

Monday, 25th August, 1947

Volume V



14-8-1947  
to  
30-8-1947

# CONSTITUENT ASSEMBLY DEBATES

OFFICIAL REPORT

REPRINTED BY LOK SABHA SECRETARIAT, NEW DELHI  
SIXTH REPRINT 2014

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Printed at JAINCO ART INDIA, New Delhi

CONSTITUENT ASSEMBLY OF INDIA

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*Under Secretary:*

SHRI K.V. PADMANABHAN

*Marshal:*

SUBEDAR MAJOR HARBANS RAI JAIDKA.

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## CONSTITUENT ASSEMBLY OF INDIA

*Monday, the 25th August, 1947*

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The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Ten of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

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### SIGNING OF THE REGISTER

The following member signed his name in the Register:—  
Mr. Syed Abdul Rouf.

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### TAKING OF THE PLEDGE

The following members took the pledge:—  
The Honourable Sri Kala Venkata Rao.  
Mr. Syed Abdul Rouf.  
The Honourable Mr. Brijlal Nandlal Biyani.

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### ANNOUNCEMENTS BY THE PRESIDENT

**Mr. President :** I have received a letter from the President of the Constituent Assembly of Burma in reply to the message we had sent to him. The letter reads as follows:—

“On behalf of the Constituent Assembly of Burma I personally thank you for your message of condolence for the loss Burma has sustained by the assassination of General Aung San and his colleagues. The Burmese nation will surely enjoy peacefully the fruits of independence which the fallen heroes have just won for Burma. Kindly convey to all Members of the Constituent Assembly our appreciation of this message of sympathy. I will convey the message of condolence to the bereaved families.”

Before we go to the next item, namely the consideration of the remaining items in the list, I would like to make certain announcements with regard to the programme of this session. As I said the other day, we should try to complete the consideration of the Report of the Union Powers Committee as soon as possible. The progress we have so far made has been very slow. I propose to set apart today and tomorrow for the consideration of the Union Powers Committee Report, and from Wednesday we shall take up the Report of the Advisory Committee relating to Minorities and Fundamental Rights and I think this will take Wednesday and Thursday. Friday will be reserved for the consideration of the Report of ‘the Committee which we appointed the other day to suggest to us what steps should be taken with regard to the Constituent Assembly and the Legislative Assembly functions of this Assembly. I hope thus that we shall be able to end the work of this session by the 31st at the latest. If necessary, I propose that we sit in the afternoon and also on Saturday and Sunday next and if necessary, have night session. We have got so many other things to do that it is not possible to prolong this session beyond the end of this month and therefore I am anxious to complete this work as far as possible. Now, I am proposing to interrupt the consideration of this list by interposing the Reports of the Advisory Committee for this reason. So far as the drafting is concerned, it will depend very

[Mr. President]

much upon the consideration Which this Assembly gives with regard to those subjects covered by the Reports of the Advisory Committee on Fundamental Rights.

But so far as the list itself is concerned, much drafting is not required and whether the Assembly accepts a few subjects or turns them down it would be easier to incorporate that in the draft when the report is drafted. Therefore I am anxious that the part of the work of this Assembly should be finished which is essential for drafting purposes as I wish to have the draft prepared as soon as possible and for that purpose a drafting Committee will have to be appointed which we shall do on the last day of the Session.

There is one other thing which may take a little time. The late Sir Prabha Shankar Pattani has bequeathed to the Nation a portrait of Mahatama Gandhi done by a distinguished artist of England Mr. Oswald Birely and that has been presented to us by his son who is a member of this House and members will surely appreciate the gift and would like to have the portrait put up in a suitable place in this Assembly. For that purpose we may require a little time on one of these days which I shall fix for that function. I shall announce the day. May be on Friday next in the afternoon but I shall finally fix it up later.

**Mr. Tajamul Husain** (Bihar : Muslim) : Sir, you have told us that this Session would perhaps end by the end of this month but you have not told us when the next session will begin.

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#### INCIDENTS IN WEST PUNJAB

**Shri Algurai Shastri** (United Provinces : General) : \*[Mr. President, I want to say a few words before the commencement of today's proceedings. I wish to draw your attention to the fact that in view of the unfortunate incidents in West Punjab, and the manner in which people are being massacred and the killings are taking place, today's proceedings should be postponed in order to express our sympathy with the unfortunate people there. It is inappropriate for us not to pay attention to these unfortunate happenings and to proceed with our work of constitution-making. I have been realising this for some-time; and for the last several days, I was on the look out for an opportunity to raise this point but hesitated to do so, in consideration of the fact that when this Assembly meets as a Dominion Parliament, that will be the right occasion for its consideration. But when on that day, some of our colleagues drew your attention on the flag question, you permitted the Leader of the House to make a statement here. I am of opinion that problems can arise, in view of which it will not be improper for us to postpone our proceedings for a short while. The Constituent Assembly is a democratic and independent body and over the whole field of its work it is fully sovereign. There have been incidents in a portion of this country where innocent children and women have been massacred and where trains have been stopped and passengers murdered. These incidents invite our attention. During these last few days such shocking and heart-rending incidents have taken place that it will be difficult to find their parallel (even) in the barbaric epoch of India's history. At a time when foundations of democratic government are being laid, occurrence of incidents of this kind is painful. If we are

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\*[English translation of the Hindustani speech.]

concerned only with making our constitution and pay no attention to these incidents, then the coming generations will say that, just as Nero was playing on his flute while Rome was burning similarly we were absorbed in constitution making while Lahore and other places were burning and people were being killed. We must not give an opportunity (to anyone) to put such blame on us. Our sense of Humanity will diminish if we do not express our heart-felt sympathy for those helpless people whose wealth worth crores of rupees has been looted and who are very anxious for the protection of their wealth and property which is (still) in the Punjab. Fleeing people are being butchered. How disgraceful it is that people's heads are being chopped off in the same way as a lawn-mower cuts off the grass; Since the 15th we are the Dominion Parliament as well. How much our hearts are full of anger anxiety and shame at our being unable to protect those helpless old men, women and children! This is such a helpless state and such a deplorable state. that it puts us to shame and grief. It would have been very different if either the Honourable Home Member or the Leader of the House or the Defence Member were to make a statement in this connection. Therefore I propose that in order to express sympathy for the dead or for their survivors, the proceedings (of this House) should be postponed. I am aware that objection may be raised to this proposal but we have seen that on the arrest of our leaders, the proceedings of Corporations and Municipal Boards etc. used to be postponed. When on previous occasions we could postpone proceedings we should not have any difficulty in doing so today, even though Maulana Hasarat Mohani has suggested that the report of Union Powers Committee should not be considered at all. We should have a full constitutional right to postpone the proceedings for a short while and I hope that the House will postpone its Proceedings at least for fifteen minutes.]\*

**Mr. President :** \*[There is no doubt that there would hardly be any Indian whose heart would not be pained and full of sorrow and grief at whatever is happening as a result of which so many murders are taking place and there is such a lot of loot, arson and destruction. Now the question is as to what we here in this Assembly can do and what we cannot do. You may rest assured that your government is doing and will make every effort to do whatever is possible in this connection. Your Prime Minister is himself touring those places and it is for this reason that he is not present here today. There is no doubt that we have full sympathy with those numerous persons who are undergoing terrible suffering. We will help them to the extent possible and will not shirk our responsibilities. At this time, if it is the desire of all members of the House, surely we should stand up and express our sorrow and sympathy for all those who are involved in this calamity and who are suffering all these hardships. If all agree, then I hope that those who are undergoing all this suffering and pay our homage to those who, as a result of these calamities, have departed from this world.]\*

*The Members stood up and observed silence for a minute.*

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]\* English translation of Hindustani Speech.

**Mr. President :** A suggestion has been made that the House should express its sympathy, by adjourning itself for about quarter of an hour, with those who have suffered in the riots which are going on in the country. I have suggested that instead of adjourning the work of this Assembly, we should all rise in our places and express our deep sympathy with those sufferers, and there can be no difference of opinion that the riots which are taking place are the most disgraceful from the point of view of the nation and are such as would make the heart of any patriot sick with the happenings and I therefore requested the members to stand in their places and express their sympathy with the sufferers and I have also pointed out that so far as the Government is concerned, the Prime Minister has flown to that place and is not here today because he is there and is doing all that can be done to help the sufferers and bring about the cessation of the events that are taking place there.

We shall now proceed with the discussion.

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REPORT OF THE UNION POWERS COMMITTEE—*contd.*

**Dr. P. S. Deshmukh** (C. P. & Berar : General) : Sir, I want to make a suggestion for your consideration if we can modify the programme you have announced. It is quite evident that we do not propose to complete the consideration of the Union Powers Committee's Report. In view of the fact that we can only advance a few items more, it would be better I think for us if you allot tomorrow also for the consideration of the Minority Committee's Report and thus have a day more for the consideration of the Report of the Committee that you appointed the other day. My point is that we should not adjourn the present Session without doing two things.

Firstly, we should complete the consideration of the report of the committee on Minority Rights and secondly we, as the Dominion Legislature, should not disperse without having an opportunity to discuss the West Punjab situation. These are the two things which I would like you to consider. If you accept my suggestion we may be better able to complete the consideration of the Minority Committee's Report and then meet for a couple of days as Legislature to discuss the most harrowing spectacle of the West Punjab, and also the East Punjab. Sir, we are quite sure that our Government is doing its very best and we have no doubt that everything possible is being done. Nonetheless, since we have transformed ourselves into a Legislature, every one of us is responsible to the millions of people whom we represent. As such we ought to know, and the world ought to know and India ought to know what exactly is happening there and to what extent we have discharged our duty. From that point of view, I think you should, Sir, accept my suggestion by which we will have one more day for discussing the Committee's Report, and then if possible meet as a Dominion Legislature may be even for a few hours during the present session itself.

**Mr. President :** Let us not spend any more time discussing the programme of sittings. I have fixed day after tomorrow to enable members to have as much time as they want for the consideration of the Report on Minority and Fundamental Rights. I have fixed day after tomorrow to enable members to have time to send up amendments before it actually comes up for discussion.

The question of having a meeting of the Assembly as Legislative Assembly can be decided only after the report of the Sub-Committee has been received. We shall await its report.

The Assembly will now resume consideration of the Report of the Union Powers Committee. Mr. Sidhwa will now speak on his amendment to Item 8.

**Mr. R. K. Sidhwa** (C. P. & Berar : General) : Last Friday, while moving my amendment to Item 8 in relation to the powers of the cantonment authorities, I stated that there are cantonments in various stations in India, small and big, and that these are within a radius of one to eight miles. As far as the troops are concerned, they are located in barracks and governed by the Cantonment Code or Cantonment Act. These troops are given all facilities and comforts and conveniences. I have no objection to that. The troops certainly ought to get all conveniences such as good water-supply, proper drainage, hospital facilities, etc. There are theaters and cinemas also for their amusement. Apart from that they have got their own messes and canteens and shops from which they could provide themselves with their other requirements. We do not want to make any change in these arrangements hereafter as far as the conveniences of the troops are concerned. We do desire that the troops should be well looked after and kept content in the area in which they reside. What we seek is this : Within a distance of two miles of these areas where the troops are located there is civilian population also in these cantonments areas. If the House will bear with me for a while I would like to mention that this civil population is deprived of all the rights and privileges which the population elsewhere enjoy. We do not want that this civil population should have the same facilities and convenience, as the troops enjoy. But I contend that some at least of the creature comforts should be provided for this civil population. I have in mind provision of drinking-water supply, drainage facilities, hospital arrangements and electric lights.

Another thing is that these areas in the earlier days had been selected in a haphazard manner, without any serious consideration being paid to the selection. They have been so arranged that on one side of the road there is the civil Government functioning, and on the other, the military. This fact has caused discontent and grievances and these have been ventilated in the press and in conference and in correspondence between the Provincial Governments and the Centre. Nothing has been done so far to remove the cause of discontent. The military authorities are lukewarm in this matter of provision of facilities to the civil population.

When these questions are raised now, it may be argued that we are running our own Government and that we must have a different outlook in all these matters. We are also told that we are labouring under an inferiority complex, even now. I submit that one can reply to such arguments that the government being popular, the old Government of India Act can continue and not bother about making a new Constitution. It must be remembered that there is a principle involved in this question, viz., that we should see to it that the civil population in the cantonment areas get the same rights as the civil population elsewhere. They should not hereafter be denied the vote and the opportunity to get redressal of their grievances.

In the Cantonment Board there are only a few nominated members and fewer members to represent the civil population. Sir, it, is very improper that the civil population should enjoy certain rights and



[Mr. R.K. Sidhwa]

Privileges even in notified areas and the civil population, in the cantonment areas should be denied the same. This is a matter of right and therefore my amendment seeks that where there are troops they should be governed by the cantonment board, but where there is civilian population it should be governed by the Municipal Act so that the civil population may have the rights and privilege which the civil population elsewhere is enjoying. Let me tell you that at times when the people in these areas suffer from diseases they do not get the medical help which the people living in municipal areas get; because under the present Act any person who is residing out of municipal limits is not entitled to the beneficial measures in force in municipal areas.

Another important factor is that a large portion of this area and the land has been given away to a certain class of people almost free of charge. I would say if this land is sold it will realize crores of rupees. These lands ranging from two to five thousand square yards are given to a class of people at a nominal price of Rs. 500 or Rs. 1,000. On these lands properties have been built and occupied by some people and then sold and resold and that class of people have made tons of money. It is State land. The Provincial Government is deprived of this land. The Central Government also has been deprived of this valuable land and the whole benefit is enjoyed by a section of people. I might here inform you, Sir, that in one station alone 80 per cent. of the property is owned by one man.

**Mr. President:** I do not want to interrupt you, but we are not discussing the mismanagement in the Cantonments. We are discussing a particular item in the list and whether the Federal list should contain this item. You need not therefore go into the whole question of mismanagement or maladministration of Cantonments here.

**Mr. N. Gopalaswami Ayyangar** (Madras: General): If you will kindly permit me to say a few words, I hope Mr. Sidhwa will not pursue the speech. I will say just a few words. Sir, five amendments have been given notice of in connection with this clause. A number of questions have been raised in connection with this particular item and, Sir, it has been considered that it will be desirable to investigate all the aspects of this question in detail before the final form of this item can be settled. If you will permit me, Sir, I would ask that this item may be held over for the present. We will come back to it later on.

**Mr. President:** The suggestion is that this item may be held over and may put forward in a form which will be acceptable to all and then all these amendments will become unnecessary. We will pass on to the next item, No. 9 of the list.

#### ITEM 9

*(Messrs. Mohan Lal Saksena and M. Ananthasayanam Ayyangar did not move their amendments.)*

**Mr. Naziruddin Ahmed** (West Bengal: Muslim): Mr. President, Sir, I beg to move that item 9 be deleted. The reason is that there has been in the past considerable amount of dissatisfaction in the country that we had not freedom as to the use of arms or firearms. There has been tremendous and persistent agitation over this and it need not be elaborated. Now my amendment is that this should be removed from the Federal List and be made a Provincial subject, for which purpose an appropriate amendment would be submitted later on. I think that so long as the British were here their objective was to disarm the people and they did so out of suspicion and jealousy of the Indian people and they kept it as a central subject. Now as the British have gone, the reason for making it a Central subject has also, I submit, gone. It would be a very proper gesture now on the part of the Centre to let the Provinces, to exercise this power. If there is any difficulty as to giving these privileges to the Provinces it may be carried to List No. III and it would be a concurrent subject. I submit that the retention of this item any more as a Central subject would be wrong. I believe that though the British have gone, their ghosts still haunt our minds and we want to cling to the power.

**Mr. President:** There is only one amendment. It is that item 9 should be deleted. Does anyone wish to speak about this?

**Mr. N. Gopaldaswami Ayyangar:** Sir, I gathered from the speech of Mr. Naziruddin Ahmed that he does not propose to remove from the scope of legislation this item of arms, fire arms, ammunition and explosives. His suggestion seems to be that there is no need for Federal legislation on this subject, and that this subject might be transferred to the Provinces. I think, Sir, that, in a matter of that importance, arms, fire arms, ammunition and explosives, particularly, in these days, it is very necessary that the control which legislation might impose upon these particular things should emanate from the Centre. There should be uniformity about the manufacture, possession, transport and use of arms, fire arms and ammunition. It would perhaps interest Mr. Naziruddin Ahmed to know that even the States which have acceded to the Dominion already have acceded on this subject, which means that they are prepared to let the Federal Legislature make laws for this subject. I hope, Sir, he will not press this amendment.

**Mr. President:** I will put Item 9 now to vote. The amendment is that this item should be deleted.

The amendment was negatived.

**Mr. President:** I put the item to vote, whether it is to be retained.

The motion was adopted.

#### ITEM 10

**Mr. President:** We will now proceed to Item No. 10. I do not find that there is any amendment to this, unless. Mr. Himmat Singh Maheswari wishes to move any amendment.

**Shri Himmat Singh K. Maheswari** (Sikkim and Cooch Behar Group): Mr. President, Sir, the object underlying my amendment \*to this item is that the mineral resources required for the production of atomic energy should be paid for wherever it may be necessary to take them over. This does not require any lengthy argument and I hope the framers of the Report will accept it without any hesitation.

**Mr. President:** Does anyone wish to say anything about this?

**Mr. N. Gopalaswami Ayyangar:** Sir, this item relates only to the passing of legislation by the Centre in respect of atomic energy and the mineral resources required for that purpose. But the inclusion of an item like that in the Federal list does not mean that the Centre is going to expropriate any people who might own mineral resources of their own, whether it is an Indian State or a Province or a private individual. If it is necessary for the interests of the Federation that control should be exercised or even acquisition should be made of those resources; certainly due compensation will be paid. I do not therefore think that it is necessary that this word should be added at the end.

**Shri Himmat Singh K. Maheswari:** In view of the assurance given, I do not press my amendment.

**Mr. President:** I take it that the amendment is allowed to be withdrawn. I put the original item 10 to vote.

The motion was adopted.

ITEM 11

**Mr. President:** We go to the next item. (Item 11.)

So far as I can see, there is no amendment to item No. 11. I put it straightaway to vote.

The motion was adopted.

ITEM 12

**Mr. President:** We go to item No. 12. There is an amendment by the Prime Ministers of States to this item.

**Sir V. T. Krishnamachari** (Jaipur State): We do not move the amendment.

**Mr. President:** There is no other amendment to item No. 12, I put the item to vote.

The motion was adopted.

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\*That in item 10 the following be inserted at the end:  
"subject to payment of compensation to the unit."

## ITEM 13

**Mr. President:** We pass on to item 13. There is no amendment to item No. 13. I put it to vote.

The motion was adopted.

## ITEM 14

**Mr. President:** Now, we take up item No. 14. There is an amendment by Sir Ramaswami Mudaliar and other Prime Ministers of States.

**Sir V. T. Krishnamachari:** Mr. President, Sir, I move:

That in item 14 of the following be added at the end:—

“Provided that the Federation shall not by reason only of this entry have power to implement such decisions for a province or a Federated State except with the previous consent of the Province or of the State.”

Now, Sir, we participate in all kinds of International Conferences, Associations and other bodies. The power to implement the decisions taken at these Conferences, Associations and other bodies must depend on whether the subject matter of that decision is a provincial or a Federal subject. My proposal is that if these decisions relate to provincial subjects, the consent of the province concerned should be taken before the decisions are implemented. In the absence of such a restriction, the powers of provinces and of States will become almost nugatory. These Conferences relate to matters like agriculture, food, and largely matters which are within the scope of provincial authority. Honourable members will remember that we have section 106 in the Government of India Act which makes provision for this. If the intention is to re-enact section 106, my amendment will not be needed. If, however, that is not the intention, I propose that these words be added at the end of item 14.

**Mr. President:** Mr. N. Madhava Rau, there is an amendment to item 14 in your name.

**Mr. N. Madhava Rau** (Eastern States Group II): I do not propose to move the amendment.

**Mr. Naziruddin Ahmed:** Mr. President, Sir, I beg to move:

That in item 14 the following be added at the end:—

“on matters within its legislative competence, and in other matters affecting a province or a State, with the express consent of such State.”

The point which I wish to make in this amendment is that there may be subjects which are entirely Central or it may come within List No. III in which case the Centre will also have jurisdiction. But the subject may also come within List No. II that is within the provincial jurisdiction. In that case, it would not be proper to give powers to the Centre, to do anything without the consent of the province. In fact, that would be an indirect encroachment over a thing which is reserved entirely and exclusively to the province.

Then, with regard to the States, from the papers which have been circulated amongst us, we find that the States have acceded subject to important reservations. They have acceded with regard to certain

[Mr. Naziruddin Ahmed]

subjects which have been clearly defined in the Schedule attached to their Agreement. There may be subjects which are outside the scope of that Schedule. In that case, to ask the Central Government to legislate or to agree to matters coming within the scope of those subjects which are outside the scope of the Agreement, that would be allowing that Government to encroach upon spheres which would be prohibited by the Agreement. The Agreement makes it absolutely clear that the States do not accede to anything except those enumerated in the Schedule. In these circumstances, I submit that it would not be proper for the Centre to take powers which may go outside its scope. The principle embodied in my amendment would thus be necessary to prevent confusion and some scrambling for power with regard to certain matters.

**Mr. President:** There is no other amendment. Now, the amendments and the original item are under discussion. Those who wish to speak may do so.

**Mr. K. M. Munshi (Bombay: General):** Mr. President, Sir, I oppose the amendment that has been moved by my honourable friend Sir V. T. Krishnamachari. Honourable members will see that item 16 is "The entering into and implementing of treaties and agreements with foreign countries". They will also find a similar amendment to that item by the same four honourable members. Now, I do not want to anticipate the arguments on that amendment. But item 16, as honourable members will see, relates to the implementing of treaties and agreements with foreign countries. These agreements and treaties are bilateral between this country and another. So far as item 14 is concerned.....

**Sir V. T. Krishnamachari:** Are we on item 16?

**Mr. K. M. Munshi:** No. I am distinguishing between the two, if the honourable member has the patience to listen to me. Item 14 does not refer to bilateral treaties, but refers to international conferences. Now, as the House knows very well, in this age international relations are not necessarily governed by treaties. There are various conferences at which India sends out her representatives and she will be sending them out in much larger measure in the future. At these conferences decisions are taken on the footing that the representatives of India have got the power to implement those decisions; no representative of India will be heard with any weight at all, if he has to keep a reservation that he would come back to this country and ask his 35 unit Governments and if one of them disagrees he would not be able to implement those decisions. In this present world it would be impossible for India in such conditions to take part effectively in any conference, except of course as in a debating society without coming to any decision. Therefore it is highly essential that the central legislature as well as the Central Government should have ample power not only to participate in these conferences but to implement the decisions arrived at there.

Take for instance this simple example that I can give you at the moment. Suppose there are trade relations with a country, and as a result of an impending war or of her conduct which is against international policy those trade relations are to be terminated, suppose, all the members of that international association in a body said that they should denounce such trade relations or follow a particular kind of policy as regards them and, that would be a decision, not a treaty. Even if that decision were adopted practically by the whole world, the Indian representative would have to say that he must go back to India and see that every Unit of India—even a State with a population

of 20 or 25 thousand—has to say about it, and that until such consent is forthcoming he could not implement it. That will reduce the whole Central Government to a farce before the international world. As the House is aware, we are moving towards a position when most of the decisions regarding all larger policies are taken by international conferences, not in the shape of actual treaties but conventions. Decisions with regard to education, hours of labour and various other matters are taken in this way. Surely if this clause is deleted, it will again come to this that a small section of India can hold up the implementation of the decision approved by the rest. Assuming this power is taken away, India's representatives can go to any of these gatherings and be a party to all their decisions, but when they come here one-sixtieth of India can put a veto upon the implementation of those decisions. That will be the effect of accepting this amendment. If therefore India is to be an international personality and equal to other sovereign bodies of the world it must have the power not only to take part in these decisions but also to implement them.

The safeguard is this. This item here means that the central legislature will have the power to make laws for the purpose of implementing these decisions. Before a decision is implemented it will come before the central legislature; that legislature will fully debate upon it; and it will then decide whether it will implement that decision or not. It is not going to be taken behind the back of the representatives of any member of the Union; it means not only the lower House but the upper House as well,—the House of States. Therefore the representatives of the whole of India—the people as well as the States—will have the right to vote upon it and bring to bear upon it the influence of an all-India opinion. That is the effect of the clause as it stands. Therefore it is not as if something will be done behind the back of any State or province. India as a whole assembled in these two legislatures will consider the point of view of each unit as put forward before it and then come to a conclusion in the interest of the whole of India. If both Houses of the legislature by a majority come to the conclusion that the decision is to be implemented, is it suggested that one State or one small province can say that whatever the legislature may have done it should have liberty not to implement that decision? That destroys the very basis of the sovereignty of this country. Therefore I submit that though it looks a very harmless amendment, the results which will flow from it will cripple the power of India as a sovereign member of international society, and I submit that this amendment should be rejected by the House.

**Pandit Hirday Nath Kunzru** (United Provinces: General): Sir, I feel that the amendment placed before the House by Sir V. T. Krishnamachari which is practically a repetition of the provision which existed in section 106 of the Government of India Act of 1935 is a very unfortunate one. He cannot be unaware of the criticism to which that provision has been subjected during the last ten years, particularly in connection with questions relating to labour. Although questions relating to labour could under the Act be dealt with both by the Central and the provincial Governments it was clear that in all essential respects the labour question is an all-India affair; it cannot be dealt with piecemeal by provinces. If it is to be dealt with successfully, in other words in such a way as to create contentment throughout the country and to be in accordance with international views and standards, it is absolutely clear that it should be within the power of the Central Government to give effect in the last resort to agreements entered into at the international labour conferences. Yet it did not possess this power under

[Pandit Hirday Nath Kunzru]

the Act of 1935. No question relating to the matters which require the consent of the Governments of the units for their implementation has given rise to such dissatisfaction and criticism as that relating to labour. I think even if there were no other instance to be taken into account we should be perfectly justified in throwing out Sir V. T. Krishnamachari's amendment.

But there are other questions which in these days require to be dealt with by the country as a whole. Sir V. T. Krishnamachari was afraid that the power which item 14 would confer on the Central Government would be too vast, and as an illustration of the subjects that it might extend to, he mentioned food and agriculture. I was rather surprised when my honourable friend mentioned these two subjects. If there is anything today that requires to be dealt with by the National Government, it is questions relating to food and agriculture. We know the dangerous position to which we were reduced in 1943 and 1944 because the Government of India either did not possess or was unwilling for some time to exercise the powers required to control the Provincial Governments and bring them to accept a uniform policy. I may go further and say that experience has shown that the matter is of such vital importance that although a state of war does not exist, the Central Government must continue to exercise the power of coordinating provincial policies in regard to food and agriculture for at least some time more. Again, Sir, these questions are so important as to require the almost continuous attention of international bodies. There is the Food and Agricultural Organization which has been set up in order that these questions might be dealt with in a coordinated way in all the important agricultural countries. It would be most unfortunate, it would be retrograde, if we accepted Sir V. T. Krishnamachari's amendment, with our eyes open and with a full knowledge of the dangers that we would be exposed to. If we had to obtain the consent of every unit in order to adopt a uniform policy, we would drift again into the position that existed in 1943.

Apart from this, Sir, I should like to say one word with regard to the fears that the representatives of the States or any other units might entertain with regard to the power that the Central Government would enjoy in case item 14 was accepted by this House. The National Government, before accepting any responsibility, will naturally consider whether the responsibility will be one which can be discharged by the units with their own unaided resources, or only with the aid of the National Government. It will not be in a hurry to enter into agreements which will involve large expenditure, because it will in that case be morally bound to help the Provinces to fulfil the obligations accepted by it. Honourable Member may be afraid that the acceptance of international conventions might involve the units in expenditure which they would be unable to bear. I do not think that there need be any fear of it because it is well known that the units, whatever financial powers may reasonably be conceded to them at the present time, will not be in a position either to make education free or compulsory, or to adopt the measures recommended by Sir, Joseph Bhore's Committee in regard to public health or make satisfactory progress in regard to other matters which would lie within the provincial sphere unless they receive generous help from the Centre. It is inconceivable to me in these circumstances that the Central Government should, without adequate thought and previous consultation with the units, commit them to policies which it would be beyond their resources to implement. Again, Sir, the

representatives of India at the international conferences which will be concerned with subjects which the Provinces will be called upon to deal with, will not belong exclusively to the Central Secretariat or the Central Legislature. They will be taken from the Provinces also, and from other units too. Why need we therefore entertain any apprehension about the effect of any international agreement entered into by the Government of India on the finances of the Units ? Sir, taking past experience into account, and considering the unenviable position that we have occupied during the last 25 years and more at the International Labour Conferences on account of the unfortunate limitation placed on the power of the Central Government by the Government of India Act, 1935, it is right, and necessary in my opinion, that the power of the Central Government to give effect to international agreements should be wider than it is at present. I should like to add, before I close, that if the number of units were limited and they were of a size which would make it possible for the Government of India to consult them and pay due weight to their views, there might be a case for the acceptance of Sir V. T. Krishnamachari's amendment. But we do not know at the present time how many units there will be or what the size of the smallest unit will be. If a unit is to consist of a few thousand or a few hundred people, the acceptance of Sir V. T. Krishnamachari's amendment would place us in a very difficult position. We shall be laughed at international gatherings if we say that we cannot commit India without consulting units which are no better than big zamindaris. In view of this, Sir, I think the position that will be created by Sir V. T. Krishnamachari's amendment is impossible to contemplate. I am therefore, wholeheartedly for its rejection.

**Sardar K. M. Panikkar** (Bikaner State): Mr. President, Sir, I think there has been a very considerable amount of misunderstanding in the debate that has followed the motion by Sir V. T. Krishnamachari. The issue is not whether agreements reached at international conferences should be ratified by the Central Legislature or implemented by the Central Legislature. It is accepted by everybody that agreements entered into by India at international conferences must be ratified and implemented in the Central Legislature. Then what is the issue ? The issue is that in order to do so it must be related to a federal item or an item in the concurrent legislative list so that the power for this legislation may be vested in the Central Legislature. Now the issue raised by Mr. Munshi and by Pandit Kunzru is that there are many conferences in which India has to go and take part, where decisions are arrived at and where it is not possible to consult all the units when we come back to legislate and give implementation to agreements arrived at. Here, I venture to say, there is a slight misunderstanding because if you take the question of the I. L. O. for example, which has been prominently mentioned, if you turn to the concurrent list, you will find that item 26 deals with welfare of labour; conditions of labour; provident funds; employers' liability and workmen's compensation; health insurance, including invalid pensions and old age pensions. Now, as long as that item is in the concurrent list, the right belongs to the Union Legislature to pass any law which it considers necessary whether in terms of any international agreement or otherwise to give effect to its policy. In the same way in regard to every matter of importance either in the concurrent legislative list or in the federal list. Therefore, the issue that arises is if the Union goes not merely to a recognized international conference as the U.N.O. or is a party to the I. L. O. as India may be, but say to the Moral Rearmament conference at Switzerland, are we in position to give effect



[Sardar K.M. Panikkar]

to the decisions? In order to do so, it is absolutely necessary that it must be related to a substantial item in the federal or concurrent legislative list and the federal or concurrent legislative lists have been made in such a manner as to include every possible thing which may be of common interest. So, what is left to the Provinces or States are purely matters of local administration, not of an all-India or of a common character. That being so, to entrust wide powers such as the enforcing of decisions by legislation, the implementing of any agreement or arrangement reached at international association—itsself a very dangerous definition, what kind of international association or conferences it is not mentioned—is most dangerous which will, nullify every provincial and State constitution, because it is not limited to the subjects in the federal or concurrent legislative list. After all, Section 106 of the Government of India Act, as it stands, specifically limits the power of implementing such decisions. I am as anxious as any other Member here that the Central Legislature should have ample powers to give effect to treaties and agreements reached with other countries. But in order to do so it must be related to one or other subject in the concurrent or the federal legislative lists. As item 14 stands, it is rather peculiarly worded. It reads—

“Participation in international conferences, associations and other bodies and implementing of decisions made thereat.”

If this relates to items which are in the federal and concurrent lists, then this clause is not necessary. If it relates to matters outside the federal or concurrent list, then this clause will completely nullify every legislative item in the Provincial list or in the list pertaining to the Units and therefore I shall strongly suggest that whatever you may want is in Item No. 16. You may make the position clear in regard to the I.L.O. and other conferences or associations of a recognized international character. I would very respectfully submit that to give any more powers, such wide and undefinable powers to the Central Legislature, would be to nullify every act of the Provinces and units and to give the Union the right to interfere in every sphere of power without having a proper legislative source to which this legislative authority can be traced. Therefore, I have pleasure in supporting the amendment which has been put forward by Sir V. T. Krishnamachari.

**Sir B. L. Mitter** (Baroda State): Mr. President, I wish to draw the attention of this Assembly to one aspect of this question which has not yet been touched upon. I agree with Sardar Panikkar that there is a certain amount of misunderstanding in this matter and reference has been made to Section 106 of the Government of India Act. Section 106 of the Government of India Act was enacted when India, as defined in that Act, was not an organic entity. India consisted of British India and the States and therefore special provisions had to be made in regard to the States. But now India is an organic entity. There is no distinction, so far as the outside world is concerned, between the Provinces and the States. Therefore any reference to the Government of India Act is not quite relevant.

Now, this item speaks about the implementing of decisions made at international conferences. Before you implement a decision, you have got to ratify it. The decision will come before the Central Legislature for ratification. Then, at the next stage, if the Central Government so decides

that the ratification needs to be further implemented by legislation, then and then only does item No. 14 come into operation. Consider what is the nature of things likely to come before these international conferences for decision. They will be matters which are common to nations and matters which are of national interest and not of parochial interest. That being so, the chances are that anything outside the exclusive or concurrent list will not ordinarily come in for international decision. But supposing some matter of provincial importance is embodied in an international decision. Then this question will be debated in the Central Legislature where the Unit will be represented and if there be anything in the nature of oppressiveness, naturally the Central Legislature will take account of it. Where is the risk then in empowering the Central Legislature with the implementing of international decisions?

My point, therefore, is this; that international decisions are likely to be taken on matters of national interest and common to many nations. India now goes to the international conferences as an organic entity and not as a collection of political units as under the Government of India Act. That being so, Sir, I do not see any risk in giving this power to the Central Legislature. I would request my Honourable friend Sir V. T. Krishnamachari to withdraw his amendment.

**Mr. M. S. Aney** (Deccan States): Mr. President, Sir the item here has really raised a controversy which I thought would not be raised at all; but on the amendment standing in the name of Sir V. T. Krishnamachari being moved and another amendment in the name of Mr. Naziruddin Ahmad also, being moved, the controversy has assumed a form in which I find that certain fundamental aspects of this question are being obscured. Let us see what this item calls upon this House to do. It relates to participation in international conferences. So far as participation is concerned, I believe nobody seems to take any exception that it should be the right of the Central Government or the Dominion Government to send representatives to participate in these Conferences in the name of India. The real difficulty comes in regard to implementing those decisions. Now, as has been very rightly pointed out by my friend Sir B. L. Mitter, these decisions will be arrived at after consultation and deliberation at the international conferences. They will embody decisions on matters not taken in the interest of any particular part of his country or that country, but from the broader point of view of international usefulness and international benefit. The question is, when decisions of that nature involving international considerations are, to be implemented, although they might be related to matters within the provincial sphere, are those decisions not fit subjects to be considered by the Central or Union Government? Units are intended to govern their territory in regard to certain matters purely from the interest of the persons living within the territory of the unit. Their view is therefore necessarily limited to a territorial nature, bounded by the geographical limits within which the units have to carry on their administration, but here there are decisions taken in which the world view is taken and therefore in the carrying out of those decisions the Central Government will be in a better position to see whether those decisions should be implemented or not, and even in the former case, what is the proper way to implement them so as to justify India before the civilised world. That is the stand point from which these decisions will have to be looked at. This is not possible, in my opinion in the very nature of things if these matters are left to be decided by Provinces or units. It is this body the Central Legislature, I mean, which is in a position to take a broader and international view and therefore the authority for implementing those decisions must also vest in it. I

[Mr. M.S. Aney]

think it is obvious to everybody that if India to stand as a whole, before the whole world, it is the Central Legislature only which can represent India before the world and it must be responsible for implementing those decisions also. In all affairs outside India, the authority is exclusively left to the control and administration of the Central Government and I submit this is a matter of that nature, *i.e.*, falling within the category of external affairs. International conventions are external considerations which affect the affairs inside the country. Therefore, in the natural course of things this should be a matter for the Central Government to decide and I am sure that Sir Krishnamachari will see that nothing is lost if he does not press his amendment and let the item stand as it is. I therefore oppose the amendment.

**Mr. T. Channiah** (Mysore State) : (*Spoke in Canarese*).

**Mr. H. V. Kamath** (C. P. and Berar: General): Mr. President, the Honourable Member knows English and I suggest that you request him to speak in English.

**Mr. T. Channiah**: I have got option to talk in any language. I like (*continued to speak in Canarese*).

**Mr. Shankar Dattatraya Deo** (Bombay: General): Sir, We must at least be told in what language the Honourable Member is speaking.

**Mr. President**: My information is that he is speaking in Canarese. (Laughter).

**Shri Mohanlal Saksena** (United Provinces: General) : How do we find out whether he is talking in Canarese or not?

**Diwan Chaman Lall** (East Punjab: General): On a point of order, Sir, Are there any arrangements for a translation to be made into some understandable language of the speech that my honourable friend is making?

**Mr. President**: There is no arrangement for translation. If an Honourable Member chooses to speak in his own language, I cannot prevent him. The other members miss the speech and the speaker himself is not in a position to influence the bulk of the members present here. So the loss is more on the side of the speaker than on the side of the members who do not follow him. I don't wish to interrupt any member who wishes to speak in his own language.

**Mr. T. Channiah**: Thank you, Mr. President (*continued to Speak in Canarese*).

**Mr. M. S. Aney**: Sir, on a point of order. Are you in a position to know whether he is speaking relevantly or not?

**Mr. President**: I am not in a position to know whether he is talking relevantly or not. This is the third occasion when a gentleman has spoken in a language which is not understood by the bulk of the members present here. I allowed a member to speak in Telegu and another in Tamil and I thought I could not prevent a member who wished to speak in Canarese. I know that he will himself realize that

the speech he is making is not understood by the bulk of members and that he is therefore wasting his time. I would therefore request him to cut short his speech.

**The Honourable Mr. B. G. Kher** (Bombay: General): He is talking of the relations between the States and the Centre. I submit that has nothing to do with the subject we are discussing.

**Dewan Chaman Lall:** Rule 59 of the Rules of Procedure and Standing Orders of this Assembly says—"In the Assembly, business shall be transacted in Hindustani (Hindi or Urdu) or English, provided that the Chairman may permit any member who cannot adequately express himself in either language to address the Assembly in his mother tongue". I submit that the Honourable Member is now taking advantage of this particular rule and he has no business to take advantage of it. He knows English. He has already expressed himself adequately in English and therefore he should not now be given an opportunity to speak in his mother tongue.

**Mr. President:** This Rule, exists in the Rules of the other Legislative Assemblies also and there the members have been permitted to speak in their own languages even if the member could express himself in the English language. I would therefore allow him to express himself in his mother tongue. I would, however, request him to cut short his speech.

**Shri Raj Krushna Bose** (Orissa: General): In that case, when you allow, the members to speak in a language which is not understood by the bulk of the members, the Chair will, at least, keep an interpreter by his side to know what the member in speaking about.

**Mr. T. Channah:** (*Concluded his speech in Canarese.*)

**Mr. President :** We have had enough discussion. I now ask Mr. N. Gopalaswami Ayyangar to reply if he wishes to.

**Mr. N. Gopalaswami Ayyangar:** Sir, the two amendments that are before the House for consideration now are those of Sir V. T. Krishnamachari and Mr. Naziruddin Ahmad. In substance I think they raise the same issue more or less. So far as the merits of the amendments go, they have been sufficiently canvassed already the speakers who have dealt with the matter before me. I do not wish to add anything of a material nature to the discussions that have taken place. The main thing for our consideration is whether, in the case of International Conferences, Associations and other bodies, the Federal Legislature should have power to legislate not merely for our participation in those Conferences and Associations but also for our implementation of the decisions arrived at at those Conference and Associations.

Now, Sir, if, as has been conceded, it is very necessary in view of the new status that India has acquired in the International World that this country should speak with one voice at those Conferences and Associations and if it is also agreed that India should be a party to any decisions arrived thereat, it is to my mind important that steps should be taken by India as a whole for the implementation of such decisions. Ordinarily speaking, I agree with Sardar Panikkar's argument that the Federal Legislature should trace its powers of legislation in respect of matters decided at those Conferences only to specific

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entries in either the Federal List or the Concurrent List. That is so, but—we have got to remember that we go to those Conferences not on behalf of the Federation as distinguished from the Units of the Federation. We go to those Conferences as representing India as a whole, *i.e.* the Federation and the Units combined, and, if we are empowered to subscribe to the decisions arrived at at those Conferences, it is only right that we should be in a position to implement those decisions which we agree to at those Conferences. It is on use our assenting to such decisions and coming back home to find that we at the Centre are unable to implement them but have to remit those decisions to the various Units for the purpose of arriving at their own decisions in regard to such matters and either implementing those decisions or refraining from implementing them. Now, Sir, that would put India as a country in the International World, in a very awkward position. There is of course the fact that, when we do reach decisions at those Conferences, those decisions are of varying degrees of importance. At many of those Conferences, only pious decisions are arrived at, but at others human freedoms are declared and so on. It would be difficult for us to attempt implementing every one of the resolutions that may be adopted at those Conferences; but what does this item really mean? It does not mean that every decision that is arrived at at those Conferences is necessarily to be implemented by legislation. It only means that, if it is decided that those decisions should be implemented, the Federation should have power to legislate about them. That is about all. Therefore, Sir, looking at it from that point of view it seems to me that, if the House agrees to legislation for participation in such Conferences, it should also agree to its having power to implement such decisions as deserve implementation.

There is one other point I would like to mention. The proviso that has been suggested by Sir V. T. Krishnamachari in respect of this item is really not a thing which should be accepted so far as the List of Items is concerned. I think really if that question is to be debated at all it must be by his giving notice of an amendment when the text of the Constitution comes up before the House and asking for a specific section, on the lines perhaps of section 106 of the Government of India Act, to carry out his object. To put a proviso of that sort into a mere enumeration of the list of items in respect of which the Federal Legislature is empowered to make laws is, I submit, not an appropriate way of bringing up that matter. I have nothing more to say.

**Mr. President:** I will now put the amendments to vote. The first amendment is the one moved by Sir V. T. Krishnamachari.

The question is—

That in item 14, the following be added at the end:—

“Provided that the Federation shall not by reason only of this entry have power to implement such decisions for a province or a Federated State except with the previous consent of the province or of the State.”

The amendment was negatived.

**Mr. President:** Then there is the amendment of Mr. Naziruddin Ahmad.

The question is—

That in item 14 the following be added at the end :—

“on matters within its legislative competence, and in other matters affecting a province or a State, with the express consent of such State”

The amendment was negatived.

**Mr. President:** I will put the original item 14 to vote.

The question is—

“That Item 14 be adopted.”

The motion was adopted.

#### ITEM 15

**Mr. President:** I do not find that there is any amendment to this item No. 15. So I put it straightway to vote.

The motion was adopted.

#### ITEM 16

**Mr. President:** There is a notice of an amendment by Sir A. Ramaswami Mudaliar, Sir V. T. Krishnamachari, Shri M. A. Srinivasan and Shri C. S. Venkatachar.

**Sir V. T. Krishnamachari:** I withdraw the amendment.

**Mr. N. Madhava Rau:** I also withdraw my amendment.

**Mr. Naziruddin Ahmad:** Mr. President, Sir, I beg to move that in item No. 16 the following be added at the end:—

“on matters within its legislative competence, and in other matters affecting a province or a State, with the express consent of such State.”

Sir, the matter has been fully debated and I do not wish to go over the ground covered already. I beg to submit one thing *i.e.* in the debate on clause 14 Mr. Munshi almost gave away his case when he said that no action would be taken by the Centre without consultation with the units or with the States and that the Centre would never do anything behind their back. That is a very indirect concession that the Provinces and the States are entitled to be consulted. Then again, Mr. Ayyangar also said in a reply—I think it was with reference to proviso to amendment to Item No. 14—that this item was not the proper place to put it in, suggesting thereby, if I caught him rightly, that the same may be dealt with in the body of the Act itself in some appropriate form. These two speeches by two eminent men in the House indicate to me that they also felt the difficulty of their position. In fact the point is simply this. That Mr. Ayyangar and Mr. Munshi are very influential men of the Centre; let us suppose they go to an international conference and there they agree that all properties of the men in the street should be expropriated and distributed amongst the influential men. The man in the street says: “You cannot do it without my consent”. But the influential men say: “If you interrupt us in our noble pursuit at the International Conference, I think you are obstructing us.” This is exactly the position. Although noble sentiments may lie behind this action, it is a question of the rights of the provinces and the States. The question is whether you can be permitted, even indirectly, even for the benefit of the whole of India, to circumvent the legislative safeguards of the provinces and the States by means of a proviso like this. I submit that the debate has not answered this difficulty which

[Mr. Naziruddin Ahmad]

I feel. In fact the Provinces and the States have rights within their legislative competence being in List No. II that is, within the exclusive provincial jurisdiction or in the case of a State within a sphere on which they have not acceded. The question is whether the Centre should be permitted indirectly to encroach upon those exclusive spheres. Thus all the distinctions in the legislative list would be brought to nullity. On a question of principle I think that this should not be allowed to be done however laudable the motive may be supposed to be. All that I desire is that the List should be so amended or some sufficient safeguards should be introduced into the body of the Constitution that in going to an international conference previous discussion with the province or State should take place and their consent taken and then the Centre should send their representatives to such conferences. It would be absurd to go there without this formality. This seems to me to be absolutely simple and straightforward and absolutely legal. I do not know why in the name of efficiency and good name of the Centre this encroachment should be resorted to. I think the point which I made is based upon sound constitutional reason and something should be done to provide against acts being done by the Centre behind the back of the Units on their exclusive subjects.

**Mr. Alladi Krishnaswami Ayyar** (Madras: General): Though a decision of the House on item No. 14 makes any speech on Item No. 16 unnecessary, I should like to say a few words in view of the statement made that unless the treaty or the agreement is implemented by the province the treaty or agreement must have no sanction and there is also a suggestion thrown out that adequate provision should be made in the Constitution on the lines of section 106 of the Government of India Act. I submit, Sir, that as has been pointed out by Sir B.L. Mitter, the reasons for the enactment of Section 106 of the Government of India Act no longer exist and the Central Legislature must have the power to implement the treaty or the agreement that has been entered into with foreign powers. There is nothing novel in a provision of that description. Almost in every federal constitution in spite of any division of powers between the Centre and the Provinces, notwithstanding the fact that the treaty may encroach upon what might otherwise be a provincial power, the treaty perforce has a binding force and the Centre has the power to implement the treaties notwithstanding the fact that but for the treaty the subject-matter would be in the domain of the Provinces.

I would only refer to a few parallels. In the American constitution also, there is a division of powers between the Centre and the States. The residuary power is in the States and yet it has been uniformly held that if in the exercise of the treaty-making power the United States Central Government enters into a treaty with a foreign power, the treaty is binding on the States notwithstanding the fact that the subject-matter of the treaty may otherwise fall within the domain of the States. In fact, the provision in the American constitution goes to the extent of stating that the treaty shall be the supreme law of the land. That is the position in America.

In Australia also, the residuary power in the States and the powers of the centre are confined to a few specific matters. And yet, if the Centre enters into a treaty or an arrangement with a foreign

power in the exercise of its power under External Affairs, the treaty is perforce binding upon the States and it is not open to a State to challenge the treaty or the law implementing the treaty on the ground that in the normal course of things, it would fall within the purview of the States.

In Canada, there has been a sharp difference of opinion in the decisions of the Judicial Committee in appeals from Canada. But the preponderance of Canadian national opinion is in favour of the view that the Centre must be in a position to implement the treaties entered into by the Dominion as a member of International Society and it is not open to the province to say that because particular matters are in the normal course within the provincial sphere, the treaty is not binding on the provinces. So far as the decisions are concerned, there is no doubt a difference of opinion. But, as I have stated, the preponderance of influential and national opinion in Canada is in favour of giving force to the treaty.

In these circumstances, having regard to the peculiar nature of Indian conditions, the multifarious States that exist and the number of Units that are going to comprise this Union, this country must have a right to enter into a treaty and implement that treaty. But, of course, our statesmen must be on the guard in entering into an unconditional treaty. They must make the necessary reservation and they must see that until our legislature implements the treaty, it shall not be binding or they may make other reservations in consultation with the Governments of the Provinces and of the Centre. Otherwise, the Centre will be stultifying itself in any treaty arrangement. I am making these observations in view of the frequent references that were made to section 106. In supporting the retention of this item I proceed on the footing that there will be no such provision as section 106. Apart from treaties, the case of international conferences or what might be called a kind of agreements entered into in international conferences may stand on a different footing.

**Shri M. Ananthasayanam Ayyangar** (Madras: General): Sir, I was also of the view that a provision should be made in the constitution in terms of section 106 of the Government of India Act. But, on reconsideration, I find that it will involve this country in a series of troubles; they will not be able to represent our case in international conferences and even with respect to foreign countries where we have entered into treaties or agreements. There is no doubt danger in allowing the Centre a free hand in this matter without consulting or taking the consent of the various provinces or units. The Units may be too large in number and it may not be possible to consult every one of them or take their consent before the decisions are implemented. These are the two sides of the picture. A middle course must always be found and that can be done by way of a convention.

I find, Sir, that all treaties and agreements that are entered into, except those which are entered into with foreign countries on political matters. The other agreements trade agreements and decisions by international conferences are all, before implementation, brought before the Central legislature and without its consent, or ratification they are not given the sanction of law. Therefore, there is at least one



[Shri M. Ananthasayanam Ayyangar]

legislature in this country which accepts these decisions and gives them the sanction or force of law. The only question is whether with respect to provincial matters, the provincial legislatures must have a voice or not. That will be impossible having regard to the fact that the number of units is too large. There is the International Conference on Food and Agriculture in Geneva. I know as a matter of fact the provinces have not been consulted, one at least of the provinces has not been consulted, regarding the representatives that had to go and what instructions had to be given. If, over the head of the provinces representatives are sent to these international conferences, without the consent of the provinces and without the provinces giving any particular directions to these representatives as to what these representatives should press at these conferences, it is practically ignoring them both in the beginning and in the end, before the representatives are sent and after decisions are taken. This difficulty arises only with respect to provincial subjects. If the provinces are treated with scant courtesy in the matter of choosing representatives and in giving directions to the representatives, and, after the representatives come back with particular decisions which have been taken at these international conferences, the provinces or units have no say in this matter, it is regrettable matter. In practice, the Centre does not consult the various units. I do not want a legislative provision tying up the hands of the Centre and preventing it from implementing the decisions. If there is to be such a provision, the Centre will be stultifying itself before the eyes of the world and to that extent I agree that this amendment ought not to be allowed.

But, in practice what ought to happen is this. An Inter-provincial Council or an All India Council must be established with respect to these matters where international conferences are generally held, health, education, labour and other matters. Whenever representatives are asked to be sent to conferences, this council must have a voice. There must be representatives of provincial Governments and units. They must be consulted in the choice of representatives. The representatives must consult them and obtain directions as to what they should say on behalf of the Government and on behalf of the various provincial Governments also with a united voice. After they return, they must report to this inter-provincial or All India Council and take their decision. After the decision is arrived at that decision must be implemented by the Centre. This would avoid a number of inconveniences which would arise out of making a statutory provision for obtaining the consent of the units. It would not be desirable to ignore the Governments of the units and the various provinces altogether. A middle course must be adopted; but it need not be by statutory provision; it may be by a convention. For these reasons, Sir, I am not in favour of the amendment. Nor am I in favour of a provision like section 106 of the Government of India Act to be incorporated in the body of the Act. But the Centre must bear in mind that immediately an All-India Council, with respect to the various items or matters that come up in these international conferences and which are in the provincial list, must be established and this council must be consulted in the matter of sending representatives, in the matter of giving directions, and after the decisions are taken, in the matter of implementing them before they are ratified by the Central legislature.

**Mr. N. Gopalaswami Ayyangar:** Sir, a good deal of what has to be said on the amendment before the House has been said already both during the debate on it and during the debate on item 14. I wish only to meet one point which was raised by Mr. Naziruddin Ahmad. It is this. He wanted that if this amendment was not accepted in relation to this item, some other provision should be made at least in the body of the constitution embodying the substance of this amendment. Now, Sir, in connection with the debate on item 14, I took the point that, if the proviso which was moved to that item as an amendment had to be considered at all, the substance of it, it should not be in connection with that item, but might be brought up as an amendment to the body of the constitution when that came before the House for consideration. I wish however to make it clear that that statement of mine was intended merely as an indication of the correct procedure that should be followed. I wonder if—I have been rather thinking that—in the minds of some members, there is a lurking feeling that I myself suggested the inclusion of something on the lines of section 106 in the body of the constitution. That was not my point. I only said that if such a thing happened it must be with reference to the text of the constitution. On the merits of putting in a provision of that sort in the body of the constitution I have absolutely no doubt in my mind that so far as item 16 is concerned there is no case for such a provision in the conditions of this country. I agree with Mr. Alladi Krishnaswami Ayyar in the point he made on that question. That being so I am afraid I must oppose Mr. Naziruddin Ahmad's amendment, and I cannot hold out before him any prospect of my agreeing to accept an amendment even to the text of the constitution on the lines of his amendment here or on the lines of Section 106 of the Government of India Act, 1935.

**Mr. President:** I will now put the amendment to vote.

The question is:

“That in item 16 the following be added at the end:

“on matters within its legislative competence and other matters affecting a province or a State, with the express consent of such State.”

The amendment was negatived.

**Mr. President:** The question is:

“That item No. 16 be adopted.”

The motion was adopted.

#### ITEM 17

**Mr. President:** There are two amendments of which I have notice and both of them are to the effect that the item be deleted.

**Sir V. T. Krishnamachari:** I am not moving my amendment.

**Mr. Naziruddin Ahmad:** I am not moving my amendment.

**Mr. President:** The question is:

“That item No. 17 be adopted.”

The motion was adopted.

## ITEM 18

**Mr. President:** Mr. Madhava Rau.

**Mr. N. Madhava Rau:** I am not moving my amendment.

**Shri Himmat Singh K. Maheshwari:** Mr. President, Sir, I beg to move :

“That in item 18 the following be inserted at the end:

‘raised by the Federation’.”

The object of this amendment is to have the position made clear whether foreign loans referred to in this item will be loans raised by the Federation only or whether it is intended that units or private concerns or private individuals should have no right whatsoever to raise a loan in a foreign country. The item as it stands does not make its scope clear. I shall therefore be grateful if some light is thrown on the exact scope of this item.

**Mr. A. P. Pattani** (Western India States Group) : Mr. President, the amendment that has been moved, as far as I can understand, suggests that not only the Federal or Central Government but the units should be able to raise foreign loans. I think that is a very dangerous power to give to the units, especially in the light of the previous item on the Federal List where the Federal Government is taking responsibility to meet grave economic crises in any part of the country. If a unit, that is to say a Province or a State, is permitted to raise loans in any foreign country and create economic difficulties for the Federation it will be very hard on the Federal Government. I therefore request the mover of the amendment kindly to withdraw it.

**Mr. N. Gopaldaswami Ayyangar:** Sir, the mover of the amendment wanted some elucidation of what was covered by this particular item. The words ‘foreign loans’, I think, are a fairly clear description of what is intended. Apparently the object of the amendment is that the power of the Federal Legislature to make laws should be confined to foreign loans raised by the Federation. I am afraid, Sir, that I cannot agree to that position. The Honourable the mover of the amendment was referring to the case of units being at liberty to raise such loans in foreign countries. I do not think the Centre can agree to a unit, without reference to the Centre, proceeding to raise a loan in a foreign country. If it has to do so, it must get the consent of the Centre and perhaps must Act through the Centre in raising such a loan, if it is otherwise unobjectionable. This item is intended to give complete power to the Federation to control the raising of foreign loans.

**Shri Himmat Singh K. Maheshwari:** What about a private concern or a private individual?

**Mr. N. Gopaldaswami Ayyangar :** If the Federal Legislature considers it necessary to place restrictions or regulate the raising even of such loans, the power will be there. But whether it should be exercised at all, or whether it should be exercised in certain circumstances will be a matter for decision by the Federal Legislature.

**Mr. President:** I shall put the amendment to vote.

The question is:

“That in item 18 the following be added at the end:

‘raised by the Federation’.”

The amendment was negatived.

**Mr. President:** The question is:

“That item No. 19 be adopted.”

The motion was adopted.

ITEM 19

(*Mr. Krishnamoorthy Rao and Shri Omeo Kumar Das did not move their amendments.*)

**Mr. President:** The question is:

“That item No. 16 be adopted.”

The motion was adopted.

ITEM 20

**Shri Himmat Singh K. Maheshwari:** Sir, I move:

“That in item 20 the following be added at the end:

‘subject to existing agreements between one Unit and another’.”

The subject of extradition formed part of Item No. 3 of the Government of India Act, 1935 relating to External Affairs. The exact item stood thus :

“External Affairs: The implementing of treaties and agreements with other countries: extradition, including the surrender of criminals and accused persons to parts of His Majesty’s Dominions outside India.”

In this context, Sir, extradition apparently related only to extradition from and to foreign countries. In the present List, Sir, the subject of extradition has been separated from other subjects dealing with foreign affairs. For instance, we have item No. 11 dealing with foreign affairs and we have item 14, 16 and others dealing with foreign matters. By putting this subject “Extradition” into a separate item the implication is that the Federal Legislature will have the right to legislate not only regarding extradition from and to foreign countries but also in matters relating to Units, *i.e.* that existing agreements between Units, between States and Provinces, between one Province and another will be affected adversely. I am not sure what the intention was in putting this as a separate item. But I imagine it cannot be that the existing arrangements between States and Provinces are going to be replaced or disturbed by taking over the subject as a Federal subject. In any case, Sir, I would like to have light thrown on this.

**Mr. President:** Does any one wish to speak about this ?

**Mr. Naziruddin Ahmad:** Mr. President, Sir, I should think that one point requires clarification. Extradition is a subject on which it seems to me that the States are not acceding. In that case, when any legislation or any executive action is intended, the question arises as to whether the States should be consulted or their consent taken. This is a matter which requires clarification.

**Mr. N. Gopaldaswami Ayyangar:** Sir, I do not think that there was any mysterious purpose behind the List on this item of extradition being separated from the group of items which are included in a single entry in the Federal List of the Government of India Act. As a matter of fact, that particular entry is so jumbled up that we thought that extradition, being an important matter in itself, should be separately listed.

As regard the point that was raised by the mover of this amendment, and also the question of clarification, that was raised by Mr. Naziruddin Ahmad, I have only to say this. Ordinarily speaking extradition arrangements are a matter between one State and another, the two States being in essential respects independent in the exercise of their respective jurisdictions. There are Federations in the world where extradition arrangements exist between one Unit and another inside the Federation. I believe there are Federations in the world where the question of the matters that should be provided for by extradition is dealt with in a much easier manner than the formal way in which extradition has to be accomplished as between one independent State and another. But whether it is the one or the other, extradition is really a matter of agreement between the two States which enter into these arrangements. The entry of extradition as an item in the federal list does not necessarily abrogate any agreements or arrangements that may exist. It is possible that, when a law is passed it will probably provide, as the present extradition enactments do provide, for the entering into of agreements between one State and another, and if extradition has to be provided for as between one Unit and another of the future Federation of India. I am sure that that law will make a similar provision. As to whether the power to make that law should be restricted by the words that the honourable the mover has suggested, namely, "subject to existing agreements between one Unit and another" that question is one as to which I am not prepared to give an affirmative answer. Those agreements will be entered into under the provisions of the law that may be made. I cannot anticipate what those provisions will be; that is a matter for the future. But whether existing agreements should continue or whether modified agreements should be entered into, should be left to the administration of the law that may be enacted in future. It may be taken for granted, however, that, when extradition is provided for, the States entering extradition arrangements have got to be consulted and it is only ordinarily by consent between the States entering into that arrangement that the arrangement can come into existence. This being so, Sir, I would suggest that the Hon'ble Mover of the amendment need not press his amendment.

**Shri Himmat Singh K. Maheshwari:** Sir, I beg leave to withdraw my amendment.

The amendment was, by leave of the Assembly, withdrawn.

**Mr. President:** The question is:

"That Item No. 20 be adopted."

The motion was adopted.

## ITEM 21

**Mr. President:** We come to Item No. 21. I do not find there is any notice of amendment to this item. So I will put it to vote.

The motion was adopted.

## ITEM 22

**Mr. President:** Item No. 22.

**Sir V. T. Krishnamachari :** Sir, the object in setting down this amendment (That Item No. 22 be deleted) on paper is to seek a clarification whether this means jurisdiction over nationals of this country in other countries, or whether it means anything more than that. That is the point on which we seek clarification.

**Mr. President:** There are two amendments of which I have notice, both to the same effect, one by Mr. Naziruddin Ahmad and the other by Mr. Himmat Singh Maheshwari.

**Shri Himmat Singh K. Maheshwari:** Sir, I have nothing to add to what Sir V. T. Krishnamachari has said.

**Mr. N. Gopaldaswami Ayyangar:** Sir, my answer to Sir V. T. Krishnamachari's question is that foreign jurisdiction is jurisdiction exercised in another country over the nationals of this country. Not merely that. The power to exercise the jurisdiction can be taken only if we have the consent of the government of that foreign country. Therefore, what this item really means is that, when we have the permission of that foreign country to exercise jurisdiction over our own nationals in that country, we make laws for the purpose of governing the relations between our own nationals who happen to be in that country.

**Sir V. T. Krishnamachari:** Sir, in view of what Mr. Gopaldaswami Ayyangar has said, I beg leave to withdraw my amendment.

The amendment was, by leave of the Assembly, withdrawn.

**Mr. President:** Then I put this item to vote.

The motion was adopted.

## ITEM 23

**Mr. President:** We now come to item No. 23. I do not find there is, any amendment to this item.

**Shri M. Ananthasayanam Ayyangar:** I only want to make a suggestion. Item 23 says:—

“Piracies, felonies committed on the high seas and offences committed in the air against the law of nations.”

I want to suggest the deletion of the words “in the air”. Sir, this entry was lifted bodily from a similar article in Section 8 of the American constitution where the words are the same item by item and word for word. But in that article there is reference to piracies, felonies committed in the high seas and offences against the law of nations. There is no restriction to offences committed in the air. There is no reason to discriminate against the offences committed on the high seas against nations and

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offences committed in the air. I believe these words have been put in by inadvertence, and may be omitted and this item may fall in line with the similar provision in the United States of America constitution. I would place this suggestion before the Assembly for its consideration.

**Mr. N. Gopaldaswami Ayyangar:** Sir, I see the point that was attempted to be made by Mr. Ananthasayanam Ayyangar; but I am not so sure that we should keep entirely to the language of a constitution that was made, I believe, 160 years ago. So I think I would meet his main object if he will agree to the alteration of this item as follows:

“Piracies, felonies and offences against the law of nations committed on the high seas or in the air.”

**Shri M. Ananthasayanam Ayyangar:** That will meet my point.

**Mr. President:** I take it that the House will permit Mr. Gopaldaswami Ayyangar to recast this item in the way he has just now suggested.

Then I put this item, in the form he has put it, to the vote of the Assembly.

Item 23, as amended, was adopted.

#### ITEM 24

**Shri Himmat Singh K. Maheshwari:** Mr. President, Sir, I beg to move that for item 24 the following be substituted:—

“Subject to the existing laws of a Federated State, admission into, and emigration and expulsion from, the territories of the Federation, pilgrimages to places outside the boundaries of India as they stood before the 15th August 1947.”

Sir, I have two objects in view in moving this amendment. Firstly, certain States have got laws in existence for regulating the admission of foreigners into and emigration and expulsion from their territories. If the Federation takes over this subject completely, that is to say, to the exclusion of the jurisdiction of the Unit, then the power of the Unit to take prompt action will be removed, much to the detriment of the maintenance of law and order. Whatever provision, therefore, Sir, is made to give the Centre power to direct the admission and emigration and expulsion from the territories of the Federation, I think it has got to be subject to one condition, namely, that the discretion of the federating State in this matter should not be interfered with.

The second point that I want to make is that pilgrimages to certain places like the Gurudwaras in Pakistan and the Shrine of Khwaja Moinuddin Chishti in Ajmer are not subjects which need be dealt with by means of legislation by the Centre.

After all, a gurudwara may be only ten miles away from a village in India and it would be, I hope, a very common occurrence in future for people from one Dominion to cross over into the other for a religious purpose like this without let or hindrance. Similarly, I don't see why there should be any restrictions placed on the visit to a place like Ajmer of Muslims living in Pakistan. I therefore hope, Sir, that these two

points will be very carefully considered and that the reply of the framers of the Report will be reassuring on the subject.

**Mr. Mohd. Tahir** (Bihar: Muslim) : Mr. President, Sir, I beg to move:

“That in item 24, the words ‘pilgrimages to places beyond India’ be numbered separately as one specific item, namely, item 88, or that it may be added as 24-A.”

Now, Sir, this is an amendment which is very simple, modest and innocent. To me, Sir, it appears that this aspect is the most important aspect of our constitution. But unfortunately it has been given a very insignificant place in the constitution. I therefore request the Hon’ble Mover to agree to it, as has been rightly done in the provincial list, item 14. And in doing so, Sir, I think the Hon’ble Member will not have any difficulty because we have also done it as regards item 27 of the provincial list. In the Government of India Act, the matters referred to in item 26 and 27 have been included in once, *i.e.* item 27, and it has been separated here in the provincial list. I therefore submit that if this matter, *i.e.* the pilgrimages to places outside India is given as a specific item, there will be no difficulty. Lastly, I submit that in item 24, the first part of it has got no concern whatsoever with the second part, to which my amendment refers. With these few words, I request the Hon’ble Mover to make his heart, and mind more flexible towards this amendment and accept it.

**Mr. A. P. Pattani:** Mr. President, the powers sought under item 24, as I understand, relate very much to powers taken under item 21 also. It will be very necessary, I believe for the Union Government to regulate movements of aliens in our country and there is a suggestion I would like to add to this item 24 as it stands. This item refers to “admission into and expulsion or emigration from the territories of the Federation.” My suggestion relates only to questions of “admission into and expulsion from.” It is possible there may be some areas of the country, or rather States, that have not acceded to the Federation. I suggest, Sir, that Mr. Gopalaswamy Ayyangar may kindly note that in any agreements that are arrived at with such States, provision should be made that aliens should be excluded or expelled if they are undesirable to the Federation. I say this because, the old Government, under paramountcy, had taken power to exclude such aliens from India should they seek asylum in Indian States. We are always anxious to speak much against paramountcy, and I did not like it myself, but it is a thing that arises of its own accord for the defence: or rather for the proper looking after of our own country. So, I request a note be made that in making any agreements with States that have not acceded to the Union, there shall be provision to exclude aliens not merely from the territories of the Federation but from India if those aliens are undesirable to the Union.

**Mr. N. Gopalaswami Ayyangar:** Sir, as regards Mr. Himmat Singh’s amendment, I have not very much to say, but it is important, I think that the power of the Federation to make laws in respect of “admission into, emigration or expulsion from the Federation” should be absolute. The main reason why that is necessary is that the Federation is responsible for maintaining the integrity of India, preserving its internal security, providing for its defence and so on. An authority charged with these heavy responsibilities should have absolute power to make laws controlling-immigration and expulsion from the territory



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Mr. Pattani drew my attention to the fact that it is possible that some of the States might not have acceded and that it is important, in entering into any political relations with them, to make sure that a condition is imposed upon them in the terms more or less of this particular item.

I am sure, Sir, that those in the Government of this country who will be responsible for relations with Indian States in the future, whether acceding or non-acceding States, will keep this very important point in mind and make the necessary provision.

Sir, the other amendment by Mr. Mohammad Tahir is purely a question of cutting up this item into two. What he has argued is that pilgrimages to places beyond India have very little relation to the rest of this item. One possible justification for lumping these two things together would be that pilgrimages outside India are a form of temporary emigration but I do concede that it is not necessarily a matter which should go with the rest of this particular item. I am quite willing to have it listed as a separate item though I hope the House would forgive the framers of this list of Union Powers if that means an addition to the 87 items that already exist.

**Mr. President:** I put these two amendments to vote, one after another.

**Mr. Mohd. Tahir:** I withdraw my amendment.

The amendment was, by leave of the Assembly, withdrawn.

**Mr. President:** There is one by Mr. Himmat Singh Maheshwari as follows:—

“Subject to the existing laws of a Federated State admission into, and emigration and expulsion from, the territories of the Federation pilgrimages to place outside the boundaries of India as they stood before the 15th August, 1947.”

I put it to vote.

The amendment was negatived.

**Mr. President:** Now I put item 24 to vote.

The motion was adopted.

#### ITEM 25

**Mr. President:** Now, we will go to item 25. (Messrs R. K. Sidhwa, M. S. Aney, and Naziruddin Ahmad did not move their amendments). Then there is no amendment to item 25, and I put it to vote.

The motion was adopted.

#### ITEM 26

**Mr. President:** Now we take item No. 26. There is only one amendment by Mr. Himmat Singh Maheshwari.

**Shri Himmat Singh K. Maheshwari:** Mr. President, Sir, I beg to move that in item 26 the following words be inserted at the end:—

“Subject to the right of a Federated State to levy and to vary from time to time customs duties on its own frontier.”

Customs duties in most States form a very substantial part of the

income of the States and if the intention is that States should not levy any customs duty, I can say without hesitation that the power of the States to efficiently administer their area will be completely lost. Without finances no State will be able to run its schools and hospitals and if this important item disappears, I am afraid the finances of most of the States, even the bigger ones, are likely to collapse. I hope therefore that this amendment will receive serious consideration and be accepted.

**Mr. N. Gopaldaswami Ayyangar:** Sir, there are two items in this list which are relevant to be considered in connection with the amendment that has been moved. The first is item 26 which we are considering now. The other one is item 71 'Duties of Customs including export duties.' Now Sir, if the amendment has reference only to the right of a Federated State, situated on the frontier of the Federation, to continue to levy its own customs duties, this particular amendment would more relevantly come up for consideration under item 71. I should say, Sir, that item 26 refers only to legislation which has reference to import and export across customs frontiers. As there is a separate item relating to the levy of duties of customs, I take it that any Court will interpret this item 26 as not covering the levy of duties of customs, assuming that item 71 is also going to remain in our list. So, on that ground, this amendment does not call for consideration at the present moment. Mr. Himmat Singh, however, raised another issue of some importance and that was the right of a Federated State to levy and to vary from time to time customs duties on its own frontier. These frontiers may not be the frontiers of the Federation. They might merely be frontiers between one State and another or one State and the rest of India. With regard to the continuance of these rights, the whole thing will depend upon what conclusions we reach as regards the distribution of financial resources between the Federal Centre and the Federal units. That also will come up later for consideration in connection with this report. I might say, in order to remove any possible misapprehensions that may be in the minds of representatives of States, that, if on account of powers taken by the Federation as regards customs duties in general, even customs duties between the frontiers of one unit and another, the financial equilibrium of a unit gets upset, the Federation is not likely to run away from the responsibility of making that unit solvent. That is as much as it is necessary for me to say at the present moment. If any proposals of this kind should be made at the time we come to consider the distribution of financial resources, I shall elaborate this particular point. In view of this I hope Mr. Himmat Singh K. Maheshwari will not press his amendment.

**Mr. Himmat Singh K. Maheshwari:** As this subject is to come up again, I do not press my amendment.

The amendment was, by leave of the Assembly, withdrawn.

**Mr. President:** The question is:

"That item 26 be adopted."

The motion was adopted.

**Mr. President:** I have received a letter from two Members asking for an opportunity to discuss the situation that has arisen in some parts of the country in the Punjab. There is a suggestion in that letter that the Report of the Committee, which was appointed the other day

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to define the scope of the working of the Constituent Assembly and the Legislative Assembly, has been made to me and that I am not bringing it up before the House. I desire to assure Members that I have not received the report, whatever may have appeared in the newspapers. Therefore I am not in a position yet to decide how the Assembly can function in its two aspects. As soon as I get the report, I shall give an opportunity to the House to discuss it and therefore we shall take such action as may be considered necessary in the light of the Report.

The House stands adjourned to Ten of the clock tomorrow morning.

The Assembly then adjourned till Ten of the Clock on Tuesday the 26th August 1947.