulations which local governments of municipal areas are empowered to make in

/regard to the

regard to the licensing of Asiatic tea rooms. Some of these matters were dealt with by statutes going as far back as 1871, and some have, as pointed out in the statement made at the time by Field-Marshal Smuts, never formed the subject of any previous controversy between the two Governments. The first question which arises is whether the implied condemnation, if any, must be taken to relate to all these or only to some of them, and if the latter to which of them?

(b) In order to arrive at any conclusion as to the validity of the Indian complaint in regard to any of these matters, it would, moreover, have been essential to determine in the first place, whether there existed between the two Governments any agreement which was legally of binding force according to international law; in the second place, if such an agreement was found to exist, what the specific obligations of the parties under that agreement were, whether any such obligation has not been carried out by either party, and if so, in what respect; in the fourth place it would have been necessary to determine whether the relevant provisions of the Charter impose a ban on all legislative racial distinctions of whatsoever nature or only on such distinctions as constitute an infringement of recognized fundamental human rights and freedoms, and if the latter, what those rights and freedoms are; and lastly, in which respect if any, they have been infringed by the Government of the Union.

(c) Without a clear answer to every one of these questions, no tribunal could with any justice arrive at a general and unqualified condemnation of the Union Government on the Indian complaint, such as the Indian Government seem to expect the Union Government to accept. To none of these questions do the proceedings before the Joint Committee or the Assembly provide such a clear answer. Both Governments adduced certain facts, many of them of a disputable nature, and submitted arguments as to the legal aspects of the matters involved. At no stage was any finding made, either by the Joint Committee or the Assembly, as to the facts or as to the law to be applied to those facts. The Union Government were, therefore, not prepared to assume that the Assembly did in fact intend on such inadequate proceedings and by a mere implication to give one sweeping answer on all these most contentious issues.

9. If, moreover, the resolution of the Assembly must be taken to imply an adverse finding against the Union Government on all the matters raised by the Indian Government, the following propositions would of necessity have to be accepted:

(1) Notwithstanding the uncontroverted evidence to the contrary

submitted by the Union Government, the declarations of 1927 and 1932 constitute international treaties.

- (ii) Agreements (assuming that the 1927 and 1932 declarations were in fact agreements) entered into between State members of the League of Nations which were not registered with the Secretariat of the League would, notwithstanding the provisions of Article 18 of the Covenant of the League, be binding and enforceable before the United Nations Organization.
- (iii) Treaties as well as the provisions of the Charter, are retrospectively violated by acts inconsistent with their terms, committed before they were concluded or came into force. A considerable part of the legislation complained of was passed before the 1927 declaration. All the legislation complained of, except the Asiatic Land Tenure and Indian Representation Act of 1946, was passed before the Charter came into force.
- (iv) The Charter bans with immediate effect not only all legislative and administrative distinctions based on race, but also all such distinctions based on sex, language or religion, and does so not merely in relation to fundamental human rights and freedoms but in relation to all rights and freedoms of whatsoever nature, and whatever the purpose or effect of such distinctions may be.

10. The last proposition is of so much importance and received so much support in the discussion of the complaint against the Union Government, that it would, perhaps, not be out of place to deal with it in somewhat greater detail than with the three other propositions.

11. If we examine the provisions of the Charter, we find that wherever the words "without distinction as to race, sex, language or religion" occur in Articles 1 (3), 13, 55 (c) and 76 (c), they always occur in juxtaposition with, and as an amplification of the meaning of, the words "human rights and fundamental freedoms". The question is whether the expression "human rights", in this context, refers to all rights which may be conferred upon or claimed by men and women, or to a more limited category of rights. It is submitted that the answer to this question has been given in the preamble to the Charter which sets out as one of its basic objectives, "to reaffirm faith in fundamental human rights", and also by the General Assembly itself, in its resolution of 11 December 1946, by which it referred to the Economic and Social Council a draft declaration on what was described in the resolution as "fundamental human rights and freedoms", and also in its resolution of 14 December 1946, whereby it affirmed that "freedom of information is a fundamental human right". The purpose of the Charter, therefore, is not /to deal with

to deal with every conceivable right, whatever the political, social, economic, racial or religious structure within which it exists may be, but only with such rights as may be regarded as fundamental, as so essential for "the dignity and worth of the human person" as to demand recognition in all countries at all times in regard to all human beings. "Human rights", as used in the Charter, do not comprise more than this limited category of rights. It is in relation to such rights only that the above-mentioned Articles of the Charter, enjoin that there should be no distinction as to race, sex, language or religion. These articles, moreover, do not impose any immediate ban upon such distinctions, even where the latter do affect fundamental human rights. They do no more than give expression to one of the objectives of the Organization, for the achievement of which the United Nations will exert themselves in the manner indicated in the Charter. That is why the human rights commission has been entrusted with the task upon which it is now engaged. Until fundamental human rights have been defined and have received recognition in a binding form, the provisions of the Charter cannot be said to extend to human rights other than those which are today in international law accepted as being so fundamental that they are not merely of domestic importance but the concern of the society of nations.

12. That all distinctions, without exception, are not outlawed by the Charter, is confirmed by the results which would follow if they were. If all such distinctions, whatever their purpose or effect, are to be regarded as prohibited, what will be the effect upon the internal organization of member states throughout the world? It is known that there are member states which limit the right of citizenship to persons of a particular racial descent; which do not accord to women all the rights of franchise, of public office or of guardianship over children, that are accorded to men; which have by statute denied or limited the entry into their territories of members of a particular race; which restrict the acquisition of land from aborigines or prohibit the alienation of fixed property to members of a particular race, sometimes even beyond their own borders; or which have, by their legislation, placed obstacles in the way of marriages between members of different races. Other member states have by their constitutions declared a particular language the official language, some declaring it the only language in which compulsory primary education may be given; or have recognized a particular religion as the religion to be supported by the State. That must, in so far as language is concerned, almost inevitably result in some measure of discrimination between persons whose native language is the official language and those whose native language is not. The former will ordinarily have the right inter alia to claim tuition for their children in state schools in their native language, whilst the latter would have no such right. In regard

to a State religion, a similar position will arise. The adherents of other creeds will not be able to claim the same official support for their churches as adherents of the recognized religion which is, in terms of the constitutions of some states, entitled to support from the State. In the case of some states, education in public schools must be in accordance with the principles of the national faith. That also must result in practical discrimination on religious grounds against those who do not profess the national faith.

13. If, then, the Charter forbids all distinctions based upon race, sex, language or religion, these States will one and all stand condemned, and to what purpose? The distinctions which they have drawn are not necessarily evil distinctions. That fact that these distinctions exist is no evidence of oppression, of cruelty or of inhumanity. In the circumstances peculiar to the respective countries concerned, they may very well, and do, no doubt, in many cases, serve the most laudable of purposes. Why then should they be condemned without any enquiry as to their purpose or effect within the social framework in which they are found to exist? And if they are to receive such summary condemnation, the question may even arise whether the separation of India into Hindustan and Pakistan, based, as it appears to be, on considerations of a religious character, as also the separation of the Arab and Jewish peoples as a possible solution of their difficulties, do not likewise stand condemned by the Charter. The Union Government find it difficult indeed to accept that it is the intention of the Charter to express such wide censure in regard to all such distinctions everywhere in the world, regardless of the purposes they serve or the effects they produce.

14. If such a universal condemnation is the correct interpretation, it must follow that racial problems in multi-racial states are to be solved without any legislative or administrative racial distinctions, whatever the object or nature of those distinctions may be and whatever the racial and cultural divergencies and the different stages of advancement of the races concerned may be. The only permissible method of solving these problems would be one aiming at identity, imposing no distinctions and recognizing no differences.

15. If this were to be given effect to in the Union of South Africa, the result would be immediate chaos and ultimate disaster. The distinctions which are being drawn there, do not proceed from any oppressive intent and have no oppressive effect, but are, broadly speaking, designed to ensure peaceful development towards the preservation of racial and cultural identities by differentiation and by separation into different areas and different groups within which each race can develop in its own way and work out its own destiny with a minimum of racial friction. These distinctions provide but another method - in the view of the Government of the Union, the only practicable



method - for creating and stabilizing the conditions which are necessary for the harmonious development of all races to the full stature of each. This object the United Nations cannot condemn. It is fully in accordance with the provisions of the Charter. To condemn the method by which the people of the Union have been seeking to attain this object, would be unjust. If the peaceful way in which the necessary racial adjustments are gradually being made in the Union is compared with the constant turmoil in other parts of the world, where the principles of the separation of and differentiation between conflicting groups who have no desire of being assimilated, have not been recognized, or have not been sufficiently recognised, it must surely be apparent that the South African system may, after all, have a great deal to be said in its favour, and that it cannot be condemned offhand as an evil way of dealing with the realities of human reactions. In a land of many races, who have the widest possible racial divergences and are at almost every conceivable stage of advancement, South Africans have lived these many years with, comparatively speaking, no serious disturbances. The Union Government draw attention to this, not in the superiority of pride, but in modest gratitude that South Africa has been spared the evils which would most probably have attended a policy of identity. Can it not be claimed that, if the tree is to be known by its fruit, there must be some virtue in the policy pursued in the Union? To abandon this policy, designed to meet the unique circumstances of the Union, would be to retard for many generations, if not to frustrate altogether, the realisation of the very natural desire of each race to maintain itself as a separate entity in the multi-racial framework of the Union.

16. In South Africa these distinctions can in fact not be abolished without jeopardizing the development, if not the survival, of the races concerned, especially of the less advanced races. The truly fundamental human rights of all races cannot be safe-guarded in the Union without distinctions in regard to non-fundamental rights. The effect of the abolition of all distinctions would be, amongst others, to throw open to European and Indian penetration, all native reserves in the Union and in South West Africa, where economically less powerful racial groups are to-day protected against acquisition by Europeans and Indians of the land without which these groups would be lost in one heterogeneous mass of landless paupers; it would entail the repeal of statutes which allow members of native races to live and arrange their affairs according to their own native laws and customs or which require children of a racial group to receive tuition in their own mother tongue. Not only would modern arms and ammunition be made freely available to races still in a relatively primitive state of development, to conduct faction fights with deadly effect, but they would also have free access to intoxicating liquor, which has on other continents led to the decimation of



aboriginal inhabitants of a more advanced development. This the Union Government conceive to be a denial of the unquestionable fundamental right which every race, including the European races of the Union as well as the most primitive of the native races, has to advancement and survival, a right which the General Assembly recognised in no uncertain terms when it declared genocide to be an international crime. Separation in the Union has not been devised as an instrument of oppression, but is in fact a means to the achievement of the very object of this resolution: namely, the prevention not only of the liquidation of racial groups, but also, to quote the words of the resolution, of the "great losses to humanity in the form of cultural and other contributions represented by these human groups".

17. For these reasons it is submitted that the suggested interpretation of the Charter not only violates its clearly expressed intention, but would also result in such unnecessary and in some places disastrous repercussions, that it cannot be assumed that it was the intention of the General Assembly to import it into the resolution here in question as the true interpretation of the Charter.

18. All these propositions, namely, the recognition of the declarations of policy of 1927 and 1932 as international treaties, the enforcement by the United Nations organisation of unregistered treaties, the retrospective violation of the provisions of the Charter, and the immediate ban on every conceivable distinction based on race, sex, language or religion are so startling and far-reaching, and must each in its own way lead to such obvious complications in many places, that the Union Government is unable to accept the view that the recommendation of the Assembly was in fact intended to convey by mere implication and notwithstanding the inadequacy of the proceedings before the Joint Committee and the Assembly, already referred to, a definite finding against the Union Government of such a general and unqualified character as to make the acceptance of all these propositions a necessary inference. The Union Government were not prepared to act on the assumption that the Assembly has made a definite finding of such global importance by no more than a contentious inference, and were therefore, quite apart from the question of jurisdiction to make such a finding in the circumstances of this case, not prepared to assent to a basis of discussion which would ascribe such a finding to the Assembly.

19. These propositions are inherent in the assumption that the Union of South Africa stands condemned on all the counts of the Indian indictment. But even if the censure said to be implied in the recommendation of the Assembly should be read to relate only to the 1946 Act, the difficulties are not removed. The provisions of that Act, as pointed out in the memoranda submitted to the Joint Committee, fall into three categories:

1. Those conferring upon Indians a limited franchise and

representation in the Parliament of the Union and the Provincial Council of Natal.

2. Those containing relaxations of the laws in force in the Transvaal province, imposing restrictions upon the ownership and occupation of fixed property by Asiatics.

3. Those imposing new or perpetuating existing restrictions in Natal and to a more limited extent in the Transvaal.

20. If the recommendation of the Assembly implies a finding that the 1946 Act was passed in violation of treaty obligations and the provisions of the Charter, and should be repealed, the results of complying with that finding would be obvious. Certain restrictions would be removed by the repeal of that Act, but others would automatically be revived in their previous form by the repeal of the provisions modifying them. The relaxations in the Transvaal would disappear, and the former more rigid restrictions would be reinstated to the disadvantage of the Indian community. The Indians in Natal and in the Transvaal would be left with no franchise at all, and without the representation granted by the 1946 Act. In the view of the Government of the Union, the repeal of the 1946 Act would be a retrograde step, entailing on the whole, a loss rather than a benefit to the Indian community. In any event the present political situation in the Union is such that a Bill repealing the fixed property provisions of the Act would today without any doubt be defeated in both Houses of the Legislature.

21. In addition, also such a limited implied finding would give rise to the proposition that there is not a single distinction anywhere in the world, based upon race, sex, language or religion, which is not banned by the Charter. And if one of the reasons for this inferred finding is a breach of the alleged agreements of 1927 and 1932, the propositions relating to the existence of such agreements and the enforcement of unregistered agreements would also be involved. For these reasons, also this more limited alleged implication of the Assembly's recommendation, could not serve as an acceptable basis for negotiations.

22. The reply of the Indian Government to the contention that the alleged implications of the resolution are uncertain and obscure, was that in their view the prolonged debates in the Joint Committee and the General Assembly, and the Assembly's decision, made the purport of the resolution perfectly clear. They referred the Union Government to the sense of these debates, for a clarification of the alleged implications of this resolution. It is necessary, therefore, to examine them and to see what light they throw upon the matter.

23. As regards the questions arising in connection with treaty obligations, it is true that some delegations who supported the resolution expressed the view that such obligations did in fact exist, and seemed to be satisfied that

the Union Government had failed to carry them out, but they did not, on the whole, indicate in which specific respects the Union Government had failed to do so. After the explanation made by the Union delegation in regard to the nature of these alleged agreements, however, the Indian delegation did not seem to press this aspect of the matter, but seemed rather to rely on an alleged violation of the principles of the Charter. In fact, the resolution which they moved before the Joint Committee, made no mention at all of treaty obligations. Also certain other delegations supporting their contentions seemed to be mainly concerned with violations of the human rights provisions of the Charter. There is therefore no ground for saying that the debates disclose any intention of bringing in an adverse verdict in respect of treaty obligations.

24. In regard to fundamental human rights, it may be contended that the majority of those supporting the Indian indictment, if not all of them, expressed themselves in terms showing that in a general way they had arrived at the conclusion that the legislation of the Union of South Africa violated the principles of the Charter. But also in this regard there were differences in approach and conclusion. Some of these delegations seemed to be of the opinion that the Charter forbids all racial distinctions of whatsoever nature and for whatsoever purpose, and not merely distinctions by which fundamental human rights are denied or restricted. Others, again, like the delegations of Mexico and the Philippines, seemed to concede that the Charter deals only with fundamental human rights, but argued that respect for the dignity of the individual is such a right, and that the legislation of the Union offends against the dignity of the Indians in the Union. If this is the correct interpretation of their views, one may be disposed to infer that legislation like the new restrictions of the 1946 Act, could not be included in the category of offensive racial distinctions, as they distinguish equally between Indians and Europeans, do not impose any restriction upon Indians without imposing a corresponding reciprocal restriction upon Europeans, and could, therefore, hardly be regarded as a special infringement of Indian dignity.

25. But apart from this there was a further matter in which these delegations did not seem to be quite unanimous. That was in regard to the question whether all the legislation referred to by the Indian Government in their indictment, or only so much of it as was passed after the 1927 declaration, or only the 1946 Act, the only Act passed after the Charter came into force, was to receive the censure of the United Nations organisation on the score of violation of fundamental human rights. Some delegations seemed to confine themselves to the 1946 Act. Others drew no distinction at all. Also in this respect, therefore, there was not the unanimity necessary to establish the intention of pronouncing judgment the one way or the other.

26. In the submission of the Union Government, therefore, the debates afford no clear answers to the questions which require clear answers, if the implications contended for by the Indian Government were to be read into this resolution. In any event, views expressed in the course of debate, before all the facts had been adduced and before all the arguments had been heard, could, in the submission of the Union Government, hardly be a reliable substitute for specific findings which could only have been properly made after due consideration of all the facts and all the arguments. A view expressed before the case is concluded, is not necessarily the view held when the final vote is cast.

27. What is more, the debates before the General Assembly do not by any means disclose any unanimous intention on the part of delegations who were in favour of this resolution, of conveying any implied condemnation of the Union Government at all. It will be recollected that before the Joint Committee the Indian delegation had moved the following resolution:

"The General Assembly, having taken note of the application made by the Government of India regarding the treatment of Indians in the Union of South Africa, and having considered the matter is of opinion that:-

(a) the Union Government's discriminatory treatment of Asiatics in General and Indians in particular on the ground of their race constitutes a denial of human rights and fundamental freedoms and is contrary of the Charter;

(b) the Union Government's policy in general and the enactment of the Asiatic Land Tenure and Indian Representation Act, 1946, in particular, have impaired friendly relations between the two Member States, and unless a satisfactory settlement is arrived at immediately, these relations are likely to be further impaired.

The General Assembly, therefore, considers that the Union Government should revise their general policy and their legislative and administrative measures affecting Asiatics in South Africa so as to bring them into conformity with the principles and purposes of the Charter and requests the Union Government to report at the next session of the General Assembly the action taken by them in this regard."

28. Now, this proposed resolution did contain a general condemnation of the Union Government under the human rights provisions of the Charter. It was, however, withdrawn in favour of the French-Mexican proposal, which was ultimately adopted by the Assembly. In the course of the debates before the Assembly, it was represented that there was a difference between the two proposals. The Indian delegation described the French-Mexican proposal as "not the one that the Indian delegation submitted to the Committee, but a middle way placed before it by France and Mexico". In fact when it came to the question whether or not this resolution required a two-thirds majority,

the Indian delegation contended that it required no such majority, inasmuch as the operative part merely calls upon the two Governments to report at the next session as to the measures they have taken. Also the distinguished delegate of China seemed to regard the terms of the French-Mexican proposal as rather less censorious than those of the Indian proposal. When he intervened in the debate he referred to the French Mexican proposal in the following terms: "we are decidedly of the opinion that the best course for the General Assembly to pursue now is to make a friendly offer of good offices, to make an effort to facilitate a settlement of the case by the parties, either separately or together. That is precisely what this resolution proposes to do". He then proceeded to analyse the three paragraphs of the resolution, and agreed with the view expressed by the Indian delegation, that it was so simple and so mild that really no one could take serious objection to it. He concluded his analysis with the following words: "I entirely share the view of the Indian delegation that this resolution is a very mild one, and that it really amounts to nothing but an offer of good offices. Even good offices simply point the way for the parties to bring about relief to ease the situation and to effect a settlement". These words clearly negate every suggestion of any condemnation. Indeed the Polish delegate explicitly stressed the fact that no condemnation was intended. His words were the following: "The French-Mexican resolution has nothing discriminatory in it. It does not condemn South Africa which we all know is a peace-loving state. The resolution states only facts and expresses the opinion - I underline - it expresses the opinion that the treatment of indians in the Union should be in conformity with the international obligations under the agreement concluded between the two Governments and the relevant provisions of the Charter". The delegations of the Philippines and of Egypt expressed views to a somewhat similar effect. From this it may fairly be inferred that at least some of the delegations who voted for the resolution, were under the impression that it was less drastic in its effect than the Indian Proposal, and that it contained no implied condemnation of the Union. The resolution is capable of this more lenient interpretation, and that was the interpretation which some delegates apparently had in mind when they voted for it.

29. What now is the effect of the stipulation made by the Indian Government, requiring the Union Government to accept a condemnation implied in the resolution? Its effect is this: It not only reverses this more lenient interpretation, to which the Indian delegation itself seems to have subscribed before the Assembly, but also seeks to transform the offer of good offices in

a verdict more sweeping even than the Indian proposal which had been withdrawn. That proposal confined itself to the principles of the Chapter. The implication which the Union Government was required to accept embraces not only those principles but also a violation of treaty obligations. That would make of this resolution not the middle way which the Indian delegation claimed it to be, not a mere offer of good offices, but the most complete condemnation which could have been pronounced on the Indian complaint. This, the Union Government submit, is not a fair interpretation of the resolution, and cannot be said to reflect the unanimous view expressed by those who voted for it. Also for this further reason the Union Government contend that the Indian Government were not justified in making this excessive and somewhat exacting stipulation a conditio sine qua non for friendly negotiations. It is their submission that the Union Government could not reasonably have been expected to agree to that stipulation, as the true meaning of this resolution was at the time represented to be, in effect no more than a recommendation to the two States concerned to re-examine the whole position, to see what steps could be taken to put an end to unfriendly relations, and to report to the United Nations Organization what they have done.

30. In the meantime the Union Government have, wherever occasion offered, sought to promote better relations between the two Governments. When, for instance, they were requested to hold available vaccine for combating an outbreak of bubonic plague in India, they agreed to do so as a matter of course, and would have been happy to provide every possible assistance. When requested to provide certain facilities for an Indian research officer from Poona, they readily acceded to the request, offering to receive such officers, in so far as their accommodation at agricultural colleges and transport were concerned, as the guests of the Union Government. On the direction of the Prime Minister, these courtesies and facilities were to be extended to all other persons from India who may come to the Union on similar missions. In the same way, the Union Government, when requested to assist with the disposal of certain livestock purchased in the Union by the Imperial Council of Agricultural Research, New Delhi, gave instructions that everything possible was to be done in order to accede to the request. Although the Union Government could have inflicted considerable harm upon India by retaliatory economic sanctions, inter alia, by withholding from her the advantages derived from the use of South African coal, they have refrained from doing so.

31. The Indian Government, on the other hand, have continued to apply economic sanctions to the Union. They have done so in spite of the readiness of the Union Government to assist on these various occasions and of the fact that



no retaliatory measures of whatsoever nature have been taken by the Union, and in spite of the fact that they have seized the United Nations Organization with the dispute between the two Governments. By continuing their sanctions they have not contributed to the creation of a favourable atmosphere for a solution of the existing difficulties, and have been undermining the prosperity and welfare also of the Indians in the Union. As a direct result of these sanctions, those affected by them have started a boycott of Indian shops and undertakings, and public opinion in Natal has hardened to such an extent that the favourable prospects of extending a municipal franchise to Indians in the Province, have been wrecked, notwithstanding the efforts of the Administrator of Natal to have the necessary legislation passed.

32. Whether these unilateral economic measures might have been justified in international law as measures of reprisal, if the Union Government had in fact violated treaty obligations or their obligations under the Charter, is not beyond all doubt. But however that may be, they are in the submission of the Union Government, even on the assumption of such violation, not to be absolved, to say the least, of impropriety in all the circumstances surrounding this issue. By article 41 of the Charter, the application of sanctions, including economic sanctions, is entrusted to the Security Council. It could fairly be expected that the Government of India, having brought the matter before the United Nations organization, would be content to leave the full disposition of the matter to that Organization and to the machinery provided for dealing with it. Instead of this, the Government of India are having it both ways. While on the one hand they are invoking the authority of an international tribunal for peace, they are on the other hand, by seeking to force a solution upon the Union Government by their unilateral sanctions, taking the law into their own hands and pursuing an independent course of self-help, as if the United Nations Organization did not exist. In that way they have exposed the Union of South Africa at one and the same time to the multiple perils of the possible sanctions of the Charter and to such economic blows as they are able to deal while the matter is pending, and are contributing materially to the deterioration of those very relations which they have made the subject of their complaint to this Organization. Such a course of conduct is not calculated to facilitate friendly solutions of international disputes, so emphatically enjoined by the Charter. If a Member State, a party to a dispute, may in this way anticipate possible action by the recognized organ of the United Nations, and provoke the other party to retaliatory measures, the machinery of peace will be thrown out of gear, and the effective functioning of the Organization will be impeded, if not /frustrated.



frustrated. The question is whether a party to a dispute, whilst seizing the Organization with the friendly solution thereof, is nevertheless to be allowed to proceed to settle it in its own way by such unfriendly measures as it may consider adequate or expedient. The answer to this question has a very real bearing upon the achievement of the Charter's primary purpose of arriving at amicable solutions.

33. Because of these considerations, the Union Government felt that it would be more in keeping with the objects and purposes of the Charter and with the comity of nations, if the Indian Government were to discontinue these sanctions so as more effectively to prepare the way for friendly discussions. They accordingly suggested this to the Indian Government, but their suggestion has not been acceded to.

34. As a result, then, of the insistence of the Indian Government on the acceptance by the Union Government of a condemnation said to be implied in the resolution of the Assembly, and their continuance of economic sanctions, no progress has been made towards the settlement of the differences between the two Governments. That the Indian Government have not been prepared to change their attitude in this regard is a matter of great regret to the Union Government, as they have been and still are, anxious to arrive at a settlement of these differences and would have welcomed nothing more than negotiations having the object of restoring friendly relations.

35. A possible way of achieving that object would have been for the two Governments to agree to re-examine the policies announced in 1927 and 1932, in the light of the experience gained in the attempt to carry out those policies. The Union Government would at all times have welcomed discussions along such lines. As far as they are concerned, this could still serve as an acceptable basis for negotiations.

36. Copies of the communications which have passed between the two Governments are attached for the information of the General Assembly.

ANNEX

CORRESPONDENCE BETWEEN FIELD MARSHEAL SMUTS AND PANDIT JAWAHARLAL NEHRU  
IN CONNECTION WITH THE RECOMMENDATION OF THE GENERAL ASSEMBLY OF  
8 DECEMBER 1946 (RESOLUTION 44 (I))

I: LETTER DATED 24 APRIL 1947 FROM PANDIT JAWAHARLAL NEHRU TO FIELD MARSHEAL  
SMUTS

Dear Prime Minister,

The Government of India earnestly desires to act in accordance with the terms and spirit of the resolution passed by the General Assembly of the United Nations on 8 December 1946, on the subject of the treatment of Indians in the Union of South Africa, and are glad to offer their co-operation to assist in the implementing of paragraphs two and three of the resolution.

The Government of India have, therefore, pleasure in informing you of their readiness to enter into any discussion that the Government of the Union of South Africa may see fit occasion to initiate for implementing resolution of 8 December 1946. The Government of India would also like to assure you that they will give their best consideration to any other proposals or steps that the Government of the Union may deem appropriate to suggest for the purpose of implementing that resolution.

Allow me to express the hope, on behalf of my Government, that the approach they now make may assist in finding a solution of our common difficulties, and, with this to speed the restoration of normal and friendly relations between our two countries,

I remain,

Yours sincerely,

(signed) Jawaharlal NEHRU.

/II. LETTER

II. LETTER DATED 28 APRIL 1947 FROM FIELD MARSHAL SMUTS  
TO PANDIT JAWAHARLAL NEHRU

Dear Pandit Nehru,

I thank you for your friendly approach and for the opportunity thus given the Union Government to discuss with the Government of India the common difficulties between the two Governments in reference to the treatment of Indians in South Africa.

The Union Government have for some time been desirous of raising this matter with the Government of India, but have been debarred from so doing owing to the absence of the High Commissioner for India, who would be the natural and obvious medium for exchanges for such a purpose. Correspondence between the two Governments by cable or otherwise would mean delay and may not achieve their common purpose of finding a solution for their difficulties.

The Union Government would, therefore, suggest, as the most expeditious and effective approach, that the High Commissioner for India should return to South Africa, in order to confer with the Union authorities on the questions in issue and the best means of dealing with them and exploring the way to a satisfactory solution. For this reason they would welcome his early return to the Union.

Yours sincerely,

(signed) J.C. SMUTS.

III. LETTER DATED 6 MAY 1947 FROM PANDIT JAWAHARLAL NEHRU  
TO FIELD MARSHAL SMUTS

Dear Field Marshal Smuts,

I thank you for your message of 28 April 1947.

The Government of India note with satisfaction that the Union Government are desirous of raising this matter with the Government of India. They are, however, unable to agree that the absence of the High Commissioner for India from the Union debars the Government of the Union from initiating or conducting discussions with the Government of India, or would prevent the achievement of our common purpose of finding a solution to our difficulties.

The Government of India conceive the immediate tasks before our two Governments as the taking of appropriate and effective steps to implement the resolution passed by the General Assembly of the United Nations on 8 December 1946.

The Government of India therefore request the Union Government to accept the implication of the resolution of 8 December 1946, as the common and immediate purpose in which our respective Governments can co-operate for finding a basis for a solution of the problem "with which our two Governments are earnestly concerned."

As soon as the Union Government have acceded to this request, a common basis for future discussion would be established. The Government of India would then appoint without delay suitable representatives to join with the Government of the Union of South Africa, or with such representatives as it appoints for the purpose, in the discussion and consideration of ways and means to resolve our difficulties. The Government of India would welcome the representatives of the Union Government to New Delhi for this purpose and make all the necessary arrangements, if such a venue is agreeable to the Union Government. They are, however, prepared to agree to any proposal that the Union Government desire to make with regard to the venue of such discussions.

In inviting the Union Government to accept the implementation of the resolution passed by the General Assembly of the United Nations on 8 December 1946, as the common purpose of our joint endeavours, the Government of India are actuated by the earnest desire to act in accordance with the terms and spirit of that resolution and in complete loyalty to the principles and the Charter of the United Nations Organization. They are fortified by the belief that in the endeavour to implement the resolution, the way to the solution of our common difficulties will be found.

/The Government

The Government of India desire to state with frankness their position in regard to the proposal of the return of India's High Commissioner to the Union which you make in your message of 28 April. The High Commissioner for India to the Union was recalled for consultation, as a consequence of the deterioration in relations between our two countries, of which the General Assembly of the United Nations has taken note. The Government of India have to state with regret that these relations have not only not improved since, but have deteriorated further. The reasons which determined this course of action therefore continues. While the Government of India seek and hope for an improvement of these relations and have taken the initiative in endeavouring to secure them, they are unable to revise their decision prior to an actual improvement in such relations. They will gladly arrange for the return of their High Commissioner to South Africa as soon as such an improvement takes place. The Government of India, however, desire to assure you that the absence of the High Commissioner for India from South Africa will in no way hinder or prejudice their effective participation in joint deliberations of our two Governments, implementing of the resolution of 8 December 1946.

The Government of India would appreciate your early reply to the proposals that they make and would like to assure you that they would always give their earnest consideration to any proposal that the Government of the Union desire to make.

Yours sincerely,

(signed) Jawaharlal NEHRU

IV. LETTER FROM FIELD MARSHAL SMUTS TO  
PANDIT JAWAHARLAL NEHRU CONVEYED BY  
TELEGRAM DATED 18 JUNE 1947

Dear Pandit Nehru,

The answer to your letter of 7 May 1947, has been delayed as at the time of its receipt and subsequently conversations between the Government and groups of South African Indians were going on in connection with Indian questions. These groups, representing all classes of Indians were dissatisfied with the conduct of their affairs by the Natal Indian Congress, whose leadership was under ideological influences of which they disapproved and whose approach they considered harmful to Indian interests. They had consequently separated from the Natal Indian Congress and formed themselves into a new Organization, determined to make a new and more conciliatory approach to the Government for the remedy of Indian grievances.

The Government were quite willing to discuss their problems with them, and in the result a number of matters could be cleared up. These conversations covered such matters as land areas set aside for Indians, or open to Indian acquisition under the Asiatic Land Tenure Act of 1946, education, health, amenities generally for the Indian community in Durban, trading licences and inter-provincial movements. Some of these matters could be definitely settled and others were reserved for further consideration after consultations with the local authorities concerned. These Indian representatives of the new Organization were rightly of the opinion that the ultimate aims can best be achieved in a spirit of goodwill and understanding and negotiation with the Government and people of South Africa.

There were, however, also deeply concerned that relations between the Union and Indian Governments should be regularized in their own interests, and put on a proper footing as soon as possible. They had been perturbed by reports that the Indian Government had refused to send their High Commissioner back to the Union, and the South African Indian Congress had already made representations to the Indian Government for the return of the High Commissioner to the Union. They pressed the Union Government very strongly not to feel rebuffed by the refusal of the Indian Government, and to renew the request for his return. This the Union Government promised to do, and we accordingly urge once more that the Indian High Commissioner should be sent back in spite of the objections to such a course stated in your letter under reply.

I may point out that this is the proper course under international practice and under the circumstances connected with the departure of Mr. Dashmukh. It was not a rupture of relations between the Governments

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but simply a recall of the High Commissioner to report to his Government, while the office and the staff remained in function as before. His return to office after his long absence would therefore involve no question of prestige, and would enable the two Governments to resume discussions in the usual way on the matters in issue. If the Indian Government should regrettably be unwilling to do so, it would appear useless, if not improper, to devise other means of discussion. Technically, we are on the footing of friendly Governments, and the Union Government are anxious to treat the Indian Government on that footing.

You will allow me to point out that the Union Government are under severe provocation to consider the attitude of the Indian Government in this and other respects less than friendly. The Indian Government have severed trade relations with South Africa and unilaterally applied trade sanctions to the Union, to the great injury of South African interests, including those of its Indian inhabitants. It was in fact a hostile act, for which the Union Government would have been justified to invoke the intervention of the Security Council. The Union Government with great patience and forbearance refrained from doing so, preferring to look upon India as a fellow member of the British Commonwealth. In the same spirit the Union has favoured the rise of India to her full status of freedom and sovereignty in the most recent constitutional developments, and I have publicly welcomed this splendid achievement of Indian and British statesmanship, and wholeheartedly given it such blessing on behalf of South Africa as I can. Throughout this troubled period our attitude has been not only proper but indeed friendly, in spite of the difficult Indian problems which the Union has to face internally and the provocative attitude of the Indian Government abroad. That friendly attitude we wish to maintain.

Under all these circumstances, and backed up by a considerable volume of responsible Indian opinion in South Africa, I can fairly claim that our relations should be normalized, and that the Indian High Commissioner should be returned to his duties in the Union. I ask you to give serious consideration to our claim.

As you have sent copies of our previous correspondence to the Secretary-General of the United Nations Organization, I follow for convenience sake the same course.

Believe me,

Yours faithfully,

(signed) J.C. SMUTS.



V. LETTER FROM PANDIT JAWAHARLAL NEHRU TO  
FIELD MARSHAL SMUTS CONVEYED BY  
TELEGRAM DATED 24 JUNE 1947

Dear Field Marshal Smuts,

I thank you for your letter of 18 June in reply to mine of 6 May.

2. In my last letter I requested the Union Government to accept the implementation of the resolution passed by the United Nations General Assembly on 8 December 1946, as the common and immediate purpose of our respective Governments' co-operation for finding a basis for the solution of the problems with which our two Governments are concerned and added that, as soon as the Union Government had acceded to this request, a common basis for future discussions would be established. You would allow me to point out that, although in your present letter the Union Government have insisted on the return of our High Commissioner, we have so far had no indication that they agree to proceed on the basis of the United Nations resolution. It still is our view that, in the absence of an agreed basis for discussion, the High Commissioner would not be able to achieve much. What is required is to agree first on a basis of discussion, and, after that, a channel of discussion can be settled without much difficulty.

3. The Government of India are firmly of the opinion that further discussions between our Governments, which they would warmly welcome, can only be on the basis of the United Nations resolution. They also feel that the issues involved are so highly contentious\* (?), that these discussions could be brought to a satisfactory conclusion more expeditiously through a conference of fully accredited representatives of both Governments than through the High Commissioner. Nevertheless, should the Union Government accept the United Nations resolution as the basis for discussion, the Government of India would, in deference to the wishes of the Union Government, and as a mark of their earnest desire to reach a friendly settlement, be prepared to send their High Commissioner to South Africa to initiate these discussions. They regret, however, that their last High Commissioner, Mr. Deshmukh, will not be available for this purpose.

4. There are other matters referred to in your letter on which I should like to put forward our point of view, but would reserve this for a later occasion. My primary anxiety, like yours, is to see whether the present deadlock cannot be quickly and amicably resolved.

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\* mutilated

5. Before I conclude this letter, I wish to express my appreciation of your friendly references to India's attainment of freedom. The new India desires nothing more ardently than to work in a spirit of co-operation for the peace and prosperity of the world with all like-minded nations.

Yours sincerely,  
(signed) Jawaharlal NEHRU.

VI. LETTER FROM FIELD MARSHAL SMUTS TO  
PANDIT JAWAHARLAL NEHRU CONVEYED BY  
TELEGRAM DATED 28 JULY 1947

Dear Pandit Nehru,

I have your letter of 24 June and note that you insist that the Union Government should accept the implementation of the United Nations General Assembly's resolution as the basis for discussion between the two Governments. I assume that you mean that the Union Government must admit that they have broken agreements between the two Governments and violated principles of the Charter.

The Union Government are not prepared to make any such admissions in respect of issues which you yourself refer to as "so highly contentious". They have broken no agreements and violated no principles of the Charter. They are not even sure what agreements and principles are referred to, as their request for an advisory opinion by the International Court of Justice on the matter has been refused. In view of this uncertainty and obscurity they have suggested that the return of your High Commissioner and consultation with him might assist to clear up the difficulties and make further progress possible. This, however, you have refused.

If the reference in the Resolution to the treatment of Indians in the Union of South Africa is to the provisions of the Asiatic Land Tenure and Indian Representation Act, 1946, the Union Government would point out the following facts:

1. When the Union Minister of the Interior laid the Capetown Agreement before Parliament he declared that the agreement was not rigid and binding and did not take away the right of the Union to resist interference from outside in its domestic affairs, and that the Union Government reserved their right to deal legislatively with the Indian problem whenever and in whatever way they deemed necessary and just. No exception was taken by the Indian Government to this declaration.
2. The land provisions of the Asiatic Land Tenure and Indian Representation Act do not substantially differ from the practice of other members of the United Nations Organization in their policies to maintain peace between different communities in their States. As only one instance may be mentioned land purchase transactions between Jews and Arabs in Palestine. There is no reason why such policies to secure internal peace should be condemned, nor why the Union should be specially singled out for condemnation. If the intervention of United Nations Organization should be called

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for there should be first an inquiry into such practices among its members, and especially such practices as involve racial or economic discrimination. Only thus could a policy of general application be laid down for all. Special regard would also have to be had to the principle of domestic jurisdiction which, as laid down in Article 2, paragraph 7, governs all the other principles and provisions of the Charter.

The Union Government are sincerely anxious to pay scrupulous regard to the principles of the Charter. It is, however, in the interest of the Organization itself that its recommendations should be based on those principles as generally applied, as well as on definite facts judicially ascertained, and not on vague general charges to which popular sympathies and sentimental considerations may give an undue importance.

In view of the vagueness and generality of the charges against the Union, and the highly charged emotional atmosphere in which they were discussed, the Union Government must be specially on their guard against complying with your request and accepting so called implications of the Resolution referred to.

The refusal of the Indian Government to avail themselves of the offices of their own High Commissioner, and their enforcement of unilateral trade sanctions against the Union without authorisation of the United Nations Organisation, are of such an unfriendly character that there is little prospect of advantage from consultations between the two Governments under such circumstances. Should, however, the Indian Government see fit to change its attitude in this regard, the way may be opened for discussions between them which may be more promising of ultimate success.

Yours faithfully,

(signed) J.C. SMUTS.

VII. LETTER FROM PANDIT JAWAHARLAL NEHRU TO FIELD MARSHAL SMUTS  
CONVEYED BY TELEGRAM DATED 8 AUGUST 1947

Dear Field Marshal Smuts,

I have received your telegram of 28 July. You regard my request to accept the implementation of the resolution passed by the United Nations General Assembly on 8 December 1946, as a request that the Union Government must admit that they have broken the agreement between the two Governments and violated the principles of the Charter. You add that your Government are not even sure what agreements and principles are referred to. I should have thought that prolonged debates in the appropriate committees of the General Assembly last year and the Assembly's decision had made the purport of the resolution perfectly clear.

However, you seem to regard the resolution as uncertain and (?) obscure, and its adoption by the General Assembly of the United Nations as the result of discussion in a "highly-charged emotional atmosphere". Confess my inability to see how the return of India's High Commissioner to the Union can help to resolve the matters which, in your opinion, the Assembly and its committees left obscure and uncertain.

I have tried my best to end the deadlock between our two Governments, but must observe with regret, that, through no fault of ours, no common statement of negotiations between us has been found.

Yours sincerely,

(signed) Jawaharlal NEHRU