



सत्यमेव जयते

REPORT

JOINT COMMITTEE TO ENQUIRE INTO BOFORS CONTRACT

(EIGHTH LOK SABHA)

Presented to Lok Sabha on 26-4-88

Laid on the Table of Rajya Sabha on 26-4-88

LOK SABHA SECRETARIAT
NEW DELHI

April, 1988/Vaisakha, 1910 (Saka)

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PART II

Minutes of the Sitzings of the Committee*

* Not printed. One cyclostyled copy laid on the Table of the House and 5 copies placed in Parliament Library.

JOINT COMMITTEE TO ENQUIRE INTO BOFORS CONTRACT

COMPOSITION

Shri B. Shankaranand—*Chairman*

MEMBERS

Lok Sabha

2. Shri T. Basheer*
3. Shrimati D. K. Bhandari
4. Shri Dileep Singh Bhuria
5. Shri Naresh Chandra Chaturvedi
6. Shri V. N. Gadgil
7. Shri Ganga Ram**
8. Dr. S. Jagathrakshakan
9. Shri Jagan Nath Kaushal
10. Shri P. Kolandaivelu
11. Shri Asutosh Law
12. Shri Y. S. Mahajan
13. Shri M. V. Chandrasekhara Murthy
14. Prof. Narain Chand Parashar
15. Shri Ebrahim Sulaiman Sait
16. Prof. Nirmala Kumari Shaktawat
17. Prof. Saif-ud-Din Soz
18. Shri Tariq Anwar
19. Shri P. K. Thungon**
20. Shri Ram Singh Yadav

* Elected w.e.f. 4-12-1987 *vice* Dr. K. G. Adiyodi died.

** Elected w.e.f. 16-3-1988 *vice* Shri Mahabir Prasad & Shrimati Sumati Oraon resigned.

Rajya Sabha

21. Shri Aladi Aruna *alias* V. Arunachalam
22. Shri Darbara Singh
23. Shri H. Hanumanthappa@
24. Shrimati Kailashpati@
25. Shri B. V. Abdulla Koya
26. Shri Thomas Kuthiravattom
27. Shri Ghulam Rasool Matto @
28. Shri Mirza Irshadbaig
29. Shrimati Jayanthi Natrajan
30. Shri Thangabaalu

SECRETARIAT

1. Shri K. C. Rastogi—*Joint Secretary*
2. Shri G. S. Bhasin—*Chief Legislative Committee Officer*

@ Ceased to be members of the Committee consequent on their retirement from Rajya Sabha w.e.f. 2-4-1988.

INTRODUCTION

The Joint Committee to enquire into Bofors Contract was appointed by Parliament in terms of the motion adopted by the Lok Sabha on 6 August, 1987 and concurred in by Rajya Sabha on 12 August, 1987.

1.2 The Joint Committee consisted of 30 members, 20 from Lok Sabha and 10 from Rajya Sabha. The members of the Committee were elected by the respective Houses according to the principle of proportional representation.

1.3 An esteemed colleague Dr. K. G. Adiyodi, M.P. passed away on 22 October, 1987. The Committee place on record their deep appreciation of his valuable contribution. Shri T. Basheer, M.P. was elected to serve on the Committee with effect from 4 December, 1987 *vice* Dr. K. G. Adiyodi, M.P.

1.4 Later, two other Members, Shri Mahabir Prasad, M.P. and Shrimati Sumati Oraon, M.P., were inducted in the Union Council of Ministers and in their places Sarvashri Ganga Ram, M.P. and P. K. Thungon, M.P. were elected to serve on the Committee with effect from 16 March, 1988. The Committee owe a word of thanks to them for their useful contribution to the deliberations of the Committee.

1.5 Three other Members of the Committee, *viz.*, Sarvashri H. Hanumanthappa, Ghulam Rasool Matto and Shrimati Kailashpati, who were Members of Rajya Sabha retired from Rajya Sabha on 2 April, 1988 on the expiration of their term of office and, therefore, ceased to be members of the Committee since then. The Committee place on record their appreciation of the valuable contribution made by each one of them to the deliberations of the Committee.

1.6 A technical presentation of the Gun system was made for the benefit of the Committee by the Chief of the Army Staff in the Ministry of Defence on 5 October, 1987. Later, the Committee were taken to a forward area in the Western Sector on 6 October, 1987 where they witnessed field demonstration of the 155 mm howitzer gun. Another demonstration was arranged in the Eastern Sector on 21 November, 1987. These visits and the technical presentations that preceded them were of immense educative value to the Committee and were indeed indispensable for a proper appreciation of the 155 mm howitzer gun.

1.7 The Committee held 50 sittings in all. Of these, 30 sittings were devoted to recording the evidence of various official and non-official witnesses. 7 sittings were exclusively devoted to study of the classified documents furnished by the Ministry of Defence. The Committee held in-house deliberations at 13 sittings.

1.8 The Attorney-General for India addressed the Committee on the legal aspects of the deal.

1.9 The total duration of the sittings of the Committee was 140.25 hours approximately. A verbatim record of the proceedings was kept. This runs into 2190 pages. The minutes of the sittings of the Committee form Part-II of this Report.

1.10 The Committee recorded the evidence of the following official and non-official witnesses :—

Official witnesses

Army Headquarters

- (i) General K. Sundarji, Chief of the Army Staff.
- (ii) Lt. Gen. Mayadas, Director-General, N.C.C.
- (iii) Lt. Gen. E. G. Kerr, Director-General, Artillery.
- (iv) Maj. Gen. T. P. Singh, Director-General, Weapons and Equipment, Army Headquarters.
- (v) Subedar Shivaji Jadhav (Surveyor).

Ministry of Defence

- (vi) Shri S. K. Bhatnagar, Secretary, Ministry of Defence.
- (vii) Shri N. N. Vohra, Additional Secretary, Ministry of Defence.
- (viii) Shri T. K. Banerji, Joint Secretary, Ministry of Defence.
- (ix) Shri A. K. Ghosh, Additional Financial Adviser, Ministry of Defence.

Non-official witnesses

- (i) Shri Per Ove Morberg, President, A. B. Bofors, Sweden.
- (ii) Shri Lars Gothlin, Chief Jurist and Senior Vice-President, A. B. Bofors, Sweden.
- (iii) Lt. Gen. H. Kaul, Deputy Chief of Army Staff (Retired).
- (iv) Shri M. C. Sarin, Former Secretary (Defence Production).

(v) Shri R. Ganapati, Former Secretary (Expenditure), Ministry of Finance.

(vi) Shri W. N. Chadha,
M/s. Anatron General Corporation,
Vasant Vihar, New Delhi.

1.11 The Committee would like to express their thanks to the officers of the Ministry of Defence and Army Headquarters for furnishing information and making available various classified documents asked for by the Committee.

1.12 The investigating agencies of the Government of India have rendered all possible assistance to the Committee in ascertaining the details of the payments made by Bofors, the persons to whom the payments were made and the purpose thereof. The Committee record their thanks to the Director, CBI, Director, Enforcement and the Director, Revenue Intelligence.

1.13 The Committee would also like to place on record their appreciation of the assistance rendered to them by the Attorney-General for India and thank him for his valuable advice on the legal aspects of the matter under inquiry.

1.14 Secretarial assistance was provided by the Lok Sabha Secretariat. A special cell consisting of three Legislative Committee Officers and a Chief Legislative Committee Officer headed by a Joint Secretary was created exclusively to deal with the Committee work. The officers worked ungrudgingly for long hours. The Committee place on record their deep appreciation of the work done by these officers and their supporting staff.

1.15 The Committee considered and finalised the report at their sittings held on 21 and 22 April, 1988.

1.16 On behalf of the Committee, I present this Report to the Parliament.

NEW DELHI;
22 April, 1988

2 Vaisakha, 1910 (Saka)

B. SHANKARANAND

Chairman,

*Joint Committee to enquire
into Bofors Contract.*

II

CONSTITUTION OF THE COMMITTEE

2.1 On 17 April, 1987, some leading newspapers of the country gave prominent coverage to a Swedish Radio Broadcast made the previous day that bribes had been paid to senior Indian politicians and key Defence figures to win the contract awarded by the Government of India to M/s. Bofors of Sweden on 24 March, 1986, for the purchase of FH 77B 155mm Towed Howitzers. The following news item appeared in the Hindustan Times, New Delhi of 17 April, 1987 :

“SWEDISH FIRM BRIBED ‘KEY’ INDIAN LEADERS”
STOCKHOLM, April 16 (Reuter)—Swedish State radio said today that the arms firm Bofors won Sweden’s biggest export order by paying bribes to senior Indian politicians and key Defence figures through secret Swiss bank accounts.

Bofors declined to comment on the radio allegations that it was planning to pay a total of 100 million kroners (\$ 16 million) to members of Prime Minister Rajiv Gandhi’s Congress-I Party in an undercover operation code-named Lotus.

The radio quoted senior company sources as saying four instalments totalling 32 million kroners (\$ 5 million) were paid during the last two months of 1986 into secret accounts at the Swiss bank corporation.

The accounts were traced to senior figures responsible for placing India’s military orders, the radio added.

Bofors is already at the centre of a political storm in Sweden after acknowledging smuggling millions of dollars worth of arms to blacklisted countries in the Middle East. Police are also investigating reports of illegal exports to Iran.

The firm last year overcame strong international competition to win an order worth \$ 1.3 billion for a complete field artillery system to be delivered to the Indian Army over the next four years.

Other leading contenders included British, Austrian and West German firms, with France as the final runner-up, Bofors said in February last year. It said it won the order through credit finance provided on good terms by the Swedish Government.”

2.2 Commenting upon the allegations contained in the news-item, the Government of India issued the following statement on 17 April, 1987 :

“Government categorically deny the allegations contained in the News stories based on the reports broadcast by the Swedish radio and television in connection with an arms order placed on the Swedish firm Bofors. The news item is false, baseless and mischievous. During the negotiations the Government had made it clear that the company should not pay any money to any person in connection with the contract. Government’s policy is not to permit any clandestine or irregular payments in contracts. Any breach of this policy by any one will be most severely dealt with.

The report is one more link in the chain of denigration and destabilisation of our political system. Government and the people are determined to defeat this sinister design with all their might.”

2.3 The Swedish Radio repeated the allegation on 17 April, 1987 claiming that it had documentary proof of the pay-offs in four instalments to Indian accounts in Swiss Banks and it had checked with Skandinaviska Enskilda Banken, the bankers for Bofors. On the other hand, Bofors denied paying any kickbacks to Indian politicians or officials for the deal involving the supply of 155 mm Towed howitzers. The company issued the following statement on 17 April, 1987 :

“AB Bofors has not paid, or conspired to pay, any bribes in connection with this order. All allegations to the contrary are hereby categorically denied.”

2.4 On 20 April, 1987, the Minister of Defence (Shri K.C. Pant) made a *suo-moto* statement on the subject in Lok Sabha. He stated *inter alia* :—

“In May 1985, the Defence Secretary, as Chairman of the Price Negotiating Committee individually advised the leaders of each of the four competing firms that the policy of the present Government did *not* approve of the appointment of Indian agents acting for foreign suppliers. He specially asked them to reduce their offers by the amount of such commissions, if any had been provided for. They were unambiguously advised that the decision of the Government of India would be based entirely on the merits of each offer. Defence Secretary further stated that Government of India would disqualify a firm in case it came to the notice of the Government of India that an agent had been appointed by a foreign firm. On the eve of finalising the contract, in response to a reiteration of Government’s policy and a demand for confirmation, M/s. Bofors replied, *vide* their letter of the 10th March, 1986, that they did not employ any Representative/Agent in India

for the project. However, for administrative services, e.g., hotel bookings, transportation, forwarding of letters, telexes etc., they use the services of a local firm.

“Besides the formally recorded deliberations of the Price Negotiating Committee, the Government of India’s policy in this regard was conveyed to the concerned Governments whenever an appropriate opportunity presented itself, either through their Ambassadors in India or during the visits of senior functionaries of such Governments to New Delhi. In the case of Bofors, opportunities arose during the visit of Mr. Carl Johan Aberg, Permanent Under Secretary of State Foreign Trade of the Swedish Government, as well as during personal consultations between our Prime Minister and the late Mr. Olof Palme. The aforesaid position has been confirmed by Mr. Aberg in a statement made by him on 17 April, 1987 regarding the Bofors contract with India. His statement is as follows :—

‘Indian Prime Minister Rajiv Gandhi himself during his talks in 1985 with Olof Palme said that one of the pre-conditions that Bofors should satisfy in connection with the Howitzer contract was that the company should have no middlemen. The deal should be drawn directly between Bofors and the Indian Defence Ministry. The Company informed the Swedish Government representative in autumn 1985 that there would be no middlemen involved and that they would deal directly with Indian Defence Ministry.

This was conveyed by Olof Palme in his personal conversation with Rajiv Gandhi in January, 1986.’

It would thus be seen that there was no doubt whatsoever, in Bofors or in the Swedish Government, about the Government of India’s policy that no commissions or agency fees should be paid in respect of contracts secured from India.

By inducting the Bofors FH 77B Towed Howitzer the Government of India have achieved the following :—

- (i) Acquired the weapon system which, in the technical opinion of Army Headquarters, was the most preferred.
- (ii) Acquired it at a value cheaper than that offered by its closest competitor.
- (iii) Obtained considerable price reduction from the original bid which was based on June 1984 base prices plus escalation and converted it into a fixed price contract at the reduced level.”

2.5 The Defence Minister further stated that "if any evidence is produced involving violations of the law, the matter will be thoroughly investigated and the guilty, whoever they may be punished."

2.6 A similar statement was made by the Minister of State for Defence in Rajya Sabha on 21 April, 1987.

2.7 The matter was thoroughly discussed in the Lok Sabha on 20 April, 1987 and in the Rajya Sabha on 21 April, 1987. During the discussions the members raised issues relating not only to the alleged kickbacks paid by Bofors for winning the contract but also about the quality and suitability of the gun selected for procurement.

2.8 Intervening in the debates in the Lok Sabha the Prime Minister observed :

the issue was raised by the Swedish Prime Minister, who said that they were interested that India buy their guns. I said that (1) the guns must be technically acceptable and superior to all the other weapons. (2) the cost must be less than the competitors and (3) if you want any involvement at my level, you must guarantee me. That means I must get a firm answer from the Prime Minister of Sweden that no middlemen are involved. We have been taking this up....."

"It has been taken up at the official level whenever dealings have been taking place. It has been taken up by junior Ministers wherever they have been involved that this should not take place. But when I was sought to be involved in a particular process and it is not only Prime Minister Olof Palme who has said this, Mrs. Thatcher, President Mitterrand, all Heads of State do raise the question of deals that their Government are doing with our Government and I make it clear on every occasion that this is one of the conditions that there must be—that there can be—no middlemen or agents involved in such dealings and I got confirmation from Prime Minister Palme that there will be no middlemen or agents involved. It is on that basis that this exercise was done. We have to take somebody's word as truth and when a Prime Minister of a country assures us after having gone into in great depth with the company that was involved that there are no middle agents and there will be no middle agents involved, then we have to accept somebody's word. And like Pantji has said now, you show us any evidence, we do not want proof. We will bring the proof. You show us any evidence that there has been involvement of middlemen, of pay-offs or of bribes or commissions, we

will take action and we will see that nobody however high-up is allowed to go free. To the best of our knowledge, there is no agent involved. We have been assured by the Company, we have been assured by the Swedish Government that there is no agent who has been involved. We have got a telex from the Swedish Government saying that they had checked up and on the basis of that, they have said 'no'....

We have approached the radio company. They have told us that they got the information from correspondent in India. We traced that correspondent in India and he has refused to give us any documentation. He said he is not giving it to us."

2.9 Replying to the points made in the House by the Members, the Defence Minister stated in the Lok Sabha on 20 April, 1987 as follows :—

"Many Members have referred to what the Swedish Radio has said and there has been a tendency to ignore what the Swedish Government has said. It is not reasonable or right to simply ignore them and put all emphasis on one small aspect of this case. We should balance the two and see whether it is right to put this one Radio in the balance against Olof Palme and the Swedish Government, not to speak of our own Government. The Prime Minister has already intervened on a number of occasions and has said that 'there are no charges at the moment and if evidence is asked for then we shall look into it. We shall inquire into it and if somebody is found guilty we will punish him'. This is the essence of what Members have been asking.

"Simply because someone has made a statement or made certain charges, a parliamentary committee cannot be set up to go into it. There must be some basis for this enquiry; there must be some document; there must be something on which one has to go.

"So far as the range of the gun is concerned, I have made some enquiries and I was told that this has the required range. But if Members have any information, certainly this is a point and I will look into it.

"As far as the Swedish Government's attitude to this particular transaction or contract is concerned, there is no cloud over that. The Swedish Government has supported this particular transaction.

The Swedish Government was not only interested in this sale but at the level of the Prime Minister, they took up the matter with our Prime Minister.

“So far as delay in entering into this particular deal is concerned, it is necessarily a long term exercise. We have entered the stage of long term perspective in our planning in defence matters and defence modernisation.

“We did not go in for our own R&D and develop this gun because when the requirement for 155 mm gun was projected to the DRDO, the DRDO was then engaged in the design of two important guns required in the services—the Indian Field Gun MK-2 and MBT Arjun gun of 120 mm calibre. In spite of DRDO’s eagerness to take up this project, it was felt that its available infrastructure could only handle two guns at the same time. Now, these guns were also important. So, it is not as though the question was not gone into. It was gone into, but those who know best, the technical people, decided that they would like to concentrate on the other two guns. That was their priority, and that is the reason why this happened. So, we have gone in both for importing this gun and for manufacturing it within the country. That transfer of technology is a part of this particular deal. Similarly, ammunition from other sources was also considered. Six types of ammunition were required and it seems that none of the parties could give all the six types except Bofors. That is the reason why this was preferred.”

The Minister added :—

“As far as the process of destabilisation is concerned, we should not ignore what is happening in Punjab, or what is happening in Arunachal Pradesh. We should not ignore the massing of troops, the arming of Pakistan, the possibility of disinformation from various sources. There are certain forces today who would be happy to see India break up. Certainly wherever corruption occurs, it must be fought. We are not running away from that. The Prime Minister has already said that we will have an inquiry and whoever is found guilty, will be punished, if there is a room and basis for such an inquiry. But the fact remains that if you destabilise the institutions of this country, there will be destabilisation. There are forces in the world who are doing it.

“I am given to understand that Gen. Sunderji did not make any statement regarding the indigenous capability to design, develop and manufacture 155 mm guns. The design development and passing of high technology guns takes anywhere between five to

ten years. I have found that nobody has questioned the procedure either for technical scrutiny or for commercial scrutiny. Nobody has questioned the price matter either. The bids cannot be laid on the Table of the House because it is a sensitive matter and these arms have to be purchased from various countries.

“There is need to modernise our Defence Forces. It is urgent that we must be able to counter any sophisticated lethal weapons which come in our neighbourhood. We must recognise the needs of Defence and that must take priority. We will do whatever is necessary to modernise the armed forces.”

2.10 During the course of discussion on the demands for grants of the Ministry of Defence for 1987-88 questions were raised with regard to the quality and suitability of the Bofors gun and the procedures followed to assess its performance. Several members demanded a probe into the whole deal by a Parliamentary Committee.

2.11 On 29 April, 1987, the Minister of Defence (Shri K. C. Pant) made the following statement in the Lok Sabha:—

“The Swedish Government is issuing the following press statement* today in Sweden and the information has just reached us and I am passing it on to the House. I quote:

‘The Government has today decided.....’ i.e. the Government of Sweden.....

‘.....to ask the National Audit Board to make an auditing review of certain transactions that were made by Bofors in connection with the Indian contract. The review shall be conducted speedily, and should be concluded by the end of May. The Indian Government has made a request to the Swedish Government to try to ascertain if middlemen had been used. The assignment by the Government to the Audit Board means that the Board shall undertake an auditing review in the matter. The Board may, if necessary, appoint a Chartered Accountant to participate in the review. In its work, the Board should take the advice of the Military Equipments Inspectorate. The Government assumes that Bofors will give the Audit Board all necessary insight into the transactions. The Board will also partake of available documents with various authorities concerned.’

* As translated into English by Swedish Embassy in India.

“The background to the decision of today is the following.

“An important question during the negotiations for a contract between Bofors and the Indian Defence Ministry was the request of the Indian Government that the Howitzer deal should be concluded directly between the parties, without middlemen. This question was also raised in talks between Prime Minister Mr. Rajiv Gandhi and Prime Minister Olof Palme. In January of 1986 Prime Minister Olof Palme informed Prime Minister Gandhi that Bofors had declared that it wished to conclude the business directly with the Indian Defence Ministry, thus, without any middlemen. Bofors also wrote directly to the Defence Ministry in March 1986 stating that no middlemen would occur in the transaction.

“On April 21 of this year, the Indian Ambassador came to the Swedish Foreign Ministry and asked that the Swedish Government should help in obtaining information whether middlemen had been used or not. In view of this, the Under Secretary of State, Mr Carl Johan Aberg immediately contacted the leadership of the Nobel Industries and requested that full clarity should be obtained in the matter. On April 24, Bofors transmitted a written report to the Indian Ambassador in Stockholm. The Indian Government has declared that an investigation through the Swedish Government is of great importance. The Audit Board will make a speedy review of those transactions which may be relevant in the matter.”

2.12 On 4th June, 1987, the Swedish Embassy in India, presented to the Ministry of External Affairs, Government of India, a copy of the Report of the Swedish National Audit Bureau. The observations as summarised in the report (*Appendix I*) are as under :—

“—that an agreement exists between AB Bofors and* concerning the settlement of commission subsequently to the FH 77 deal; and

—that considerable amounts have been paid subsequently to, among others, AB Bofors’ previous agent in India.”

2.13 The report of the Swedish National Audit Bureau was discussed by Prime Minister with the leaders of opposition parties on 11 June, 1987. The Government decided to request the Speaker, Lok Sabha and the Chairman, Rajya Sabha to set up a Joint Parliamentary Committee to enquire into and establish the identities of the persons who received the payments.

[* Names not disclosed]

The Minister of Parliamentary Affairs accordingly, addressed communications to the Speaker, Lok Sabha and the Chairman, Rajya Sabha on 11 June, 1987.

2.14 However, the Speaker, Lok Sabha and the Chairman, Rajya Sabha declined to set up, on their own, a Joint Parliamentary Committee to probe into the Bofors Gun deal. Thereupon, the Prime Minister, during his meeting with the leaders of Opposition in Parliament on 17 June, 1987 indicated that the Government would move a motion in the Monsoon Session of Lok Sabha for the appointment of a Parliamentary Committee to probe into the Bofors deal.

2.15 Accordingly, on 29 July, 1987, the Minister of Defence (Shri K.C. Pant) moved a motion (*Appendix II*) in Lok Sabha, for appointment of a Joint Parliamentary Committee. On 3 August, 1987, while moving the motion, the Minister of Defence recalled the whole sequence of events and stated *inter alia* as follows:—

“... On April 20, 1987, Shri Oza, our Ambassador in Stockholm, met the representatives of Bofors and sought full clarifications about the allegations. He pursued similar enquiries with the Swedish Foreign Office, on April 21, 1987 and, *inter alia*, requested them also to use their good offices with Bofors to persuade Bofors to convey to us the entire details sought by us. On April 22, 1987, he personally met the acting Chief of the Swedish National Radio Company and tried to secure their co-operation in obtaining any evidence which was in the possession of the Company. On the same day, he again pressed Bofors to furnish complete information in the matter. It will thus be noticed that intense and immediate efforts were made to obtain the fullest information about these allegations from all possible quarters.

Two facts emerge from a careful study of the Report of the Swedish National Audit Bureau. These are, firstly, that sizable payments were made by Bofors and, secondly, that these payments were made in 1986. It would also be seen that the most crucial portion of the Report, which contains particulars of the recipients of the amounts paid by Bofors, have not been disclosed to us. The reasons for withholding this information are contained in the forwarding note of the Swedish Government, which I quote:

“The details in the report are essentially based on the information that the National Audit Bureau has obtained from the Bank of Sweden. The Bank of Sweden has made this information available

to the Audit on condition that it be classified for secrecy. These parts of the report may therefore not be made public.”

2.16 Explaining the underlying idea of the terms of reference of the proposed Parliamentary Committee, the Defence Minister stated:—

“...while formulating the approach contained in the motion before us, we have duly considered the suggestions made in the matter by the Leaders of the Opposition Parties to the Prime Minister. There are two variations of substance in the terms of reference of the Joint Parliamentary Committee, as proposed by the Opposition and those contained in the Motion.

“The first difference relates to the Opposition’s desire that all aspects of the policy, procedures and decisions in regard to the defence procurements of equipments, stores and ancillaries, since January, 1980, be examined by the Joint Parliamentary Committee. In other words, the suggestion is to review all defence contracts concluded in the past seven years and more. In this context, it is essential for the Hon’ble Members, regardless of political affiliations, to appreciate that effective defence preparedness inevitably entails the modernisation of the Defence Forces. Modernisation is a dynamic process and in turn, requires the timely finalisation of purchase contracts to ensure deliveries within envisaged schedules. This was true not only in 1980 but earlier as well, for instance when the Jaguars were contracted, or in 1979 when the requirement for the 155 mm weapon system was first recognised, and will continue to be so in the future also. Any arbitrary selection of date, whether it be 1980 or 1977 is, therefore, liable to be politically suspect. A roving enquiry will have an adverse impact on the morale of the Defence Forces and thereby endanger defence preparedness. This cannot be allowed to happen as the preservation of our integrity is a national imperative of the highest order.

“.....It requires to be emphasised that in the case of Bofors, as soon as it was established that a *prima facie* case exists, Government immediately decided to refer the matter to a Parliamentary probe.

“.....It would be observed that the terms of reference contained in the Motion have the merit of concentrating on the issues emerging from the Report of the Swedish National Audit Bureau and saving the Committee from an unrewarding and unfocused exercise.”

2.17 Assuring full support and assistance to the Committee, the Defence Minister observed:

“....Let me also say that while the proposed Joint Parliamentary Committee shall function within the time-honoured Rules of Business governing the functioning of Parliamentary Committees and the directions that the Hon. Speaker may give from time to time for regulating the procedure and organisation of the work of the Committee, Government shall provide full support and assistance in regard to all matters relevant to the inquiry.”

2.18 Requesting the House to adopt the motion unanimously, the Defence Minister pointed out:

“....this Joint Parliamentary Committee would perhaps be the first investigative Committee of its kind in our Parliamentary history. Its establishment reflects the unanimous wish of Parliament and of all political parties that the full facts of the payments by Bofors need to be ascertained and placed before the country.”

Substitute Motions

2.19 Sarvashri Somnath Chatterjee, Dinesh Goswami, C. Madav Reddy, K.P. Unnikrishnan, Indrajit Gupta and C. Janga Reddy, members, moved substitute motions to the motion moved by the Minister of Defence (Shri K.C. Pant). They are *at Appendices III to VIII*.

2.20 The discussion in both the Houses on the motion moved by the Minister of Defence, lasted for 44 hours—22 hours in each House approximately spread over 19 days. The following points were made by Members regarding the constitution, composition, terms of reference, powers and procedures etc. of the proposed Committee:—

(a) Constitution

- (i) There was no need to appoint the Committee, the requisite information ‘who received the payment; what was the amount and at what point of time the payment was received’, could be obtained by the Government of India direct from M/s. A.B. Bofors;
- (ii) Swiss Banks should be approached to ascertain the payments made;
- (iii) it should be referred to an independent tribunal to be presided over by a judge of Supreme Court of India;
- (iv) M/s. Bofors should be asked to disclose the names forthwith failing which the agreement should be cancelled;

- (v) instead of appointment of a Committee, the House should adopt a resolution asking the Swedish Parliament to direct the Government of Sweden to release the complete Audit Report.

(b) Composition

- (i) more representation should be given to Opposition Parties/ Groups on the Committee.
- (ii) the Chairman of the Committee should be appointed from amongst the members of Opposition;
- (iii) there should be a consensus on the composition of the Committee.

(c) Terms of reference

- (i) the Committee should be empowered to examine the Government policy and decisions in relation to purchase and procurement of defence equipment, stores and ancillaries since January, 1980;
- (ii) the Committee should also look into the submarine deal;
- (iii) it must go in details with regard to the kickbacks which have been received from Bofors;
- (iv) all the points on which information was called for from M/s. A.B. Bofors should be included in the terms of reference of the proposed Committee;
- (v) the Committee should also enquire whether the Bofors deal strictly conforms to the procedure already laid down for the purpose;
- (vi) the Committee should also be empowered to ascertain whether any payments other than those referred to in the Swedish National Audit Bureau Report were made;
- (vii) whether this payment of money influenced the decision of purchasing the guns;
- (viii) was there any condition in the terms of agreement to ensure that M/s. A.B. Bofors would not engage any middlemen?

(d) Powers

- (i) A Parliamentary Committee could not visit a foreign country;
- (ii) all powers should be given to the Committee to enable it to find out the fact of the case;

- (iii) the proposed Committee does not have powers to compel Bofors to furnish the requisite information;
- (iv) the Committee should have powers to examine the Ministers;
- (v) the Official Secrets Act should not be allowed to come in the way of the Committee. All papers, documents etc. should be made available to the Committee.
- (vi) the Committee should be empowered to take the help of CBI and other investigating agencies of the Government of India to accomplish the assigned task;
- (vii) the Committee/sub-Committee should be allowed to visit Sweden;
- (viii) the Committee should be entitled to look into the evaluation reports of the guns and should find out whether the decision to purchase Bofors gun was based on these evaluation reports;
- (ix) the Committee should have powers to enlist the assistance of the Attorney General of India.

(e) *Procedure*

The procedure, powers and jurisdiction of the Committee should be properly defined.

(f) *General*

The Swedish National Audit Bureau's Report is not based on documents, hence it should not be relied upon.

2.21 Intervening in the debate in Lok Sabha, the Prime Minister made the following statement on 6 August, 1987:—

“During the course of discussions on the Bofors case, both inside and outside the House, many allegations have been made. Rumour and unfounded suspicion have been used to tarnish the image of the country and its leadership. I categorically declare, in this the highest forum of India's democracy, that neither I nor any members of my family have received any consideration in these transactions. That is the truth.

I have repeatedly stated in both Houses that if enquiries establish that any person has been guilty of receiving illegal payment, the strongest action under the law will be taken.

The Congress and its Government are as interested as anyone else in finding out the truth. Let all sections of the House cooperate in this common task.”

2.22 Questions were asked during the debate in the Lok Sabha about the Swiss Accounts of Indians and the action taken by Government against Shri W.N. Chadha. Replying to these questions, the Minister of Finance and Commerce (Shri Narayan Datt Tiwari) stated as follows:—

“The Government has been concerned about Indians having accounts with Swiss Banks without the permission and the knowledge of the Government. In order to explore the possibility of finding out the details of Swiss Accounts by resident Indians and the steps that could be taken in this context, a team of experts headed by Dr. A. Ghosh, Dy. Governor, Reserve Bank of India, visited Switzerland and held discussions with the Swiss authorities. The team came to the following conclusions :

- (a) Swiss authorities would not permit generalised inquiry or furnish ordinary information about the customers' accounts unless specific and appropriate court orders are obtained in Switzerland.
- (b) The Swiss Federal Act on International Mutual Assistance in Criminal Matters (IMAC) would enable mutual assistance where acts in respect of which assistance is sought satisfy criteria of dual criminality and the State seeking assistance guarantees reciprocity to the Swiss authorities. If the above conditions are satisfied, Swiss authorities would entertain request for assistance in criminal matters under the provisions of IMAC and suitable proceedings would be initiated in Swiss courts for obtaining information from the concerned bank.
- (c) Tax evasion or violation of foreign exchange regulations would not be regarded as criminal offences by Swiss authorities.
- (d) Information obtained under IMAC would not be used for any purpose other than one for which it is intended.
- (e) Assistance from the Swiss authorities under IMAC would be obtained even without entering into a bilateral treaty/agreement with Switzerland provided that the requirements of dual criminality and reciprocity are satisfied. Entering into a treaty or agreement would, however, enable assistance even beyond the provisions of IMAC

being extended and placing an obligation on Swiss authorities to provide assistance according to the terms of treaty or agreement.

“The Government are aware that some Indian citizens have clandestine deposits in foreign banks. The origin of these deposits is from various illegal practices such as invoice manipulation on exports/imports, illegal retention abroad of commissions on exports, illicit traffic in drugs and smuggling of Indian currency etc. In order to intensify action against economic offenders, Government has decided to enter into a treaty for mutual assistance in criminal matters with Swiss authorities, and pending conclusion of such treaty or agreement, entering into a Memorandum of Understanding with Swiss authorities for assistance in specific cases of Indians having accounts in Swiss banks. We are intimating our Ambassador in Switzerland to inform the Swiss authorities of this decision. Expeditious further action within the framework of Indian and Swiss laws will be taken so that we are able to obtain requisite information against offenders and proceed against them effectively. . . . The Swedish National Audit Bureau’s report which was received by the Government of India on 4th June, 1987, referred to certain winding up costs amounting to two-three per cent of the ordered sum. This was in clear contravention of the understanding that no payments were to be made about the engagement of Indian agents. In the light of this latest information from the Swedish National Audit Bureau and in view of the association of Anatronc General Corporation with Bofors, it was decided to take action against them under FERA.”

“The Enforcement Directorate accordingly conducted searches on 5-6-1987 on the premises connected with Shri W.N. Chadha. Based on the scrutiny of the documents seized as a result of search action, Shri W.N. Chadha was summoned to appear in the Enforcement Directorate for purpose of investigation. However, so far Shri W.N. Chadha has not appeared in the Enforcement Directorate. Under the circumstances order for revocation of his passport has been issued by the Regional Passport Officer, New Delhi on 23-7-1987. Action has also been taken to file prosecution against Shri W.N. Chadha in the court of law for his non-appearance despite summons by the Directorate of Enforcement. All possible efforts are being made to proceed with the investigation of the case.”

“A case against M/s. Anatronc General Corporation has also been taken up for detailed scrutiny by the Income Tax

Department and all its known assets have been attached.”

2.23 Replying to the debate on the motions, the Minister of Defence informed the Lok Sabha on 6 August, 1987, as follows:—

“The Opposition has been trying to create an impression that the Government is not interested in getting at the truth in the matter of payments by Bofors.

“In the face of the facts placed before the House and the steps taken by the Government ever since the publication of the Swedish National Radio report in Indian newspapers the Government’s seriousness of purpose cannot be questioned by any unbiased observer. I was listening very carefully to the debate and I did not hear anybody faulting the Government on the steps it had taken since April. I have given the dates in my statement already. Not only did the Government immediately approach the Swedish Government, and of course made inquiries of Bofors, but our Ambassador even approached the Swedish Radio seeking substantiation for the allegations it had made. The Radio promised that they would give the facts but those disclosures have not come even to this day. The net result was that the Swedish Government re-confirmed the precautions taken by the Government of India to exclude middlemen and Bofors denied making any illegitimate or illegal payments, the only payments acknowledged by Bofors in their letter of 24th April, 1987 were for the reimbursement of consultancy services within the areas of marketing and counter-purchasing, and those made to a Swiss company which according to Bofors were completely legal.”

“.....Bofors also states categorically that the company did not make any payments of the kind alleged by the media....”

“.....It also says that the payments were not made to any Indian company or Indian citizen and had no connection with the winning of the contract.”

“The Government persisted in its efforts and its is entirely due to the persistence that the Swedish Government established the National Audit Bureau Inquiry on the 29th April, 1987.”

2.24 Justifying the appointment of a Parliamentary Committee, the Defence Minister recalled that on the very day the report of the Swedish National Audit Bureau was received by the Government, Leaders of Opposition had been consulted and it was in response to the demand for an enquiry, the Government decided that the matter might be referred

to a Joint Parliamentary Committee. He further observed that 'it must be realised that setting up of the Joint Parliamentary Committee was an extraordinary step' and that 'this would be the first Committee of its kind and we cannot also disregard the implications of such a Committee for the future'.

2.25 The Minister added that "The Government has nothing to hide. The Government wants to get at the truth and that is why this Committee has been set up."

2.26 Referring to the various suggestions made by the members regarding the terms of reference etc., of the Committee, the Minister of Defence (Shri K.C. Pant) stated that with a view to accommodate those suggestions, he proposed to move an amendment to his original motion to provide *inter alia* for the following :—

- “(i) the Committee would consist of 30 members—20 from Lok Sabha and 10 from Rajya Sabha to be elected on the basis of proportional representation ;
- (ii) the Committee would also enquire whether the procedure laid down for the procurement of weapons and systems was followed in the Bofors deal ;
- (iii) the Committee would ascertain the identity of the persons who received, payments of the following amounts :
 - SEK 170-250 million
 - SEK 29.5 million
 - SEK 2.5 million

from M/s. Bofors (as referred to in the Report of the Swedish National Audit Bureau, received by the Government of India on June 4, 1987).

- (iv) arising out of the enquiry, if there is *prima facie* evidence that M/s. Bofors have in addition to payments mentioned in (ii) above, made any other payments for securing the Indian contracts, the identity of the persons who received such payments shall be ascertained.
- (v) as per Rules of Procedure and also as per normal practice, the Chairman of the Committee would be appointed by the Speaker from amongst the members of the Committee;
- (vi) the Committee would also determine whether any Indian Laws, rules and regulations had been violated either by M/s. Bofors or by persons who received the said payments ;

- (vii) the quorum for the sitting of the Committee would be 1/3 of the total membership of the Committee;
- (viii) the Comptroller and Auditor-General of India and Attorney General of India would provide assistance to the Committee, as necessary ;
- (ix) the investigating agencies of the Government of India would render such assistance to the Committee as may be required by it;
- (x) the Committee would have powers to ask for and receive evidence, oral or documentary, from foreign nationals or agencies;
- (xi) a sub-Committee of the Committee may visit a foreign country.”

2.27 Commenting upon the suggestion that the Committee should be empowered to summon the Ministers to give evidence before them, the Defence Minister observed that as per practice obtaining in Westminster (UK) the Ministers being answerable to Parliament, are not summoned before Parliamentary Committees. In Lok Sabha under Direction 99(1) of the Directions by the Speaker, Ministers are not to be called before the Financial Committees for formal evidence. However, if a Minister wanted to place some facts before the Committee of his own, he could do so. In view of the special nature of the Committee, the Government would be prepared to allow the Ministers to appear before the Committee if the Speaker, after ascertaining the views of the Committee, felt that his appearance was necessary for the purpose of the inquiry.

2.28 As regards waiving the application of the Official Secrets Act to the matter under examination of the Committee, the Defence Minister stated that the proposed motion could not negate a statute. In other respects *i.e.* matters which were not covered in the motion, the Rules of Procedure of Lok Sabha relating to Parliamentary Committees would be applicable to the Committee with such variations and modifications as the Speaker may make.

2.29 Concluding, the Minister observed that the Government had gone to the utmost length to accommodate the points of view of the Members of the Opposition Parties in the belief that they would join the Committee and moved his amendment (*See* Appendix IX) to the original Motion. Thereafter, the amendments moved by Sarvashri Somnath Chatterjee, Dinesh Goswami, C. Madhav Reddy, K.P. Unnikrishnan, Indrajit Gupta and C. Janga Reddy, members, were negatived by the House and the amendment moved by the Minister was adopted by the House.

2.30 Finally, the Lok Sabha adopted the following motion :—

- “(1) That a Joint Committee of both the Houses consisting of 30 members, 20 from Lok Sabha and 10 from Rajya Sabha be

elected on the basis of proportional representation to enquire into the issues arising from the Report of the Swedish National Audit Bureau relating to the Bofors' contract to supply 155 mm Howitzer guns to India.

- (2) The Committee shall enquire into the following matters:—
- (i) whether the procedures laid down for the acquisition of weapons and systems, were adhered to in the purchase of the Bofors' gun;
 - (ii) to ascertain the identity of the persons who received, and the purpose for which they received, payments of the following amounts :
 - (a) SEK 170-250 million
 - (b) SEK 29.5 million
 - (c) SEK 2.5 million.

from M/s. Bofors (as referred to in the Report of the Swedish National Audit Bureau, received by the Government of India on June 4, 1987);
 - (iii) arising out of the enquiry, if there is *prima facie* evidence that M/s. Bofors have in addition to payments mentioned in (ii) above, made any other payments for securing the Indian contracts, the identity of the persons who received such payments shall be ascertained;
 - (iv) to determine if any Indian laws/rules/regulations have been violated either by M/s. Bofors or by persons as indicated in (ii) and (iii) above.
- (3) That the Speaker shall nominate one of the Members of the Committee to be its Chairman.
- (4) That the quorum of the Committee shall be one third of the total strength of the Committee.
- (5) That the Comptroller and Auditor General of India and the Attorney General of India will provide assistance to the Committee, as necessary.
- (6) That the investigating agencies of the Government of India shall render such assistance to the Committee as may be required by it for the purposes of its enquiry.

- (7) The Committee shall have the power to ask for and receive evidence, oral or documentary, from foreign nationals or agencies, provided that if any question arises whether the evidence of a person or the production of a document is relevant for the purposes of the Committee, the question shall be referred to the Speaker whose decision shall be final.
- (8) If the Committee wish to nominate a sub-Committee to visit a foreign country for specified purposes connected with the enquiry the matter shall be referred to the Speaker who may take such decisions and give such directions as he thinks fit, provided that such sub-Committee shall not hold sittings, record evidence or take decisions in a foreign country.
- (9) That in other respects the Rules of Procedure of this House relating to Parliamentary Committees shall apply with such variations and modifications as the Speaker may make.
- (10) That the Committee shall make a report to this House by the last day of the first week of the next session of Parliament.
- (11) That this House recommends to the Rajya Sabha that the Rajya Sabha do join the Committee and indicate to this House the names of the Members from amongst the Members of the Rajya Sabha to be on the Committee.”

2.31 The Rajya Sabha concurred in the above motion on 12 August, 1987. The Committee was duly constituted with the appointment of the Chairman on 28 August, 1987.

III

PROCEDURE OF INQUIRY

3.1 It is for the first time in the history of independent India that a Committee of both the Houses of Parliament has been constituted to go into the question of alleged pay offs in a Defence acquisition, namely, the purchase of 155mm Howitzer Guns from A.B. Bofors of Sweden. For an enquiry of such a magnitude, the Committee followed the procedure as laid down in the :—

- (i) Motion adopted by Lok Sabha.
- (ii) Rules of Procedure and Conduct of Business in Lok Sabha.
- (iii) Directions by the Speaker, Lok Sabha.

Directions regarding procedure contained in the Motion adopted by the House

- “(4) That the quorum of the Committee shall be one third of the total strength of the Committee.
- (5) That the Comptroller and Auditor General of India and the Attorney-General of India will provide assistance to the Committee, if necessary.
- (6) That the investigating agencies of the Government of India shall render such assistance to the Committee as may be required by it for the purposes of its enquiry.
- (7) The Committee shall have the power to ask for and receive evidence, oral or documentary, from foreign nationals or agencies provided that if any question arises whether the evidence of a person or the production of a document is relevant for the purposes of the Committee, the question shall be referred to the Speaker whose decision shall be final.
- (8) If the Committee wish to nominate a sub-Committee to visit a foreign country for specified purposes connected with the enquiry the matter shall be referred to the Speaker who may take such decisions and give such directions as he thinks fit, provided that such sub-Committee shall not hold sittings, record evidence or take decisions in a foreign country.

- (9) That in other respects the Rules of Procedure of this House relating to Parliamentary Committees shall apply with such variations and modifications as the Speaker may make”.

Relevant Rules of Procedure and Conduct of Business in Lok Sabha

“Decisions in Committee

261. All questions at any sitting of a Committee shall be determined by a majority of votes of the members present and voting.

Casting vote of Chairman

262. In the case of an equality of votes on any matter, the Chairman, or the person acting as such, shall have a second or casting vote.

Power to appoint sub-Committees

263. (1) A Committee may appoint one or more sub-committees, each having the powers of the undivided Committee, to examine any matters that may be referred to them, and the reports of such sub-Committees shall be deemed to be the reports of the whole Committee, if they are approved at a sitting of the whole Committee.

(2) The order of reference to a sub-Committee shall clearly state the point or points for investigation. The report of the sub-Committee shall be considered by the Whole Committee.

Sittings of Committee

264. The sittings of a Committee shall be held on such days and at such hour as the Chairman of the Committee may fix :

Provided that if the Chairman of the Committee is not readily available, the Secretary-General may fix the date and time of a sitting :

Provided further that in the case of Select or Joint Committee on a Bill, if the Chairman of the Committee is not readily available, the Secretary-General may, in consultation with the Minister concerned with the Bill, fix the date and time of a sitting.

Sittings in private

266. The sittings of a Committee shall be held in private.

Venue of sittings

267. The sittings of a Committee shall be held within the precincts of the Parliament House, and if it becomes necessary to change the place of sitting outside the Parliament House, the matter shall be referred to the Speaker whose decision shall be final.

Strangers to withdraw when Committee deliberates

268. All persons other than members of the Committee and officers of the Lok Sabha Secretariat shall withdraw whenever the Committee is deliberating.

Power to send for persons, papers and records

270. A Committee shall have power to send for persons, papers and records :

Provided that if any question arises whether the evidence of a person or the production of a document is relevant for the purposes of the Committee, the question shall be referred to the Speaker whose decision shall be final :

Provided further that Government may decline to produce a document on the ground that its disclosure would be prejudicial to the safety or interest of the State.

Counsel for witness

271. A Committee may, under the direction of the Speaker, permit a witness to be heard by a counsel appointed by him and approved by the Committee.

Evidence on oath

272. (1) A Committee may administer oath or affirmation to a witness examined before it

(2) The form of the oath or affirmation shall be as follows :

swear in the name of God

'I, A.B., _____ that the
solemnly affirm
evidence which I shall give in this case shall be true,
that I will conceal nothing, and that no part of my
evidence shall be false'.

Examination of witnesses

273. The examination of witnesses before a Committee shall be conducted as follows :—

- (i) The Committee shall, before a witness is called for examination, decide the mode of procedure and the nature of questions that may be asked of the witness.
- (ii) The Chairman of the Committee may first ask the witness such question or questions as he may consider necessary with reference to the subject matter under consideration or any subject connected therewith according to the mode of procedure mentioned in clause (i) of this rule.

- (iii) The Chairman may call other members of the Committee one by one to ask any other questions.
- (iv) A witness may be asked to place before the Committee any other relevant points that have not been covered and which a witness thinks are essential to be placed before the Committee.
- (v) A verbatim record of proceedings of the Committee shall, when a witness is summoned to give evidence, be kept.
- (vi) The evidence given before the Committee may be made available to all members of the Committee.

Record of Decisions

274. A record of the decisions of a Committee shall be maintained and circulated to members of the Committee under the direction of the Chairman.

Evidence, report and proceedings treated as confidential

275. (1) A Committee may direct that the whole or a part of the evidence or a summary thereof may be laid on the Table.

(2) No part of the evidence, oral or written, report or proceedings of a Committee which has not been laid on the Table shall be open to inspection by any one except under the authority of the Speaker.

(3) The evidence given before a Committee shall not be published by any member of the Committee or by any other person until it has been laid on the Table :

Provided that the Speaker may, in his discretion, direct that such evidence be confidentially made available to members before it is formally laid on the Table.

Relevant Directions by the Speaker, Lok Sabha

Venue of sittings

50. (1) Sitting of a Committee/sub-Committee, whether formal or informal, at which Officers or staff of the Lok Sabha Secretariat are required to be present, shall invariably be held within the precincts of the Parliament House. If, for any reasons, it becomes necessary to hold a sitting of the Committee outside the Parliament House, the matter shall be referred to the Speaker for his directions.

(2) When the Committee is on a study tour, informal sittings may be held at the place of the visit, but at such sittings, no decisions shall be taken nor any evidence recorded.

Procedure for speaking in Committees

52.(1) A member desiring to make any observations at the sitting of a Committee shall address the Chairman and make all remarks to other members through the Chairman.

(2) A member shall not speak unless the Chairman calls him.

(3) When any member desires to interrupt while another member is speaking he shall seek the permission of the Chairman to do so.

Reopening of question

54. If a member desires to reopen a question on which a Committee has already taken a decision he shall, in the first instance, obtain the permission of the Chairman to do so.

Proceedings and certain documents treated as confidential

55. (1) The proceedings of a Committee shall be treated as confidential and it shall not be permissible for a member of the Committee or any one who has access to its proceedings to communicate, directly or indirectly, to the press any information regarding its proceedings including its report or any conclusions arrived at, finally or tentatively, before the report has been presented to the House.

(1A) The provisions of clause (1) shall also *mutatis mutandis* apply to the proceedings of meetings held by the Speaker with the Leaders of Parties and Groups in Lok Sabha.

(2) Whenever a paper or document, marked 'secret' or 'confidential' is circulated to the members of the Committee, the contents of such paper or document shall not be divulged by any member either in the minute of a dissent or on the floor of the House, or otherwise, without the permission of the Speaker; and where such permission has been obtained any restriction imposed by the Speaker in regard to the manner in which, or the extent to which, the information contained in the document may be divulged, shall be strictly observed.

Evidence liable to be treated as public

58. Where witnesses appear before a Committee to give evidence, the Chairman shall make it clear to the witnesses that their

evidence shall be treated as public and is liable to be published, unless they specifically desire that all or any part of the evidence given by them is to be treated as confidential. It shall, however, be explained to the witnesses that even though they might desire their evidence to be treated as confidential such evidence is liable to be made available to the members of Parliament.

Mode of examination of witnesses

62.(1) The Chairman may first ask any question and thereafter he may call other members, one by one, to ask questions.

(2) Witnesses may, with the permission of the Chairman, place before the Committee any other relevant information which has not been already placed before the Committee.

Verbatim proceedings

65. (1) The verbatim proceedings of a Committee, if taken, shall be treated as confidential and shall not be made available to anyone without the orders of the Speaker.

(2) Relevant portions of the verbatim proceedings of the sitting, at which evidence has been given, shall be forwarded to the witnesses and members concerned for confirmation and return by a date fixed by the Lok Sabha Secretariat. If corrected copies of the proceedings are not received back by the specified date, the reporter's copy may be treated as authentic.

(3) Corrections in the verbatim proceedings, if any, shall be made neatly and legibly by the witness or the member, as the case may be, in ink in his own handwriting and shall be confined to correction of inaccuracies which may have occurred in the process of reporting and not for the purpose of improving their literary form or altering their substance by additions and deletions.

Minutes

66. (1) The decisions of a Committee shall be recorded briefly in the minutes of the Committee.

(2) The draft minutes shall be prepared by the Lok Sabha Secretariat and approved by the Chairman.

(3) The minutes of each sitting may be circulated to members of the Committee. Relevant extracts therefrom may also be circulated to any Ministry or Officer, if considered necessary.

(4) If any member desires any alterations in the minutes, on the ground that they are not in conformity with the decision arrived at, the matter shall be referred to at the next sitting of the Committee and the decision of the Committee taken thereon shall be incorporated in the minutes of the sitting.

(5) Until the minutes are presented to the House, they shall be treated as confidential.

Reports

68. (1) A Committee shall present reports to the House or to the Speaker, as the case may be, from time to time.

(2) The draft of the report shall be prepared by the Lok Sabha Secretariat and may be placed before the Committee after it is approved by the Chairman.

(3) There shall be no minute of dissent to the report.

Circulation and consideration of draft reports

69. (1) The Chairman of a Committee may direct that the typed, cyclostyled or proof copies of the draft report together with any other documents connected therewith, be circulated amongst the members of the Committee before the date fixed for the consideration of the draft report.

(2) On the date fixed for the consideration of the draft report, the Chairman shall read out the draft report, paragraph by paragraph, putting the question to the Committee at the end of each paragraph, 'That the paragraph do stand part of the report'. A member objecting to any portion of the report, not being in conformity with the decisions arrived at, shall propose his amendment to bring it in line with the decisions. The amendment, if accepted, shall be incorporated in the said paragraph."

3.2 The task of the Committee has been onerous specially because of the highly sensitive nature of the issue involved in examining the Defence acquisition. While accepting their responsibilities to the Parliament and the public to unravel the truth the Committee have had to keep in view that nothing may be done that might result in compromising national security interest.

(a) Procedure for study of material

3.3 A mass of data and sensitive information was called for and made available to the Committee by the Ministry of Defence ungrudgingly and with the utmost despatch. To ensure against the possibility of classified

information falling into unauthorised hands, the Committee decided that the documents of a classified and sensitive nature submitted by the Ministry of Defence need not be circulated to the members and be perused in the precincts of the Parliament.

3.4 It was agreed that these documents would be studied by members before witnesses were called in for examination. Accordingly, all such documents were studied by members at sittings exclusively devoted to this purpose.

3.5 Further, during the course of examination of witnesses, the relevant documents were made available to members on demand. Members availed of the opportunity of taking notes so that they could put precise questions to the witnesses.

3.6 Consistently with the requirements of national security, the Committee have drawn upon the classified documents only to the extent necessary to back up their conclusions. The Committee, have therefore, consciously excluded reference to specific data and a variety of sensitive information, the disclosure of which would be detrimental to the security interests of the country.

(b) Procedure of examination of witnesses

3.7 Members of the Committee gave various suggestions from time to time, regarding the witnesses to be summoned for examination. After deliberations, appropriate decisions were taken in the matter by consensus.

(c) Technical presentation

3.8 For the benefit of the Committee, a technical presentation was made in the Ministry of Defence on 5 October, 1987 by the Chief of the Army Staff to explain the capabilities and characteristics of the 155 mm Howitzer guns.

(d) Demonstrations

3.9 The Committee also witnessed 'firing demonstrations' of the gun in desert areas of the western sector and also in the mountainous areas of the eastern sector. These demonstrations helped the Committee to acquaint themselves about the range and capabilities of the Bofors gun in varying field conditions.

(e) Advice of Attorney-General for India and Comptroller and Auditor General of India

3.10 The Attorney-General for India and the Comptroller and Auditor-General of India were provided with the relevant documents including the

terms of reference so that they could assist the Committee in their task. The Attorney-General addressed the Committee and clarified important legal issues involved in the enquiry. The Deputy Comptroller and Auditor-General in the absence of the Comptroller and Auditor-General informed the Committee that the documents already available with them and additional papers supplied to them did not appear to throw any light on the matters under enquiry by the Committee and from the professional audit angle, no comments seem possible.

(f) Assistance of Investigating Agencies

3.11 Some members of the Committee suggested that the Committee should visit Sweden to record the views of the representatives of the Swedish Radio, A.B. Bofors, Swedish Banks and other connected agencies to ascertain the truth. After discussion, the Committee arrived at the conclusion that unless the various foreign agencies were willing to extend cooperation in finding out the truth, it would not serve any purpose. During the course of their examination on 18 and 19 September, 1987, the Bofors Officials had declined to supply the requisite information on the plea of commercial confidentiality. Consequently, the idea of visiting Sweden was not pursued further. Instead, the Central Investigating Agencies (CBI, Directorate of Enforcement and Directorate of Revenue Intelligence) were assigned the task of ascertaining facts with regard to items (ii) and (iii) of the terms of reference of the Committee.

3.12 The Chairman, Joint Parliamentary Committee on Bofors Contract, held meetings with the Director, CBI—Shri M.G. Katiye, Director, Enforcement—Shri Anil Kumar and Director of Revenue Intelligence—Shri B.V. Kumar and apprised them of the nature of the work under the terms of reference of the Committee and the inquiries which the investigating agencies were required to carry out.

3.13 The Chairman also passed on to the aforesaid agencies all information which had been received by him from the Ministry of Defence to enable them to take up necessary investigation/verification. The Committee were kept apprised of the progress made by these agencies from time to time. The request made by Director, CBI, to the Chairman about keeping the matter under investigation confidential till the investigation was complete, was conveyed to the committee and agreed to by them. On receipt of the Report from the investigating agencies, as per procedure adopted by the Committee, the Members studied the Report in the precincts of Parliament. As decided by the Committee, a copy of the Report was also made available to the Defence Secretary in order to facilitate his further examination.

(g) Extension of time

3.14 The Committee were required to present their Report to the House by the last day of the 1st week of Winter Session, 1987, *i.e.* 6 November, 1987. However, two extensions for the presentation of the Report were sought for and granted by the House, first on 16 November, 1987 upto the last day of the first week of the Budget Session, 1988 and second, on 26 February, 1988 upto the last working day of April, 1988.

(h) Observations/conclusions of the Committee

3.15 During the entire course of enquiry by the Committee, the Committee did not experience any difficulty in handling the work of enquiry due to any procedural difficulties. The Committee also did not have any difficulty at all in their functioning and in the matter of enquiry for want of authority or power either in summoning any witness or calling for any document for the purpose of enquiry.

IV

PROCEDURE FOR THE ACQUISITION OF WEAPONS AND SYSTEMS BY ARMY HEADQUARTERS

A. Procedure for assessment of requirements

4.1 The first task of the Committee is to find out whether the procedures laid down for the acquisition of weapons/systems were adhered to in the purchase of the Bofors Gun. Accordingly, the Committee enquired from the Ministry of Defence with regard to the procedures laid down for procurement of new weapons/systems. The Ministry of Defence furnished all the papers involving the procedures laid down by the Army Headquarters in this regard. It is found that a definite and elaborate procedure has been provided for assessing the requirements for the introduction of new weapons/system.

(a) *Philosophy Paper*

4.2 The introduction of new weapons/systems and the de-induction of old guns is an integral part of the process of modernisation and in fact the first step towards the introduction of a major weapons/systems is the preparation of Philosophy Paper. The Army Headquarters takes into account their perspective for the next 15 to 20 years while preparing the Philosophy Paper which contains relevant details relating to the concept, force level, advantage of the new weapons/systems over the current equipment, its characteristics in broad terms, relative priority, units/establishments to be used with equipment, de-induction and utilisation of the existing weapons/systems and other related issues. Appropriate provisions in the Defence Plan are also suggested based on such philosophy.

4.3 The modernisation process is planned, guided and dictated by : (i) reappraisal of threats; (ii) changes in the geo-strategic environment; (iii) perception of mutual balance; and (iv) forecast of obsolescence of existing weapons/systems. The other factors which have to be taken into account in preparing the philosophy Paper are : (i) acquisition of capability by the adversaries ; (ii) acquisition of counter measures by the adversaries; (iii) international or indigenous technical developments; and (iv) experience of field formations and users.

(b) *General Staff Equipment Policy Committee (GSEPC)*

4.4 The next step in the acquisition of a new weapon/system relates to a reference to the General Staff Equipment Policy Committee, a Standing

Committee in the Army Headquarters which meets periodically under the chairmanship of the Vice-Chief of the Army Staff/Deputy Chief of the Army Staff. The GSEPC is the highest body in the Army Headquarters for making recommendations on matters relating to all weapons/systems and policy. The representatives of the Ministry of Defence, Defence Research and Development Organisation, Defence (Finance), Defence Production and other connected agencies are members of the GSEPC which has the following functions :

General Staff Policy Statements

The Policy statements formalise the requirements of weapons and equipment and serve as policy guide posts for procurement, discard and development.

General Staff Qualitative Requirements (GSQRs)

GSQRs lay down the optimum parameters of an equipment when allotting a project for its development to the Defence Research and Development Organisation. Normally no formal GSQRs are initiated for equipment and weapon systems to be procured ex-import.

Formal introduction of new Weapons/systems into service; and

Other tasks not related to formalising the requirement for an equipment.

4.5 Briefly, the GSEPC is to ensure that the equipment and development policy for the Army keeps pace with the scientific and industrial potentialities and is closely inter-related to the organisation and technical doctrine framed to meet the future needs.

4.6 In normal circumstances, a proposal for the introduction of a new weapon system if processed through the General Staff Equipment Policy Committee. However, the prescribed procedures provide that in cases considered urgent or which involve sizable financial expenditure, Army Headquarters may process the proposals directly with the Ministry of Defence.

(c) Examination of Philosophy Paper

4.7 The Philosophy Paper or statement of a case for introduction of a new weapon, received from the Army Headquarters, is examined in the Ministry of Defence. After examination and approval in principle of the Army Headquarters proposal, the Ministry of Defence decide whether the proposed item, if the requirements of the Army are not immediate in nature, can be developed by Defence Research and Development Organisation and eventually produced indigenously or whether it should be imported. In cases where indigenous development is not deemed feasible within the time-frame dictated by the immediate requirement of the Army, decisions for

importing the item are taken, also indicating whether such import should be linked to transfer of technology and licenced production in India.

(d) *Identification of Suppliers*

4.8 If the weapon/equipment is not available from rupee payment sources, the possibilities of import from other areas are explored. The Army Headquarters identify the potential sources of supply of the weapon/system through the Defence/Military Attaches abroad and the identified suppliers furnished technical literature on the weapon/system to the Army Headquarters for study. Occasionally, the Army Headquarters, ask the suppliers to make presentations in regard to the item under acquisition.

(e) *Paper Evaluation of Offers*

4.9 After the offers have been received from the manufacturers/suppliers, the Army Headquarters make a paper evaluation with reference to the characteristics and properties of the weapon/system. On the basis of such an evaluation, the Army Headquarters draw up a list of possible suppliers whose equipments meet fully or as closely as possible the operational requirement/minimum performance parameters.

(f) *Examination and Sanction of the proposal by the Ministry of Defence*

4.10 After the Army Headquarters have made a desk evaluation of the various offers received by them, they moot a proposal to the Ministry of Defence seeking approval to conduct trial evaluations of the weapon/system offered by the selected manufacturers/suppliers. After satisfying themselves of the need in principle, the Ministry of Defence accord necessary sanction for the conduct of trials of the weapon/system recommended by the Army Headquarters. Such trials are generally conducted on "no cost no commitment basis". On occasions, trial equipments are brought or transportation charges are borne by the Ministry of Defence. Sometimes when the trials in India are not feasible, the Government authorise teams of Army officers being sent abroad to study the various aspects of the new weapon/system.

(g) *Trial Directives and Conduct of trials for Evaluation of Weapon/System*

4.11 Before the conduct of trials for the evaluation of the weapon/system, the Army Headquarters prepare trial directives on the basis of operational requirements/minimum performance parameters and circulate the same to the trial units/formations which are designated by the Army Headquarters. The weapon/system is then subjected to detailed trial evaluation by the Trial Units/Formations in different types of conditions/terrains in which the same might be required to be used. During the course of such trials, the representatives of Defence Research and Development Organisation are also associated. The maintainability trials are held under the aegis of the Directorate General of Electrical & Mechanical Engineers.

(h) *Trial Reports and General Staff Evaluation Report*

4.12 Trial Reports on the evaluation of the weapon/system, prepared by the Trial Units/Formations are processed through the concerned head of the Army/Service and sent to the Directorate General of Weapons and Equipment, in the Army Headquarters. The Directorate General of Weapons and Equipment examines all documents in consultation with the various concerned agencies and prepares a General Staff Evaluation Report which is approved at the level of the Vice Chief of the Army Staff/Deputy Chief of the Army Staff. The Army Headquarters then submit to the Ministry of Defence the General Staff Evaluation Report along with their proposal for the import of minimum quantities of the new weapon/system from the concerned manufacturers. The availability of funds for the import of the weapon/system is also ascertained and indicated.

(i) *Examination of Proposal and Constitution of Price Negotiating Committee (PNC)*

4.13 The proposal submitted by the Army Headquarters for the import of the weapon/system is subjected to detailed examination in the Ministry of Defence. At the time of such examination, the indigenous production aspect is also examined. Wherever the long-term requirements justify indigenous production under licence, the same is also proposed. The approval of the competent authority and the concurrence of the Finance Division for the import of minimum quantities as well as licenced production, wherever necessary, is obtained after getting clearance from the indigenous angle from the Department of Defence Production and supplies and the Department of Defence Research and Development. Approval of competent authority is also obtained for inviting technical/commercial quotations from the manufacturers/firms recommended by the Army Headquarters. Simultaneously approval is also obtained for setting up a PNC under the chairmanship of a responsible officer in the Ministry of Defence. The other members of the Price Negotiating Committee usually represent Army Headquarters, Finance Division, Department of Defence Production & Supplies and the Defence Research and Development Organisation. A representative of the Department of Economic Affairs (Ministry of Finance) is included in the PNC when the foreign exchange amount is substantial.

(j) *Examination of Technical/Commercial Quotations*

4.14 On receipt of technical/commercial quotations the technical proposals of the various firms are first examined by the technical representatives. After scrutiny of all technical quotations and on consideration of all technical aspects, commercial negotiations are conducted by the PNC directly with the authorised representatives of the foreign manufacturers. During commercial negotiations, the PNC not only discusses the prices,

but also holds discussions on other terms such as payment, warranty provisions, etc. The PNC invites, wherever necessary revised commercial quotations from the contending firms in the light of the negotiations. Extended negotiations are held with the parties with a view to secure substantial reductions in prices and improvements in other commercial terms. After the technical/commercial negotiations have been concluded, the PNC submits its recommendations to the competent authority for the conclusion of the contract with the selected party.

(k) *Conclusion of Contract, Agreement for licence production and credit agreements*

4.15 After the recommendations of the PNC have been accepted by the competent authority, the contracts are signed by a senior officer in the Ministry on behalf of the President of India. In cases where it is decided to undertake licenced production by transfer of technology from the selected firm, this aspect is also negotiated along with the purchase. A licence production agreement is either signed simultaneously by the Department of Defence Production & Supplies or the requisite commitment is obtained from the supplier in the purchase contract. Whenever the purchase of the weapon system is on credit terms, corresponding credit agreements are also negotiated simultaneously and signed.

B. Procedure actually followed and the sequence of events through which the proposal for the procurement of 155 mm Howitzer gun system was processed

4.16 In the year 1975 the Army Headquarters constituted an Expert Committee under the Chairmanship of Lt. General K.V. Krishnarao, the then Vice-Chief of the Army Staff to study the artillery weapons/systems of various armies of the world and make suitable recommendations. The Committee *inter alia* recommended:

“There is a definite requirement for developing a medium gun of a calibre of say 155 mm. This gun should have a range of 28 to 30 Kms and shell weight of about 50 Kgs. The gun should be capable of firing in low as well as high angle, so that it can be utilised in the mountains also.”

(a) *Philosophy Paper*

4.17 As a follow-up of the recommendations of the Expert Committee a Philosophy Paper on the long-term equipment perspective for the field branch of Artillery was prepared by the Army Headquarters in October 1979 and sent to the Ministry of Defence under the signature of the then Chief of the Army Staff. The Philosophy envisaged a 20-year perspective

covering organisational changes and modernisation measures. The paper *inter alia* stated:

“.....the time has come when we should attempt a 20 year perspective for the remainder of the century for our major weapon systems and equipments with a view to setting in motion a number of planning processes by all agencies concerned towards the plan which has the approval in principle of the Government. A start has been made by Army Headquarters in preparing a long-term field artillery equipment perspective on these lines based on recommendations of the expert committee and other studies carried out within Army Headquarters.

* * * * *

“One of the modernisation measures which must be achieved by the regiment of artillery in the near future is the greater destructive capability *vis-a-vis* the present concept of neutralisation.”

“Following from this background a broad plan has been evolved which visualises introduction of the following long-term changes in the field tank artillery:—

- (a) The introduction of about 155 mm calibre medium gun (towed and self-propelled) in the plains and a lighter medium gun of 155 mm calibre in the mountains.
- (b) The adoption of 130 mm gun as the primary field gun in the plains.”

* * * * *

“An additional force level of medium regiments for the mountains has been sanctioned in addition to the existing regiments. The new equipment has to be selected to meet this full requirement.”

“The main perspective in this field appears to be the following guns including those of USSR origin to which we have received negative answers so far:

- (i) 155 mm medium gun from USA
- (ii) 152 mm HOW; i.e. Howitzer from USSR.
- (iii) 155 mm gun GCT from France.”

4.18 In August, 1980, the Government approved that the Philosophy Paper prepared by Army Headquarters should form the basis for future planning, provisioning and production.

(b) *General Staff Equipment Policy Committee*

4.19 In this case the GSEPC was not involved and the proposal for the acquisition of 155 mm guns was taken up by the General Staff directly with the Ministry of Defence. When questioned by the Committee why the proposal

for the introduction of 155 mm guns was not processed through the GSEPC, the Defence Secretary explained that this case was dealt with in accordance with para 22 of the Army Headquarters Instructions No. 15790/WE-1 dated 19 March, 1975, which reads as under :

“Urgent cases, which cannot await consideration by the GSEPC, and also those which involve a sizeable financial effect may, with the approval of the General Staff, be referred directly to Ministries of Defence and Finance (Defence) for approval, including foreign exchange sanction.”

4.20 When asked whether the proposal for the acquisition of 155 mm guns, which had first been envisaged in the Philosophy Paper of 1979, could be categorised as an urgent case to be regulated by the procedure referred to above. The Director-General, Weapons and Equipment stated in his evidence :

“.....in the initial stages there was urgency to buy a certain quantity within the Sixth Plan. So, perhaps some element of urgency is also there. But specifically the sizeable financial effect is the category under which this case was dealt with.”

4.21 Elaborating the point further, the Defence Secretary stated in his evidence as under :

“.....The Hon. Member is under the impression that such major contracts can be signed—he would like them to be signed—very speedily and expeditiously. But the fact of the matter is, the more major a contract, the more complicated it becomes. Secondly we also have to ensure the availability of funds, particularly the availability of free foreign exchange. This is a matter which is not easy to be resolved. Thirdly I would submit that in the case of other major acquisitions also it has taken very substantial time to arrive at a decision to acquire them. Because, before acquiring a major weapon system a large number of evaluations from various angles, negotiations finalisation of the package, servicing and overhaul facilities, infrastructure, etc. have to be taken into consideration. It takes time.”

4.22 The Defence Secretary further explained that since the requirements of the 155 mm gun system were very pressing and the DRDO was already tied up with the development of two major gun systems, a view was taken that this complicated gun system, which had already been acquired by our adversary, may initially be imported. There should also be an accompanying transfer of technology enabling subsequent licence production. After this decision was taken, the possibility of procuring this weapon system from an East European source was considered keeping in view the fact that foreign exchange was in short supply.

(c) *Russian 152 mm Howitzer Gun*

4.23 Even while the Philosophy Paper was prepared in October 1979, the then Chief of the Army Staff had in mind the 152 mm Howitzer Gun available in the Soviet Union. The Ministry of Defence, therefore, decided to evaluate the possibilities of acquiring it and a delegation was sent to Soviet Russia. The delegation reported that it was a design, which did not incorporate the latest features. However, the Ministry believed that the Soviet Union had an updated version of the gun system and as such they continued to pursue the matter. As a result, in 1985, the Russian authorities offered the 152 mm gun system, known as *GIAT SINT B*. On evaluation by the Army Headquarters, it was found that the system had certain limitations when viewed from the tactical requirements of the Indian Army. Hence it was not pursued further.

(d) *Identification and Paper Evaluation*

4.24 As a consequence of the Russian gun not meeting the requirements of the Army, the Army Headquarters took up consideration of the offers received from other sources. After paper evaluation of the offers received from eleven sources with reference to the characteristics and properties of the weapon/system, the Army Headquarters found that eight of them conformed to the required parameters. One of the systems, from South Korea, could not be received in India. Therefore, the rest of the seven gun systems for which offers had been received from Yugoslavia, U.K., U.S.A, Sweden, Austria, Netherlands and France were trial evaluated in India. The trials were mainly held from March 1980 to April 1982 with the exception of one gun which was tried out in June-July 1978.

4.25 After trial evaluating six gun systems in 1982-83, the Army Headquarters identified the following four systems as acceptable to them :—

- (i) FH 70—U.K.
- (ii) FH 77B—Bofors, Sweden
- (iii) N-45—Austria
- (iv) TR-155—France.

In July 1982 the Army Headquarters sent a draft CCPA Paper to the Ministry of Defence in connection with the procurement of 155 mm towed gun system as well as 155 mm Self-Propelled (SP) guns. In October 1982, the Ministry of Defence asked the Army Headquarters to prepare a detailed evaluation report on the basis of trial evaluations conducted by them. The Army Headquarters finalised the General Staff Evaluation of 155 mm gun system in December 1982.

(e) *General Staff Evaluation*

4.26 The General Staff Evaluation Report of 1982 contained the following recommendations :—

“(a) M 198 (USA) and M 114/39 (Netherlands) were not acceptable.

(b) The following systems were recommended in order of priority for purchase and licensed production :

(i) TR (France)

(ii) FH-77B (Sweden)

(iii) FH 70 (UK)

(c) The following were recommended for one time buy :

(i) TR (France)

(ii) FH 77B (Sweden)

(iii) FH 70 (UK)

(iv) GC 45 (Austria)”

4.27 The requirements of 155 mm towed and SP guns and other issues were firmed up in a series of meetings held in the Ministry of Defence. In January 1984, the Government finally decided to procure 155mm towed gun systems and de-link the procurement of 155 mm SP gun. It was also decided that the feasibility of integrating a foreign turret with an Indian platform for indigenous manufacture of SP guns may be explored.

4.28 In February 1984, a CCPA paper for the procurement of (i) a specified number of 155 mm (Towed) guns along with accessories/spares/vehicles and ammunition at a total estimated cost of approximately Rs. 1,600 crores and subsequent licenced manufacture in India of the remainder requirements of the guns in the 7th Plan and, thereafter (ii) entering into a licence agreement with the selected manufacturer for the production of 155 mm ammunition in India and (iii) constitution of a Negotiating and Guidance Committee for the purpose of carrying out technical/commercial negotiations, was sent to the Cabinet Sectt. for obtaining approval of the CCPA. In April 1984 the CCPA approved the proposal at (i) and (ii) above. As regards item (iii) above, the CCPA directed that instead of two committees, there should be a single Negotiating Committee chaired by Defence Secretary.

(f) *Negotiating Committee*

4.29 A Negotiating Committee, with the following constitution was set up in May 1984 for the procurement of 155 mm (Towed) guns with

accessories/spares/ammunition, etc. :

Defence Secretary	—Chairman
Secretary (Defence Prod.)	—Member
Secretary (R&D)	— -do-
Secretary (Expenditure)	— -do-
Addl. Secretary	
Economic Affairs	— -do-
(Financial Adviser)	
(Defence Services)	— -do-
Deputy Chief of the Army Staff	— -do-

4.30 The following four firms were informed to meet the Director of Weapons and Equipment in the Army Headquarters with the technical details pertaining to their 155 mm (Towed) gun on the dates shown against each :

1. M/s. Bofors, Sweden	16 May, 1984
2. M/s. IMS, UK	21 May, 1984
3. M/s. Sofma, France	25 May, 1984
4. M/s. Voest Alpine, Austria	30 May, 1984

The above firms were also informed that commercial negotiations with them for the 155 mm towed gun would commence in June 1984; the programme for the commercial negotiations was also intimated to them. The above firms were asked to submit their quotations for different types of ammunition required for the 155 mm (towed) gun. Between 16 and 30 May, 1984 technical discussions were held with the four firms by DWE along with a team of officials from Artillery Directorate, DGI, DRDO and Defence Production Department.

4.31 The first in-house meeting of the Negotiating Committee was held on 7 June, 1984, when a time table for negotiations was drawn up. The firms were asked to submit their formal price offers on 23 July, 1984. Negotiations with the firms commenced on 18-8-1984 and concluded on 28-8-1984.

(g) *Short Listing*

4.32 On 24th August, 1984, the Army Headquarters recommended that the British and Austrian systems were not acceptable to the Indian Army. Of the other two gun systems, the French and the Swedish guns were recommended in the same order.

4.33 In February 1985, the Army Headquarters again recommended that the gun systems of France and Sweden be short listed. In March 1985 the Army Headquarters reiterated their recommendation of 24th August 1984 and

also intimated that COAS had conveyed the recommendations of the Army Headquarters on the selection of 155 mm Gun (Towed) System to the Defence Minister.

4.34 In October 1985, the Negotiating Committee accepted the final recommendation of the Army Headquarters to call only M/s. Sofma of France and M/s. Bofors of Sweden for negotiations.

(h) *Commercial Negotiations*

4.35 The working Groups (established by the Negotiating Committee) and the Negotiating Committee continued detailed discussions/negotiations with M/s. Bofors, Sweden and M/s. Sofma, France. On 17th February, 1986 Army Headquarters submitted their final technical evaluation on the 155 mm towed gun systems of M/s. Bofors and M/s. Sofma. In this technical evaluation, Army Headquarters recommended that keeping in mind the capability to meet current and future operational requirements, the Swedish Bofors FH 77B gun had a clear edge over the French Sofma TR 155 gun.

(i) *Selection of Bofors Gun*

4.36 At the meeting of the Negotiating Committee held on 12th March, 1986, it was felt that keeping in view the technical, contractual and financial aspects, the Offer of M/s. Bofors was the better of the two. It recommended that pending finishing touches to the contract, a letter of intent might be issued to M/s. Bofors to the effect that Government was willing to award the Contract to them subject to their satisfying the Government of India on all aspects of the purchase, licence production, credit and other arrangements. These recommendations of the Negotiating Committee were approved by RRM(S), RRM(A) and RM on 13th March, 1986 and RM(PM) on 14th March, 1986. The Letter of Intent was issued to M/s. Bofors on 14th March, 1986. Further negotiations continued and revised offers were submitted by M/s. Bofors on 21st March, 1986. Revised offers were also submitted by M/s. Sofma, France. On 22nd March, 1986 approval of RM(PM) was sought to conclude the Contract with M/s. Bofors, on the basis of lowest offer, as well as the technically preferred one on 24th March, 1986 RM (PM) approved the proposal to conclude the Contract with M/s. Bofors.

4.37 A Memorandum of Understanding was signed with the Government of Sweden on 24th March, 1986. Cooperation Agreement, Supply Contract and Licence Agreement, were also signed with M/s. Bofors on 24th March, 1986. Separate Credit Agreements for the Supply Contract and the Licence Agreement were signed with AB Svensk Export Kredit, M/s Svenska Handelsbanken and M/s. Skandinaviska Enskilda Banken, Sweden.

4.38 The Committee examined the position stated by the Ministry of Defence to ascertain whether any deviations from the laid down procedures

took place in regard to acquisition of weapons and systems so far as the procurement of 155 mm guns was concerned. In this context the Ministry of Defence tendered the following evidence, in a formal note :—

“No Major deviation in the laid down procedures was made in so far as the procurement of 155 mm Howitzer guns were concerned. The only deviation from the laid down procedure was made in the case of Fire Control Instruments and some items of ammunition (which were finally contracted) as these items could not be put to trial evaluation due to their non-availability in 1980-81/81-82. It may be mentioned that in a complex weapon system like the 155 mm Field Howitzer, which comprises of various sub-systems and a wide range of ammunition, it was not possible to trial evaluate each and every sub-system/ammunition in the early 80's when the gun was subjected to trial evaluation, as some of them e.g. Illuminating shell (—km), Smoke shell (—km) and Cargo shell, were under various stages of development with different firms and no firm could offer these items for trial in the early 80's. However, adequate safeguards have been included in the Contract, including, a provision for the termination of the Contract and recovery of damages from the Seller, in the event of any of the items not performing according to the prescribed technical specifications.”

C. Observations/Conclusions of the Committee

4.39 On the basis of the discussion in the preceding paragraphs, the Committee observe that a very elaborate procedure has been laid down for the introduction of new weapons/systems in the Army and for assessing the requirements of the same with a view to ensuring that defence preparedness is maintained at all times. Proposals in this regard have to undergo a series of steps—the very first being preparation of a Philosophy Paper which has to take into account the perspective for the next 20 years, the need for modernisation, a reappraisal of threats, changes in geo-strategic environment, perception of mutual balance and forecast of obsolescence of existing weapons/system. The other essential factors that need to be taken into account are: acquisition of capability and/or countermeasures by the adversaries, developments in technology both within and outside the country and last but not the least the experience of field formations and the users.

4.40 The next step in the process is a detailed examination of the proposal by the G.S.E.P.C. The task of this Committee is to prepare policy statements formalising the requirements of weapons and equipment; to lay down the GSQRs regarding the optimum parameters of the equipment while allotting the same to DRDO for development and, finally, to ensure that the equipment and development policy for the Army keeps pace with scientific and industrial potentialities.

4.41 The Ministry of Defence then examines the Philosophy Paper and decides whether the proposed item can be developed by the DRDO and eventually produced in the country or whether it requires to be imported in case indigenous development is not feasible within the given time-frame. The further steps that follow are : identification of suppliers; desk evaluation of offers with a view to trial evaluate the weapon/system of the selected manufacturers/suppliers; issue of detailed trial directives and actual conduct of trials in different types of conditions/terrains; preparation of trial reports by the trial units/formations; their evaluation by the Directorate General of Weapons and Equipment (D.G.W.E.); finalisation of the General Staff Evaluation Report (GSER) at the level of the Vice-Chief or Deputy Chief of the Army Staff with proposals for the import of minimum number of weapons/equipment.

4.42 The proposals submitted by the Army Headquarters are then subjected to detailed examination in the Ministry of Defence and approval of the competent authority and the concurrence of the Finance Division for import of minimum quantities as well as licenced production, wherever necessary, is obtained after getting clearance from the indigenous angle from the Deptt. of Defence Production and Supplies and the Deptt. of Defence Research and Development. Approval of the competent authority is also obtained for inviting technical/commercial quotations from the manufacturers/firms recommended by the Army Headquarters. Simultaneously, approval is also obtained for setting up a Price Negotiating Committee under the Chairmanship of a responsible officer in the Ministry of Defence. Apart from the Army Headquarters, representatives of other concerned agencies such as the Finance Division, the Deptt. of Defence Production and Supplies, the Deptt. of Economic Affairs, Ministry of Finance and the D.R.D.O., etc. are included in the Negotiating Committee. The Negotiating Committee is charged with the responsibility of scrutinising all the technical and commercial quotations, carry out detailed negotiations with the authorised representatives of the parties concerned directly and finally conclude the contract, the agreement for licence production and credit agreements, etc. The agreements are signed by a senior officer of the Ministry of Defence on behalf of the President of India.

4.3 The entire process is quite time-consuming and can easily take a few years. In the instant case, the Committee find that the search for a medium gun of 155 mm. calibre, which had already been acquired by an adversary, commenced as early as 1975 when an Expert Committee was appointed to study the artillery weapons/systems of various armies in the world and make suitable recommendations. It came to the conclusion that there was a definite requirement for developing a medium gun of say 155 mm calibre with a range of 28 to 30 kilometres and shell weight of

50 kgs capable of firing in low as well as high angle, *i.e.* a Howitzer gun that can fire at an angle of 45° and above so that it could get across hill features easily.

4.44 Based on the recommendations of the Expert Committee, a Philosophy Paper was prepared by the Army Headquarters in October, 1979 and sent to the Ministry of Defence for approval. The other sequential steps that followed are set out in paragraphs 4.18 to 4.38 .

4.45 The Committee find that both on grounds of urgency and the heavy estimated outlay of approximately Rs. 1,600 crores involved in procurement of the 155mm. towed guns alongwith accessories/spares/vehicles and ammunition, the proposal was processed by the Army Headquarters directly with the Ministry of Defence, in terms of para 22 of Army Headquarters Instructions No. 15790/WE-1 dated 19th March, 1975.

4.46 While in retrospect, the plea of urgency may not now appear to be convincing in view of the time-lag of about five years which elapsed between the initial submission of the proposal to the Ministry of Defence and the actual finalisation of the contract, the Army's perception of an imminent threat requiring an urgent response, at the time the proposal was mooted, cannot be questioned. That the threat did not materialise, or that it receded in the intervening period, does not alter the aforestated situation.

4.47 In sum the Committee are of the view that it is amply proved that the procedures prescribed for the acquisition of weapons/systems was followed by the Army Headquarters/Ministry of Defence in the purchase of the Bofors Gun.

TECHNICAL EVALUATION OF THE 155 MM GUN SYSTEM

An elaborate procedure has been laid down for technically evaluating various Weapons/Systems including field trials under simulated battle conditions.

A. Field Trials

5.1 Technical evaluation of the equipment to be acquired is an integral part of the procedure laid down in the Army Headquarters for induction of the new weapon/system. Explaining the procedure followed in this regard, the Defence Secretary stated in his evidence that the system followed by the Army Headquarters is scientific. After making a desk evaluation with reference to the characteristics and properties of a weapon/system, a list of possible suppliers, whose equipment *prima facie* met the Army's operational requirements or fulfilled the minimum performance parameters either fully or as closely as possible, was drawn up and a proposal sent to the Ministry for permission to conduct trials.

5.2 The witness further informed the Committee that the equipment offered by the selected firms for trial purposes at no-cost-no-commitment basis, was tried out in all types of terrain *viz* deserts, plains and mountains with extreme climatic conditions. The trial reports were processed, screened and tabulated by the various echelons of the Army Headquarters and sent to the Director-General, Weapons and Equipment for analysing the results. The Vice-Chief, Deputy Chief or the Chief of the Army Staff himself, depending upon the nature, criticality and value of the equipment, thereafter sent to the Ministry a proposal reflecting the minimum requirements along with a General Staff Evaluation Report.

5.3 Commenting on the importance given to the trials conducted by the Indian Army, the Defence Secretary testified:

“I must submit here that the trial evaluations carried out by the Indian Army carry a lot of respect — a commanding respect—of suppliers, for the simple reason that our trials are extremely rigorous and done very intelligently.”

5.4 During his evidence before the Committee, the Director-General, Weapons and Equipment (DGWE) informed the Committee that the operational requirements of the new weapon/system as they were identified in the light of the Philosophy Paper of 1979 and the earlier report of the Experts

Committee (1975) were: (i) the calibre of this medium gun should be approximately 155 mm with a maximum range of 28 to 30 kms, and shell weight of about 50 kgms; and (ii) the gun should be capable of firing at high angle.

5.5 He added that the concept of future operations was for mobile warfare and for formations and units operating over wider areas going deeper and at a much faster pace into enemy territory. Over the turn of the century, this could mean operating under nuclear threat. When the battlefield scenario of the future was studied, the major issues which had to be taken into account in the formulation of the weapon requirement were: there were to be larger number of targets of fleeting nature on a battlefield; and a higher proportion of hard point targets, *i.e.* tanks and armoured personnel carriers would operate on the battlefield. There would also be enhanced vulnerability of the gun which was firing at such targets as well as of the advancing or defending troops that these guns were supporting. As a result of these forecasts, it was thought that the gun system must have some essential capabilities *viz.* high responsiveness, high rate of fire, opening salvo effectiveness, burst fire capability, mobility, longer range, availability of improved conventional ammunitions, accuracy of fire and capable of shoot and scoot tactics.

5.6 The DGWE stated that the guns were tried out in all possible terrain and in all possible climatic conditions. As far as terrain is concerned, the guiding philosophy was a simple gun for the mountains and a sophisticated gun for the plains and deserts. Consequently, there were cases where some guns were either not tried out in mountains or in plains and deserts. As far as weather was concerned, the guns were made available by the suppliers for a specific period of time during a particular period of the year. As a result, it might not have been possible to try all the guns in all weather conditions.

5.7 The DGWE also informed the Committee that detailed trial directives were issued to trial units/teams prior to the conduct of trials. The trials included trials on mobility and firing to cover accuracy and consistency, high angle efficiency, maximum ranges, rate of fire and ease of handling. The trials were checked to ensure man-machine interface, ease of assimilation of training and efficiency by the Indian crew. The trials were also held to check the timing achieved for various activities like going into and coming out of action and the back-up facilities available where any automation was involved. Finally maintainability trials were conducted by the Corps of Electrical and Mechanical Engineers.

5.8 The trials were conducted during the periods stated below:

- | | |
|-----------------------|----------------------|
| (i) N—65 (Yugoslavia) | —June to July, 1978 |
| (ii) FH—70 (U.K.) | —March to May, 1980 |
| (iii) M—198 (U.S.A.) | —April to June, 1980 |

- | | |
|-------------------------|------------------------------|
| (iv) FH—77 B (Sweden) | —June to December, 1981 |
| (v) GC—45 (Austria) | —September to November, 1981 |
| (vi) M—144/39 (Holland) | —March to April, 1982 |
| (vii) TR—155 (France) | —March to April, 1982 |

5.9 During the evidence, the Committee drew the attention of the Defence Secretary to the demand made on several occasions by some members of the Negotiating Committee that the unit level trial reports be made available to them. Explaining the reasons why these reports were not furnished to the Negotiating Committee, the witness stated :—

“These unit level evaluation reports are received in large numbers from various units. In this case, for this gun system I believe there were two or three dozen or perhaps more of such reports. These unit reports have been supplied to the JPC already. Now, a person who is not a professional cannot pull out of these large number of unit level reports as to where the truth really lies, because every Commanding Officer writes according to his own perceptions and the way he has evaluated a commodity, or store in his own environment. Now, it is the duty of the Director-General, Weapons and Equipment, that he should scrutinise carefully, examine these unit level evaluation reports and prepare a final report which would represent the view of the General Staff after it has been approved of by the Deputy Chief of the Army Staff and the Chief of Army Staff. This is how the general staff evaluation report is prepared.

The question, therefore, arose in the Negotiating Committee as to whether it is fruitful to distribute the large number of unit level evaluation reports to different members. The Deputy Chief of Army Staff who was a member of the negotiating committee, clarified that if you were to do that it would be futile and perplexing because you would not be able to fairly assimilate all those things because they are technical in character and occasionally the judgements are contradictory. They have to be integrated, coordinated and harmonised at the level of General Staff, at the level of Director General, Weapons and Equipment, on behalf of the Army Headquarters. It was, therefore, decided that these unit level evaluation reports would not be circulated, and we would trust the judgment of the Army Headquarters where these general staff evaluation reports have been approved by the Deputy Chief or the Army Chief and given by them.....”

B. General Staff Evaluation

5.10 Based on field trials carried out during 1980-82, a General Staff Evaluation Report was prepared by the Army Headquarters in December, 1982. The following four of the seven gun systems that were tried out were identified as acceptable :

- (i) FH 70 (U.K.)
- (ii) FH 77-B (Sweden)
- (iii) GC-45 (Austria)
- (iv) TR-155 (France).

5.11 The following two guns which did not meet the requirements for reasons indicated below, could not be graded acceptable :

- (i) *M-198 of USA*

This gun was not considered suitable in comparative performance, it was not to date technology, had poor cross country mobility and did not have potential for an Auxiliary Propulsion Unit to be added on. In addition a very poor delivery schedule had been indicated.

- (ii) *M-114/39 of Holland*

This gun was also not considered suitable for introduction into service because the prototype offered was basically a product improvement of the old World War-II vintage M-114 gun. It had a slow rate of fire, did not meet the operational requirements and it did not have the potential for an APU to be added on.

5.12 According to the Army Headquarters, the requirement of the Army was for a sophisticated weapon system which would remain in service till the first quarter of the next century. Such a system to be selected should have the best technology, high rate of fire including burst fire capability, long range, a fair degree of automation and capability of firing various types of ammunition. In the background of its requirement, the Army Headquarters' appraised the comparative merits and demerits of the four gun systems which were acceptable to them.

5.13 The Committee have been shown the complete details of the analysis done by the Army Headquarters. For security reasons the Committee have decided against the inclusion of the aforesaid analysis in this Report. It may, however, be noted that the Swedish gun had the advantage of being the most automatic among all the guns, with a true burst fire capability. It had the smallest crew of six and its APU was diesel driven while that in other cases was petrol driven.

5.14 The Director-General, Artillery, in his evidence highlighted the superior aspects of the Bofors gun by stating :

“.....the equipment is such that even two men can handle it and move it. Whether there is sandstorm, rain or snow, my assessment is that it will still be able to function and produce what is required of it.”

5.15 During evidence of the Chief of the Army Staff, the Committee enquired whether the technical evaluation of the gun systems was done by certain individuals or a Committee was set up for the purpose. He stated that it was much more than a Committee. Different aspects were evaluated by different officers/experts in different climates over a period of time. The representatives of the Research & Development, the Electrical & Mechanical Engineers, the Directorate General of Inspection, etc. were all involved in this process of evaluation. After all of them had given their reports these were collectively examined and only then the General Staff Evaluation was made.

C. General Staff Qualitative Requirements

5.16 As per prescribed procedure, apart from the General Staff Evaluation Report, General Staff Qualitative Requirements (GSQRs) which give all technical details including performance parameters of the weapons to be developed, are required to be prepared before hand and the technical acceptability of any new weapon is determined with reference to the GSQRs which are based on operational requirements and are an insurance against any sub-standard equipment being introduced.

5.17 During evidence the Committee enquired from Lt. Gen. H. Kaul, the then DCOAS how in the absence of GSQR, technical evaluation of the guns could be made. The witness explained that GSQRs were not required by the Army in so far as this particular gun system was concerned. GSQRs would be required if the weapon/system was proposed to be developed indigenously. He added that detailed trial directives had been issued to the trial units and they must have evaluated the system according to these directives.

5.18 On the same question, the Chief of the Army Staff in his evidence stated that there was no requirement for GSQRs when they were dealing with this kind of weapon/system which was already existing in other parts of the World and was to be acquired ex-import. These were required only when the system was to be developed within the country.

5.19 The Defence Secretary, while explaining the position during his evidence, stated that the question of GSQR was initially raised in the

Negotiating Committee meetings. Consequently, the Committee decided to view the evaluation with reference to the minimum acceptable parameters, which were furnished by the Deputy Chief of the Army Staff.

5.20 The Defence Secretary also referred to Army instructions issued on 3 February, 1983, which provided the logic for the requirement of GSQRs. Para 16 thereof reads as under :

“16. QRs are required to be prepared as per the form attached at Appendix ‘C’. These will be forwarded under the signature of a Director or equivalent to the DWE. No QR need be prepared in respect of :—

- (a) Equipment which are current in service.
- (b) Equipment for which indigenous manufacture has been established but have yet not been introduced; or where the required particulars to guide manufacture are available.
- (c) Equipment of foreign manufacture/design which are found suitable for introduction in the service with or without modifications.”

5.21 The philosophy behind this was that in case they had to purchase the equipment from abroad it was not possible to lay down the GSQRs for the reason that those items were being purchased as manufactured. If, on the other hand, it was a question of development and production within the country, the GSQRs would be essential.

5.22 When the Committee enquired how in the absence of GSQRs, the *inter se* priority of the guns could be determined, the Defence Secretary stated that in place of GSQRs the evaluation of all the four guns systems was done with reference to the minimum acceptable parameters. He added :

“The sum and substance of this is that the GSQR was represented by the minimum acceptable requirements. The Negotiating Committee thus took a decision that it would be very confusing if the Members were to go through the trial reports of the units and, therefore, the General Staff Evaluation Report should be used. Instead of these GSQRs and trial reports, they had the benefit of two other things, namely the General Staff Evaluation Report and the minimum acceptable parameters.....”

D. CCPA (Cabinet Committee on Political Affairs) Paper

5.23 In the CCPA Paper prepared in February, 1984, for obtaining Cabinet approval for the procurement and licence manufacture of 155 mm

guns it was pointed out that three guns systems viz. TR (France), FH-77-B (Sweden) and FH-70 (U.K.), evaluated and found suitable by the Army, were considered to be sophisticated/futuristic enough to be manufactured in India under licence. As stated earlier, the Austrian GC-45 guns was recommended only for a one time buy.

5.24 During evidence, the Committee enquired from the Chief of Army Staff why the Army Headquarters had recommended the Austrian gun for one time buy only. The Chief of the Army Staff explained that in 1982 when he was the Deputy Chief he had recommended the purchase and licence production from among only three guns viz. French, Swedish or the British, the Austrian gun was not considered good enough. At that time, the threat perspective was imminent and hence operationally there was an urgent requirement to obtain a certain number of 155 mm guns by the end of the Sixth Plan (1980—85). At that point of time, none of the competitors other than the Austrians was in a position to immediately supply more than 30-40 guns. Hence, the Austrian gun was recommended for one time buy. Subsequently, when the operational threat scenario started changing, the Army Headquarters dropped the idea.

E. Technical Evaluation & Negotiating Committee

5.25 After CCPA approval, action was taken to constitute a Negotiating Committee and simultaneously the then Director of Weapons and Equipment (Lt. Gen. Mayadas) was asked to undertake technical negotiations with the following four firms before the commercial negotiations commenced :

- (1) M/s. Bofors, Sweden.
- (2) M/s. IMS (U.K.).
- (3) M/s. Sofma, France.
- (4) M/s. Voest Alpine, Austria.

5.26 On the basis of technical discussions held with the four firms by the then Director of Weapons and Equipment and a team of officials drawn from different disciplines, a report entitled "Report of the Technical Evaluation and Negotiating Committee on the 155 mm Guns offered by Sweden, U.K., France and Austria (16 May, 1984 to 2 June, 1984)" was prepared. This Report *inter alia* indicated that a Technical Evaluation and Negotiating Committee had been constituted, with the DWE as Chairman, to evaluate the 155 mm towed gun system.

5.27 During evidence, the Committee enquired from Lt. Gen. Mayadas, DGNCC, who was the then Director of Weapons and Equipment, whether

any directions had been given by the Ministry of Defence in regard to the evaluation of the 155 mm towed gun system. The witness stated :

“I was told that I had been made the Chairman of a Technical Evaluation Committee; that all the four teams had already been invited to come to India and that I would have to do a evaluation between these four teams and all that they had to offer. When I enquired as to what they had to offer, I was told that everything was in my hands..... I asked my staff to find out who were the members of the Committee. The Ministry of Defence asked ‘whom all do you require’. I gave them a list of people. The Ministry of Defence then informed all these people that they had to be there. I had a committee of about 8 or 9 different agencies and consisting of 15 members.”

5.28 In reply to a question whether the directions were given in writing or orally, the witness referred the Committee to a note dated 5 May, 1984 sent to him by the then Joint Secretary (O). The Committee called for this note and found that it read as under :—

“At the time of technical negotiations, you may kindly make it a point to obtain a list of all spares, accessories, etc. with each item duly priced and the scales recommended according to the manufacturer. After getting this you may kindly have it vetted by EME and others concerned. This will form part of the Contract so that there is no dispute either about the scales or about the price of the items later. If we want to increase the scales, the choice should be left to us.

I thought I would caution you about this in advance because we face this difficulty every time an equipment is contracted. In fact, we have rectified this in respect of a number of equipment we have procured in the recent past. However, for instance, M/s. IMS have not done it and a fear is being expressed justifiably by the EME and the engineers that the IMS may try to reduce the scales. We are putting a suitable clause to safeguard this. However, this kind of a difficulty can be avoided if the details are insisted upon as indicated in para 1 above and also as indicated in my OCB message to the manufacturers through our MAs sent this morning.”

5.29 The Committee enquired whether further action taken by the Director, Weapons and Equipment was in accordance with the directions given by the Ministry of Defence in the above note. He replied in the affirmative and stated that he took the technical negotiations to mean everything concerning the gun system.

5.30 When asked whether the list of spares and accessories had been prepared and got vetted by EME, he stated that this was done subsequent to the submission of his Report and the list of spares was not given therein.

5.31 The Committee pointed out to the DWE that the Ministry's note referred to above did not authorise the establishment of a Negotiating Committee for Technical Evaluation and enquired whether there was any other letter or note on the basis of which the DWE had prepared his Report. The witness stated :

“This is a telex message dated 5th May, 1984 sent by JS(O) to the four contending firms and this is as follows :—

‘MA from JS(O), Ministry of Defence. Please advise to meet DWE with all technical details pertaining to 155 mm gun (towed). They should be prepared to answer all queries regarding the guns, spares, accessories, ammunition, etc. including the licence production of the gun and ammunition. This will form part of technical negotiations for sale of these guns..... They should also provide a list of spare parts each item duly priced at the time of technical negotiations’ ”.

5.32 At the instance of the Committee, the Ministry of Defence furnished to them copies of the report of “Lt. Gen. Mayadas Committee”. The Committee found that the Report had been signed only by 6 Members including the Chairman, out of a total of 15 Members who were stated to have comprised the Committee. The Report stated *inter alia* :

“Opinion of Senior members of the Technical Evaluation and Negotiating Committee

19. The individual opinions of the Committee are recorded in the presence of the Chairman without any one member being allowed to see what another has recommended. Their opinions are noted by them to show their analysis of the *inter se* position of the weapon/system.

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Opinion of the Chairman

20. The Chairman is of the opinion that the weapon systems are graded as given below :

GHN (45)	— Austria
TR 155	— France
FH 77-B	— Sweden
FH 70	— U.K.”

5.33 According to the individual opinion of the six members who had signed the Report, four members, including the Chairman, had rated the Austrian gun as the best. Two of these four had given the same rating to the French TR 155 gun also. One of them (the then DD Artillery) had graded FH-77-B of Sweden as number one while the sixth member stated :

“If the claims made by the Austrians about GHM-45 are correct then this gun has an edge over the others.”

5.34 The Committee drew the attention of the then DWE, Lt. Gen. Mayadas, to the undermentioned observations contained in the Report submitted by him :

“Each contender has effected improvements in the complete systems to include guns vehicles, auxiliary propulsion units (APUs), ammunition and instruments since the time these were trial evaluated in India. The Technical Committee cross-questioned the contenders closely on these changes, and tried to evaluate the varacity of these improvements. These claims are ascertainable, and the firms will be required to render Compliance Certificates before the Contract is signed. Hence their claims may be viewed as substantially correct. Where the changes are of a nature that affect the value of the gun materially, these have been highlighted in this report.”

5.35 In the above context, the Committee enquired whether the recommendations submitted by Lt. Gen. Mayadas were based on actual trials or only on the claims of contenders, the then DWE stated that the recommendations of the Committee were made on the basis of trials carried out in India, the delegation reports given by the senior officers who had gone abroad and seen the performance of these guns and on the claims made by the contenders.

5.36 The Committee pointed out that so far as the Austrian gun was concerned, what had been trial evaluated in India was the GC-45 gun and not the GHN-45, which had been accorded the first priority by him. To this the witness replied :

“If you want to make a technical distinction, it is correct.”

5.37 In reply to a query, the then DWE clarified that at the time of negotiations, no GSQR of the 155 mm gun was available. There was a draft GSQR which was got updated through Director General, Research & Training. When asked how any recommendations could be made in the absence of any GSQR he stated that these guns, although being discussed from 1975-76 onwards, had been evaluated in the absence of a formal GSQR.

5.38 The Committee wanted to know on what basis the Austrian gun had been rated as number one. To this, the then Director, Weapons and Equipment replied that there were many reasons viz. it had the longest range upto 30 kms with absolute consistency; it fired the heaviest shell which had more lethality while giving 30 kms; with the APU it was the fastest gun which could move on its own; it could carry six men on the gun and six on the ammunition side; it was the simplest, most robust and the cheapest. Consequently, they could buy with the given funds 40 per cent more of the guns system.

5.39 The present D.G.W.E., in his evidence before the Committee pointed out that the gun that was tried in India was GC-45 and not GHN-45 to which a powerful APU had been added and several other improvements claimed. The reasons why the gun was found unsuitable were :—

- (i) It was not an integrated system and there were reports of accidents. During his visit to Austria along with the Raksha Mantri, the Scientific Adviser enquired about these accidents and asked the Austrians to give details of their gun construction, test and specifications, metallurgy and the test criterion. The Austrians refused to give these details not only then but even during specification negotiations;
- (ii) There were doubts about the ammunition performance; they were using US nomenclature for their ammunition with different specifications;
- (iii) There was the question of World War II Treaty which forbade Austria from manufacturing rockets and guns with ranges exceeding 30 kilometres. Their weapon development was, therefore, controlled and there were doubts whether they would be permitted to market such weapons;
- (iv) There were doubts about the patent for the long range ERFM ammunition. The Austrian gun design and its ammunition had its origin in Canada from a firm called SRC, who gave the licence to Austria for the production of guns while for the H.E. ammunition they gave the licence to PRB Belgium. They were, therefore, quite doubtful about the right of Austrians to sell the long range ammunition or to transfer the technology;
- (v) In the mountains the GC-45 Austrian gun took more than twice the time for a given distance as compared to Bofors and some other guns which were tried simultaneously with it. The gun was, therefore, not as mobile as claimed.

5.40 The Committee also examined the then Deputy Chief of the Army Staff (Gen. H. Kaul) on the subject. Asked whether he was aware of the Report of the Mayadas Committee, the then DCOAS explained that normally, according to the set procedure, a technical negotiating committee was set up by the Ministry of Defence to decide about the technical aspects of the negotiations, which were carried out by the Negotiating Committee. Asked about his reactions with regard to the recommendations contained in the said report, the then DCOAS replied that when he first saw the report of Lt. Gen. Mayadas Committee, it was quite obvious to him that they had not done the job for which they were appointed. Their job was technical negotiation and not evaluation, because by sitting in an office and listening to various firms no evaluation can be carried out. Evaluation is based on field trials carried out by Trial Units in the different climates and regions of India. Then those things were discussed very freely. In his opinion, this was not the task for which the Committee under the then DWE was formed. After having gone through Lt. Gen. Mayadas Report and having examined it in detail, he put up a note to the then Chief of the Army Staff which is reproduced hereunder :

“ ‘ In my opinion, it is a subjective report and not at all objective. The Technical Committee cannot make recommendations based on claims of the firms which have not been verified by actual trials in India. Such a procedure is only adopted for paper evaluation when short-listing firms whose weapon systems are to be brought to India for trials. To do so at this stage for recommending a gun system for purchase can be misleading and dangerous. It is illogical and misleading for the Committee to report that the claims of the firms may be viewed as substantially correct.

The whole report seems to have been constructed in a manner to bring out one particular gun system as the best. Even the philosophy for the medium guns, the views on technical aspects expressed in this and the aspects of Indo-Pak scenario highlighted are personal views on selected aspects which build up one particular gun system. If such aspects are to be included, these must be the accepted views of the Artillery Directorate, and General Staff Branch which have been approved by the Chief of the Army Staff. I regret to say that this report is misleading and subjective’.

This note was signed by him on 14th July, 1984 and put up to the then Chief, Gen. A. S. Vaidya. He wrote :

‘I agree with the note. No credence be given to manufacturers’ claims. My recommendations be based on actual performance of the guns and ammunitions.’”

5.41 Questioned on the subject, the Chief of the Army Staff, in his evidence, stated that on going through Lt. Gen. Mayadas Committee's Report, he discovered that many of the weaknesses in the guns had been rather haphazardly projected and it appeared there was no objectivity in the assessments made. He also found from the Report that Gen. Mayadas had taken a part of the initial trial reports and that too somewhat selectively and had not taken the end position in view. He said that he was surprised about this selectivity as to why certain aspects had been highlighted and why certain others had been played down.

5.42 He further added that he fully agreed with his predecessor's comment (Gen. A. S. Vaidya, COAS) on the document wherein he had said that he totally disagreed with the findings of the Committee which did not appear to be objective in its conclusions. According to Gen. Sundarji this kind of a committee was not a truly technical evaluation committee but merely a technical group to do some preliminary work to assist the Negotiating Committee. Its task was to put the technical parameters of the various firms under one format; to make sure whether the spares support, the drawings and diagrams etc. were actually there and nothing was left out in terms of pricing.

5.43 Asked about the reasons for excluding the Austrian gun from the short-list, the Chief of the Army Staff testified before the Committee :—

“The first point was that there were proven accidents regarding the barrel. The gun barrel burst in a trial in Belgium sometime before we tried it. A photographer was killed in that. The firm also did not dispute that it occurred but they claimed that it was because of the fault of the ammunition. The ammunition was manufactured by a Belgian firm and that firm said that it was due to the defect of the gun and not because of the ammunition.

The next point was that this gun, though it notionally had the advantage of reaching a range of 39 kms., in a test firing in India it showed abnormal dispersion well beyond the acceptable limit at the higher range closer to 39 kms. as well as the shorter range when we fired charge 3 which was the lowest charge. So there was dispersion both at the lower and also at the maximum charge.

In the light of all this, the evaluations done by the Army Headquarters quite rightly treated it as gun of a 30 kms. range and not 39 kms. range even though notionally it would reach up to 39 kms. Because the effect at 39 kms. was well below the requirement. Therefore, the effective range was taken as 30 kms. for analysis.

The next reason was that in the trials conducted in Indian mountains, when we fired at high angles, the rate of fire that this gun was

able to make was one round in one minute. The difficulty was that to achieve loading it had to be brought to the lower elevation each time.

It had no burst fire capability at all and the next point of doubt was regarding the matching between the ammunition and the charge systems and the gun itself. In the case of Austrian gun because of the dispersion that we talked about, at the lowest charge and the highest charge comes at 39 kms. was in our view due to a mis-match between the charge system and the gun. Though they claimed that they had rectified this mis-match, they were not prepared to test it and prove it to us even though an opportunity was given to them."

5.44 The Committee pointed out that in spite of these shortcomings, the Austrian gun was considered as the most mobile gun. The Chief of the Army Staff replied that he did not know how such conclusions were arrived at and he was at a loss to know how any rational human being with all the inputs available in the trial reports could have come to such a conclusion.

5.45 Referring to the visit of the defence delegation led by the then DCOAS (Gen. Sundarji) to Austria in June 1982, the Defence Secretary stated in evidence:

".....the delegation witnessed a firing demonstration and thereafter visited the factory of Voest Alpine.... As regards the premature air burst at 39 kms range, when the Voest Alpine was questioned regarding the premature air burst and dispersion at range of 39 kms, the manufacturers replied that this was due to the fact that the US fuze M557 used with ammunition was not designed to bear the pressure developed by their super charge. They were, however, developing a fuze to bear such pressure. Refiring at 39 kms could not be done as there was no range in Austria with 39 kms capability."

F. Short-listing of two gun systems by Army Headquarters

5.46 At the instance of the Negotiating Committee, the Army Headquarters *vide* their letter No. 188-F/DCOAS/ARTY-1 dated 24th August, 1984, gave their final assessment and grading of each system:

"So far as our comments on the claims now made are concerned, we are quite clear that we cannot introduce any weapon system in our Army on the basis of claims. You must be aware that when we look for an equipment we try every feasible source and get details from the firms/governments concerned. After that a paper evaluation is done and those that seem likely to fit the bill are asked to send their equipments for trials at no-cost-no-commitment basis. It is

only at this stage that claims of companies are taken into consideration. Those weapon systems which arrive for trials are then put through comprehensive trials in various environments, which we are likely to face. After the trials, only those systems are recommended for introduction which meet our requirements. The companies of these systems and even others, who may not have made the grade, may be called for negotiations. Those systems, which have not made the grade are only included in negotiations for financial advantage. In the present case also we are quite clear that we cannot base any decision purely on the claims made by various firms. We have to proceed on the basis of our trial evaluations. Taking into consideration all aspects of the four gun systems, we are quite clear that the British and the Austrian gun systems are not acceptable to the Indian Army. Of the remaining two gun systems, our gradings are that the French meets our requirements most of all and the Swedish is the second best.”

5.47 In February, 1985, the Army Headquarters again recommended that the following two systems should be short-listed at the earliest:

- (a) 155 mm TR, France
- (b) 155 mm FH 77 B—Sweden

5.48 The Army Headquarters’ recommendations on the short-listing and relative grading of the gun systems were followed up through in their letter of 19 March, 1985 (No. B/28888/GS/WE-5) to the Defence Secretary. This letter *inter alia* recommended as under:

“The performance of the four gun systems has been comprehensively and critically examined through detailed trials and evaluation. The short-listing of TR (France) and 77B (Sweden) gun systems has been done entirely on the relative performance of the four gun systems, as actually proved during trials. Unsubstantiated claims have not been taken into consideration as it would not be prudent to do so. I may also mention that the case has been discussed with the COAS once again and there is no change in Army Headquarters’ earlier recommendation. In view of above it is requested that the case for selection of 155 mm (towed) gun system(s) for the Army may kindly be finalised at the earliest so that our operational preparedness does not continue to remain adverse.”

5.49 During evidence, the Committee enquired from the then DCOAS Lt. Gen. H. Kaul about the reasons for further shortlisting of the guns from four to two. The witness stated:

“Before I took over as the Deputy Chief, the Austrian gun had been only recommended for one time—buy only by my predecessor.

I discarded the Austrian and the British gun totally because when I put up my recommendations to the then Chief Gen. Krishna Rao and later on to Gen. Vaidya, both agreed with me, that we should discard them totally because they did not meet our requirements. Therefore, only two guns were left—the French and the Swedish in our recommendations.”

5.50 To a question why, in the aforesaid context, negotiations were commenced with all the four firms whose guns had been short-listed earlier, the witness stated that this was done to generate competition in prices and, on his suggestion, the short-listing of two guns was not made public, to achieve this objective. He also stated that he had made it quite clear that the only reason for including the British and Austrian guns was for financial advantage only.

5.51 The Committee pointed out that the French gun had all along been placed above the Swedish gun in order of priority by the Army Headquarters. Asked about the relative performance of the two guns, the then DCOAS stated:

“When a weapon system is selected for the Army, it is not one part of the system which is considered. One must go through the whole system. In this case, if I were to select a gun, I would think of the gun, the gun-pulling vehicle, the ammunition, the transfer of technology, the state-of-art already achieved by that particular gun in that particular country or the firm, the potential for further improvement of that gun, how much of that they could transfer to us, apart from the cost and other factors like gun control, equipment, computers and everything else. So far as the guns are concerned, just the guns—both the French and the Swedish met the requirements, though in guns also the French gun was definitely in our opinion better than the Swedish gun. In the totality the French had many more advantages. One was the range.

The next was travers. In this also the French gun had an advantage.

..... in the case of Swedish gun the rate of burst fire was better than the French gun.

In the sighting system, there was no difference—no advantage or disadvantage.

The Auxillary Power Unit was more or less the same except that there was a slight advantage in one gun.

In size the French had an advantage over the Swedish gun.

Both had a good mobility in all the terrains. But in ground clearance the French gun was better; there was a difference of only 5 centimetres—not a very major difference.

The main difference really was firstly in the totality of the inputs. In the French gun the French themselves, the So fma, had all the ammunitions which they could supply to us—all the ammunitions manufactured by So fma themselves. Computers, gun control system, communications the vehicle for pulling the gun, every thing was made either by So fma or by another company controlled by the French Government. In the case of Swedish gun, this was a major drawback. Firstly, they did not have all the ammunitions; secondly computers, gun control equipment and so on were from various other firms—not from Sweden alone.”

The witness further added :

“Then there were other factors like the system performance, future R&D support and the ability to honour contract. Here there was a problem. According to the information then available to us, according to the Swedish laws, in the event of hostilities, the Swedish Government could ban further export, which was not the case with the French Government. Also in the vintage and reliability of technology, there were certain differences because the French gun had been really drafted from the French self-propelled gun while in the case of Swedish they had no self-propelled gun.”

G. Selection of Bofors Gun

5.52 In the final technical evaluation of the 155 mm towed guns submitted by the Army Headquarters on 17 February, 1986 to the Negotiating Committee, it was *inter alia* stated :

“Essentially both guns meet the minimum acceptable parameters and the paramount requirement of mobility, technical operational features and ranges. However, in coming to a final conclusion all issues cannot be given an equal weightage as some features are more critical than others. Such issues are discussed in succeeding paragraphs.

Burst Fire Capability

Only Bofors 77B gun has true burst fire capability because of the following features :

- (a) Automatic handling of ammunition.
- (b) Automatic loading of all components of a round.
- (c) Automatic levelling sights.

- (d) Hydraulic locking arrangements for elevation and traversing mechanisms whereby the laying is not disturbed after firing a round.
- (e) Because of above features the capability of even a reduced or fatigued detachment to maintain the required rate of fire.

High degree of automation of the Bofors does mean greater chances of a defect occurring. However, due to this automation, four guns of this type could maintain the same rate of fire for short periods as six guns which are not automated. This is specifically pertinent with reduced/fatigued detachments as would normally be the case in battle. Burst fire capability is an essential feature of the "shoot and scoot" tactics which artillery will have to follow in the interest of survivability when enemy counter bombardment capabilities are enhanced. This apart, burst fire enhances the first salvo effect.

Maximum Range

It is now universally known that guns with 39 calibre barrels achieve approximately 30 kms with acceptable dispersion. Claims of both manufacturers are therefore credible. Claimed range advantage of 3 km in the case of So fma TR 155 gives this gun some advantage. However, since this extra range has been achieved through development in ammunition rather than the gun, this aspect may not be given as much importance as burst fire capability which is related directly to the features of the gun.

In the final analysis, keeping in mind the capability to meet current and future operational requirements, the Swedish Bofors 77B has a clear edge over the French, So fma TR 155."

5.53 During the examination of the Chief of Army Staff, the Committee pointed out that in all the earlier assessments made by the Army Headquarters from time to time, the French Gun system had been accorded the first priority in their evaluation. However, in the final evaluation, made in February, 1986, the *inter se* priority between the French gun and the Swedish gun was changed and the Bofors gun of Sweden was considered as the preferred one. The Committee enquired from the Chief of the Army Staff about the reasons for the reversal in the *inter se* priority of the two gun systems. The Chief of Army Staff explained :

"In 1982, I gave the General Staff Evaluation Report to my then Chief, which then eventually went to the Government. In my analysis and assessment at that point of time, I had placed the French gun at the top of the list, with the Swedish gun at the second place and

the British gun at the third place. In the Evaluation Report I had recommended that these three systems were suitable not only for acquisition but also for licensed production."

"That was the evaluation that took place in December, 1982. I would like to mention as to what were the thoughts behind this assessment of mine. At that point of time, we were evaluating not just the towed gun but also the self-propelled gun as one package. The only weapon which figured in both the lists was the French gun. None of the other self-propelled gun contenders truly came anywhere near the French gun."

"Therefore, it was only the French system which fulfilled all the requirements. This aspect of commonality weighed with me fairly considerably in allotting points for the French towed system as well. This was one of the main reasons."

"A decision was taken that we would not buy the entire system including the tank on which it is mounted. We would only go in for the gun system. Between 1982 and sometime in July, 1985, both our own R & D as well as the French firm had tried to work out the feasibility of mounting this kind of turret on the Vijayanta tank. We were very hopeful that it would succeed in the initial stages. But after three years of work, they came back and reported that this was not feasible. For many technical considerations, the Vijayanta could not accept the French GCT-Turret. In July, 1985, it was dropped. Hence the second point, which I made earlier about the advantages of commonality between the gun system on the self-propelled gun as well as the towed system in 1982, had disappeared completely from the analysis in February, 1986 because the French SP gun was not coming and we were looking for other guns. The fact is that the French GCT-Turret to be mounted on the Vijayanta had been given up, as an unfeasible proposition in July, 1985. This factor was also included in the analysis in February, 1986."

"The second main reason was that though the Bofors system had the advantage of greater degree of automation than the French system, I did not at that point of time give a larger weightage for its burst-fire capability and the automation capability. The burst-fire capability is very essential if in the future days our potential adversary acquires a kind of radar with which he can pin-point the location of the gun accurately enough in a matter of minutes, if not seconds and at that time there was no such gun locating radar in the inventory of any of the advanced countries of the world. We

were aware that the USA was the only country which was developing such a radar. My anticipation at that time was that by the time this kind of technology becomes more prevalent in the USA and they are prepared to transfer this kind of radar to their allies, it would be almost a decade and a half later Therefore, the weightage of this advantage which the Bofors gun had over the French gun was not high enough at that point of time. These were the two reasons why I had placed the French gun slightly ahead of the Bofors gun at that point of time even though I had stated that all three guns—the French, the Swedish and the British gun—were acceptable to us. Then subsequently in February, 1986, when I took over as Chief of Army Staff, two major events had occurred. First of all, the USA had successfully developed the fire-finder radar, the ANTPS-37 and had also included this radar in the package which they were giving to as part of the aid.”

“Now this made a considerable sea-change in our vulnerabilities which we would face in the decades to come. Now, what I had hoped was a threat which would materialise in 1997 or so unfortunately materialised much more rapidly than we anticipated or suspected. This ability of the fire-finder radar, the only such radar which exists even today, is that when the very first round is fired it is capable of tracking the shell in flight early enough and after taking a few successive readings in space, computerised calculations go on and give a very highly accurate location of the gun which fired in a matter of about 45 to 50 seconds from the time it was actually fired.”

Hence shoot and scoot assumed greater importance in 1986 and it could not be wished away that it may not take place even in 2000 AD.”

He added :

“..... in the light of some of these changed circumstances, I re-evaluated the *inter-se* placement and decided that the Bofors gun in these conditions had an edge over the French gun though fundamentally both guns were acceptable for the Army. This was the sequence and I would like to repeat under oath, what I told the hon. Members when I briefed them in the Army Headquarters some months back.”

5.54 When the different gun systems were trial evaluated in India some shortcomings and defects had been noticed and some modifications and changes had also been suggested in each system. Asked whether these

shortcomings etc. had been rectified, the Chief of the Army Staff stated that the defects which were noticed during the trials, and which were pointed out to the suppliers, had been modified to the Army's satisfaction before the contractual stage or negotiations for the contract.

5.55 During the course of the evidence of the then Secretary (Expenditure) (Shri R. Ganapati), the Committee referred to a question raised by a member of the Negotiating Committee that the recommendations of the Army Headquarters were based on the trials conducted in 1982 and that the improvements made by different manufacturers thereafter had been ignored. The witness stated :—

“The most conclusive method of determining to what extent these improvements have in fact been effected by different manufacturers would be to test the guns all over again. In fact, it is mentioned in the same paragraph. Secretary R & D made an observation, “Should some critical parameters be tried and evaluated in about a month's time.” But the Army explained that a fresh evaluation would be time-consuming. First of all, we have to ask them to bring the improved versions, and then trials have to be conducted all over again in different terrains. The Army stated that they have been asking for this gun system for quite a long time. It was a question of making an intelligent judgement of one's own technical knowledge and after discussions with them, deciding whether these claims were credible and if so to what extent they were credible. In a subsequent meeting of the Negotiating Committee, I am on record as having said that the conclusion of Army was based upon the trials that they carried out in the first set of guns and their own technical evaluation of the various parameters. So, it is a combined sort of an exercise. The ideal solution would have been to bring the guns all over again and conduct the trials afresh. And that would have taken one more year at least. After the trials, you invite offers and negotiate the terms and this would have taken another two or three years. But the army was not prepared to lose that much time. So, in the overall defence interests of the country, we felt that it would not be advisable to follow this foolproof method and decided to rely on the judgment of the people who are in the know of things, and are versatile and competent to judge upon these matters.”

5.56 The Committee drew attention to the findings during trial evaluation to the effect that since the Bofors gun was most automatic it was prone to more defects. Reacting to this, the Chief of the Army Staff stated :

“On the whole, I would say it was more automatic than others, more sophisticated than the others. But in our judgement

we needed a built-in stretch potential for full automation at a future date. It was an essential element. In practice, we would not have any particular problem on the maintenance side either, nor in training people to handle it.”

5.57 The Committee enquired whether the Bofors gun was comparable with the best guns of the world. To this the Chief of the Army Staff replied :

“To the best of my knowledge, at the time of our going in for the short-listing of the Bofors and the French gun, both these guns were as contemporary as can be. Undoubtedly there was a slight variation. But both of them fundamentally were contemporary guns and that position holds, I would say, even today.”

5.58 He added :

“This gun has the potential to go for automation which the French gun does not have. I would say and I believed that this weapon system has the kind of stretch potential both in barrel and design, acceptance of new types of ammunition as well as full scope for automation for whatever we can foresee for 25—30 years.”

Range of the Bofors Gun

5.59 The Committee pointed out that the Expert Committee Report, which formed the basis for the procurement of 155 mm weapon system, *inter-alia* mentioned that the gun should have a range of 28 kms to 30 kms. The Committee, therefore, enquired why the Bofors gun was at all considered. The Chief of the Army Staff explained :

“I was a member of that Expert Committee. I am personally responsible for drafting that particular paragraph which you just read. It is Volume No. 7, if I am not mistaken. When we indicated this, there was no weapon in the world which had achieved even a range of 25 kms. Mostly there were weapons which had achieved 17-18 kms. range only and some of them plus of 18 kms. In 1975, when I wrote, it had not reached anything like 25 kms. So projecting India's future needs, anticipating what the trend of development would be and anticipating what the state of the art would be, we put down roughly 28 to 30 kms. range.

Secondly, we started our exercise to find a replacement for the 5.5 inch gun, which was fast deteriorating. Therefore, even if the guns at that time were of 20 kms. range we would have certainly picked them up for trials. It is not as if the targets are limited to 28 kms. and that anything below 28 kms. should be excluded and

also the weight of the shells' guesstimate was 50 kgs. It does not mean that the 49 kg. shell is bad and 50 kg. shell is good.

Thirdly, we started with this particular British Gun. Firstly there was no ammunition in the world which could fire at that particular range at that time. Much later ammunition was generally available across the board which can fire longer ranges. Though the gun had been developed to fire long range ammunition, it could not perform at long range as the ammunition was not ready."

5.60 During the course of evidence of the D.G.W.E. the Committee pointed out that during the firing demonstration of the gun, witnessed by 'the Committee in the Western Sector on 6th October, 1987, they were told that with the improved ammunition, it had become possible to achieve a range not only of 29 kms., as claimed, but even beyond 30 kms.

5.61 Asked about the major factors which helped in improving the range of fire the D.G.W.E. explained that this particular achievement of range in this case is not related to the gun. It is related to the ammunition.

5.62 The Committee desired to know about the method adopted by the Army for measuring the distance between the gun position and the target. The D.G.W.E. stated :

".....as far as the measurement is concerned, it is done by our surveymen....manual survey.... was done to find out the accurate distance between the gun position and the target as marked there by the flags."

5.63 The Director General, Artillery, and the Surveyor who had actually surveyed the area and taken measurements in connection with the field demonstration held for the benefit of the Committee in the Western Sector on 6th October, 1987, were summoned and closely examined by the Committee on 27th October, 1987 about the method adopted to measure the distance between the gun position and the gun target and to check its accuracy.

5.64 When asked whether he had cross-checked the distance as surveyed by the Surveyor, the D.G.W.E. replied :

"If you ask me, I can stake my reputation on it; if the gun position and the Observation Post are not changed, I will guarantee the distance, because these maps are accurate to 100 metres. In this instance, the O.P. is on a sand-dune which is marked on the map, the village ruins are marked on the map, the gun position is marked on the map. As such, as I said, if you are willing to take my word, I can stake my reputation on this, and I can guarantee the distance."

5.65 Asked to comment on the performance of the Bofors gun on the basis of his personal experience as an expert in Artillery, the Director-General, Artillery stated in evidence :

“I would say as an Artillery Officer that the biggest advantage of the gun which we are now using lies in its ability to be used both in mountains and in the plains. During the demonstration we fired with this gun even in higher angles. This has the ability to fire in different projections. Then it has the ability of burst fire. And the third most important thing is that it has its own auxiliary power unit to get into action and get out of it which is very important especially in the mountains and plains.”

5.66 Referring to the visit of the Defence delegation led by the then DCOAS to U.K., France, Austria and Sweden in June-July 1982, when opportunity was taken to witness the improvements that might have been made by those countries in the 155 mm. gun system, the Defence Secretary stated in evidence:

“As far as Swedish gun is concerned while it was in India certain ranges had been achieved by this gun. When it was fired in Sweden it was found that the gun could achieve a range of— km. with Bofors ammunition. They also fired with the Belgian ammunition extra range full bore ammunition as well as the U.S. rocket assisted projectiles. The dispersion at the maximum range of the firing was also found acceptable. The Deputy Chief confirmed that certain modifications which had been suggested during trial evaluation in India had been carried out by Bofors..”

H. Observations/Conclusions of the Committee

5.67 After deliberations the Committee find that six gun systems, namely FH-70 (UK), M-198 (USA), FH-77B (Sweden), GC-45 (Austria), TR-155 (France), and M-144/39 (Holland) were subjected to extensive trials during March 1980 to April 1982. Based on the field trials, a General Staff Evaluation Report was prepared by the Army Headquarters in December, 1982. The British, Swedish, Austrian and French guns were identified as acceptable to the Army. The other two guns, viz. the M-198 of USA and M-114/39 of Holland did not meet the Army's requirements. While the Austrian gun was recommended only as a one-time buy, the other three guns were considered sophisticated/futuristic enough for outright purchase as well as licenced production. The Defence Secretary vouchsafed in evidence that the trial evaluations carried out by the Indian Army commanded the respect of the suppliers, for they were known to be extremely rigorous and were done intelligently. In the present case, the various gun systems were tried out in all types of terrains, viz., deserts,

plains and mountains in varying climatic conditions. For the guidance of the trial units, detailed trial directives were issued with a view to ensuring that essential aspects, such as mobility, rate of fire, accuracy and consistency, high angle efficiency, ease of handling, etc. were not lost sight of in assessing the capabilities of the gun systems in field conditions. Maintainability trials were conducted by the Directorate of Electrical and Mechanical Engineers. Representatives of the D.R.D.O. and the Directorate General of Inspection were also associated with the trials.

5.68 The Committee find that on several occasions in the meetings of the Negotiating Committee, a demand was made by some members that the trial reports and the G.S.Q.Rs. be made available to them to enable them to make a proper appreciation of the capabilities of the various gun systems recommended by the Army.

5.69 So far as the question of Trial Reports is concerned, the Defence Secretary pointed out, during his examination, that it was the duty of the D.G.W.E. to scrutinise carefully all the unit level evaluation reports and prepare a final report which would represent the views of the General Staff and submit it to the Ministry after obtaining the approval of the Deputy Chief and the Chief of the Army Staff. Such unit formation level reports were not only very large in number but, in the very nature of things, contained technical data which was not easy for any layman to understand. Occasionally, the findings of the Unit Commanders might be contradictory, depending upon what weightage they gave to various characteristics and the field conditions in which the equipment was subjected to trials. These had to be integrated, coordinated and harmonised at the level of the General Staff. It was, therefore, rightly decided by the Negotiating Committee that the Unit Level evaluation reports need not be circulated and the Committee should trust the judgement of the Army Headquarters.

5.70 So far as the question of making available the G.S.Q.R. to the Negotiating Committee was concerned, the Defence Secretary explained in evidence that no G.S.Q.R. was needed in respect of equipment which was to be procured from abroad. A G.S.Q.R. was required if the weapon/system was proposed to be produced within the country. No G.S.Q.R. had, therefore, been prepared in this case. However, a technical presentation was made for the benefit of the Negotiating Committee and a paper laying down the minimum acceptable parameters was circulated to all members of the Committee, to enable them to evaluate the various offers. During the course of his evidence, the then Secretary (Expenditure) affirmed that the minimum acceptable parameters were the quintessence of what the Negotiating Committee was required to look into.

5.71 In the light of the foregoing, the Committee have absolutely no doubt that the work of the Negotiating Committee was not in the least hampered due to the non-availability of Trial Reports and the G.S.Q.R.

5.72 In the light of the discussion in the preceding paras (No. 5.25 to 5.45) the Committee cannot but conclude that the then D.W.E. clearly exceeded his authority by undertaking a technical evaluation of the various gun systems and sought to over-ride the recommendations contained in the General Staff Evaluation of December 1982, which had the approval of the then Deputy Chief and Chief of the Army Staff. His brief lay in rendering assistance on technical matters to the Negotiating Committee rather than undertaking a technical evaluation of the guns. In any case, it is clear that no committee as such was appointed by the Ministry of Defence for the obvious reason that the job had already been done and the General Staff Evaluation Report which was the basis of technical, commercial and financial negotiations with the suppliers, was already before the Negotiating Committee.

5.73 In this connection, the Committee would like to emphasise that cost considerations are no doubt important but they cannot provide justification for going in for out-dated technology. The Committee have, therefore, absolutely no doubt in their mind that the recommendation of the so-called Technical Evaluation and Negotiating Committee headed by the then D.W.E. was rightly rejected out of hand both by the then Dy. Chief and the Chief of the Army Staff as being subjective.

5.74 The reasons why the Austrian gun was recommended only as a one-time buy and why the idea was subsequently given up are adequately explained in para 5.23 to 5.45. The Committee are fully satisfied with the same.

5.75 The Committee observe that the suggestion was made in one of the meetings of the Negotiating Committee that the gun system that had been trial-evaluated in India in 1982 had undergone several improvements consequent on the continuous upgrading in technology by the manufacturers themselves. Some of these improvements had been seen and confirmed by various Defence Delegations that went abroad during the relevant period. But all these improvements had neither been conclusively tested nor confirmed otherwise in a satisfactory manner in Indian conditions. It was, therefore, suggested that at the time of short-listing two gun systems, viz. SOFMA and BOFORS, fresh trials should be carried out at least on a limited basis confined to certain critical areas.

5.76. The then Secretary (Expenditure) explained that while a fresh evaluation would have been ideal, it would have been a time-consuming process. The trials themselves would have taken at least one more year

and thereafter, it would have been necessary to invite fresh offers and negotiate the terms afresh and this would have taken another two or three years. The Army was not prepared to lose that much time. The Negotiating Committee, therefore, decided to rely on the judgement of the Army Headquarters in the matter. The Chief of the Army Staff confirmed before the Committee that the defects which were noticed during the trials in India and which were pointed out to the suppliers, were all rectified/modified to their satisfaction before the contractual stage.

5.77 The Committee find that in the assessment and grading of each system provided by the Army Headquarters at the instance of the Negotiating Committee on 24th August, 1984, the fact was reiterated that "we cannot base any decision purely on the claims made by various firms" and that those systems which had not made the grade were only included in negotiations for financial advantage. It was further observed that taking into consideration all aspects of the four gun systems, the British and the Austrian gun systems were not acceptable to the Indian Army. Of the remaining two gun systems, their grading was that the French gun met their requirements most and the Swedish gun was the second best. In February, 1985, the Army Headquarters again recommended that the French gun and the Swedish gun may be short-listed at the earliest. On 19th March, 1985 the Army Headquarters reiterated their rating and requested the Ministry of Defence to finalise the case for selection of the 155mm gun system at the earliest "so that our operational preparedness does not continue to remain adverse."

5.78 The Committee observe that in the final technical evaluation of the 155 mm. towed gun systems submitted to the Ministry of Defence by the Army Headquarters on 17th February, 1986, it was stated that keeping in mind the capability to meet current and future operational requirements, the Swedish Bofors 77B had a clear edge over the French SOFMA TR 155 gun.

5.79 Explaining the reasons for the reversal in priorities, the COAS has testified before the Committee that in 1982, when the general Staff Evaluation Report was finalised by him in his capacity as DCOAS, he had with the agreement of the then Chief, rated the French gun as the best, the Swedish gun as the second best and the British gun was placed at the third place. At that point of time the Army Headquarters were evaluating not just the towed gun but also the self-propelled gun, as one package. The only weapon which figured in both the lists at that time was the French gun and this aspect of commonness weighed with them very heavily. Further, a decision had also been taken to work out the feasibility of mounting the French GCT turret on one of the Tanks in use with the Indian Army,

through the efforts of DRDO. After three years of effort in this direction, it was found that for many technical considerations, the proposal was not feasible and the project was finally dropped in July, 1985. Thus, the advantages of commonality between the self-propelled gun and the towed gun system visualised in 1982 had disappeared completely from the analysis made in February, 1986.

5.80 The second main reason which turned the scale in favour of the Bofors gun system was the emergence of a new threat perception. The COAS explained that though the Bofors system had the advantage of greater degree of automation than the French system, its burst fire capability and the automation capability had not initially been given greater weightage *vis-a-vis* the French system. However, the position underwent a sea-change and the priorities had to be reassessed when, in September, 1985 and again in February, 1986, reports were received that the fire-finder radar had been included in the package of military assistance being received by an adversary. Thus, a threat which was expected to materialise in the late nineties emerged, much earlier. The fire finder radar, the only such radar which exists today, had the capability of tracking the shell in flight as soon as the first round is fired and through successive readings in space and computerised calculations, gives a very highly accurate location of the gun in a matter of 45 to 50 seconds from the time it is actually fired. Viewed in the background of the developments, the "shoot and scoot" capability of the Swedish gun assumed much greater weightage which "could not be wished away". A complete re-evaluation of the *inter se* placement of the two systems was, therefore, called for and made. A higher weightage was naturally given to the two qualities of the Bofors gun, namely "burst-fire-capability" and 'shoot and scoot' characteristic, thereby affording it a clear edge over the French gun. The Chief of the Army Staff concluded by saying :—

"At no stage of this assessment of mine for the final short listing and indicating of the Army's *inter se* preference between the Bofors and the French gun, in no way, was any suggestion or influence applied on me or on any of my staff from the Ministry of Defence or Minister of Defence or anybody in any position of authority. It was our own free exercise of judgement that we changed the *inter se* placement because of objective analysis of what we thought was a very exceedingly vital factor which had undergone changes between December, 1982 and February, 1986."

5.81 In the circumstances mentioned above, the Committee are fully convinced that the decision taken in February, 1986 to place the Bofors gun over the French gun, in what might otherwise appear as a sudden reversal of priorities, was intrinsically sound. The Army Chief would have

failed in his duty to the country had he ignored the change in the security environment during the preceding months.

5.82 The Committee observe that in so far as the range of the two guns is concerned, the French gun had an advantage over the Bofors gun. During actual trials in India the Bofors gun had achieved a range which was less than the minimum acceptable range of 28 to 30 kms. mentioned by the Experts Committee. The Committee were informed that this was due only to the fact that the standard ammunition had been used at the time of trials of the Bofors gun. The more advanced ammunitions, *i.e.* rocket assisted and base-bleed ammunitions were not available at that time. With the subsequent availability of extended range ammunition, the Bofors gun had achieved the envisaged range. This was also demonstrated to the Committee when they visited the firing range in the Western Sector. The Defence Secretary stated during evidence, that the Defence Delegation which visited Sweden had confirmed that the gun could achieve the envisaged ranges with Bofors ammunitions, extra-range full bore ammunition of Belgian origin and with U.S. rocket assisted projectiles.

5.83 The preceding paragraphs clearly bring out that the selection of the most suitable weapon system is based on very meticulous and detailed examination of various offers, that every care and precaution has been taken, including adequate testing in field trials, to identify the best weapon system for the Indian Army. It is most unfortunate that uninformed criticism has been levelled to insinuate that the Bofors field artillery system was picked up on extraneous considerations. The Committee find that there is no force in such allegations and that the best gun has been selected for the Indian Army.

VI

FINANCIAL AND COMMERCIAL EVALUATION

A. Constitution of Negotiating Committee

6.1 As stated earlier, the CCPA approved in April 1984 the proposal for the procurement of 155 mm guns (towed) along with accessories/spares/vehicles and ammunition at a total estimated cost of Rs. 1600 crores and their subsequent licensed manufacture in India. In May 1984, a Negotiating Committee comprising the Defence Secretary as Chairman, Secretary (DP&S), Scientific Adviser to Raksha Mantri (*i.e.* Secretary R&D), Secretary (Expenditure), Addl. Secretary (Deptt. of Economic Affairs), Financial Adviser (Defence Services) and the Deputy Chief of Army Staff as members was constituted for detailed negotiations with the various suppliers.

6.2 The Negotiating Committee started its deliberations in June 1984 and decided that fresh sealed technical and commercial offers should be invited from the four firms (IMS of UK, Sofma of France, Bofors of Sweden and Voest Alpine of Austria) which had been identified by the Army Headquarters. Offers were received on 23rd July, 1984. In August 1984 technical and commercial negotiations were held with all the four firms and based on these, revised offers were invited and received on 1st September, 1984. Offers were also invited from the ammunition manufacturers.

6.3 The revised offers of four gun manufacturers were examined by a Working Group. It was decided to extend the date of receipt of offers from ammunition manufacturers upto 26th September, 1984. In November 1984, all the four gun manufacturers were asked to extend the validity of their revised offer till March, 1985. Again, in April 1985, they were asked to further extend the validity of their offers till June, 1985, and also to confirm the cost of total package strictly in accordance with the requirements communicated to them.

B. Evaluation of offers

6.4 The representatives of the four gun manufacturers met a Sub-Committee of the Negotiating Committee on 2nd and 3rd May, 1985, when clarifications were sought from them with a view to evaluating the offers of all competitors on comparable technical and commercial parameters. All the four firms were asked by the Negotiating Committee to up-date their

offers and fresh commercial offers were submitted by them on 10th May, 1985. A cost comparison of the four gun systems as on that date is given below :—

Offer of 10-5-1985

	(Rs. in crores)
IMS, (UK)	— 1141.62
Bofors (Sweden)	— 1387.80
Sofma (France)	— 1310.63
Voest Alpine (Austria)	— 1015.94

6.5 It is seen from the minutes of the sittings of the Negotiating Committee held on 7th and 14th August, 1985, that its Members wanted the Army Headquarters to give their categorical recommendation on the guns acceptable to them taking into account the technical aspects, delivery schedule etc. and also clearly indicate their preferences from amongst the acceptable guns. The then DCOAS stated that the Chief of Army Staff had given his recommendation that the French gun was the best and the Swedish gun the second best and if the price difference was marginal, they should go in for the former.

6.6 In reply to a question regarding the purpose in inviting the other firms for negotiations, the Defence Secretary explained that the Negotiating Committee decided to invite all the parties in order to gain the maximum commercial advantage by retaining as many competitors as possible at that stage. Secretary (Expenditure) was also of the view that if commercial advantage was to be gained proper competition will have to be generated amongst the firms. If only Bofors and Sofma were called at the initial stages, these firms might not have given substantial reductions, as the price difference between the two firms was not substantial.

6.7 The question of short-listing of the firms was further deliberated upon by the Negotiating Committee at their sitting held on 29th October, 1985. The recommendation of Army Headquarters to shortlist only M/s. Sofma of France and M/s. Bofors of Sweden for further negotiations, was finally accepted by the Negotiating Committee which however, felt that the choice between the two was still open and would depend on a combination of technical and financial considerations.

6.8 The Committee were informed that the two firms on the short-list viz, M/s. Sofma, France and M/s. Bofors, Sweden were called for negotiations in the middle of December, 1985 and the three ammunition manufacturers in the middle of January, 1986. The commercial, contractual and technical aspects of purchase and licence production were negotiated with these parties. Discussions were also held in various working groups and periodic reviews made by the Negotiating Committee.

6.9 In their meeting held on 4th March, 1986 the Negotiating Committee noted that while Army Headquarters found that both the guns met the minimum acceptable parameters, they had expressed the view that the Bofors gun had a clear edge over the Sofma gun. The then DCOAS also expressed the view that because of the advantages noted in the Bofors gun, this gun should be procured even if it involved paying more.

6.10 In the meeting held on 12th March, 1986, the Negotiating Committee noted that Bofors had offered increased credit for the supply of components for the indigenous manufacture of the gun system under licence and it had also reduced the interest rate on DM credit. Bofors had also considerably improved the escalation formula for the Licence Agreement. The Negotiating Committee felt that, keeping in view the technical, contractual and financial aspects, the offer of M/s. Bofors was the better of the two. It recommended that, pending finishing touches to the contracts, a letter of intent may be issued to M/s. Bofors to the effect that Government would be willing to award the contract to them subject to being satisfied on all aspects of the purchase, licenced production, credit and other arrangements.

Offers for Ammunition

6.11 The rationale for inviting separate offers from ammunition manufacturers has been explained thus :—

“Since, in value terms, ammunition comprised about half the package, ammunition manufacturers were also invited to generate competition, as also to try and have a second source of ammunition.”

6.12 During evidence, the Committee enquired whether in the case of ammunition also, the same procedure was followed as in the case of the gun systems, in reply, the Defence Secretary stated :—

“That was an even more arduous exercise. Initially, the impression was that we might be able to reduce the financial implications by bringing the ammunition manufacturers also into the competition. Consequently, we let it be known to the manufacturers of this class of ammunition that we would welcome offers. As a result, a large number of ammunition manufacturers quoted. When this was examined it was found that there was no manufacturer who could supply the entire range of ammunition. On the other hand, out of the six parties which offered we found that most of the parties had offered to supply only limited quantities of ammunition.”

6.13 The Negotiating Committee at their sitting held on 4th March, 1986 confirmed their earlier decision taken on 18th February, 1986 that it would not be worth-while going in for ammunition other than that from the gun manufacturers. When asked about the reasons for taking this decision, the Defence Secretary stated in evidence :—

“We had 9 categories of ammunition to acquire for the full exploitation of the gun system. Since no single manufacturer had offered to supply all types of ammunition, this would have meant our going to a number of manufacturers of ammunition. It also meant that the gun manufacturer would have to give guarantees that their gun would give the same performance with the ammunition of a third party. Again, there were problems in the preparation of the range-tables. Finally, it was discovered that the prices offered by the manufacturers were not in any way better than the prices offered by the gun manufacturers. On the other hand, the credit terms offered by them were inferior. Keeping all these aspects into view, it was decided that it would be a lot more expedient to go in for the procurement of the gun and ammunition from the same source. This exercise, nonetheless, proved useful because it generated competition among the gun manufacturers who reduced their offer of ammunitions. We took a few months to do this but the exercise was well-worth it. Eventually, we decided on the advice of the Army Headquarters that it would be better from the point of view of technical problems of acceptability of the gun as also test-firing of the ammunition with the gun that we go to the gun manufacturers alone for the purchase of ammunition. That is the story of the ammunition.”

Comparative Prices

6.14 Detailed discussions/negotiations continued to be held by the Working Groups and the Negotiating Committee with M/s. Bofors, Sweden and M/s. Sofma, France. As to the reasons why it was considered necessary to hold negotiations with the two firms knowing that the Army was in favour of the Bofors gun, the then Secretary (Expenditure) stated during evidence :—

“Unless you have a minimum number of parties who were convinced that we are very serious, you will not get the best advantage in commercial, financial and technical terms from the party and I must state that this strategy of negotiations with two parties did pay handsome dividend in the form of financial terms.”

6.15 During the last round of negotiations held during January to March, 1986, the Negotiating Committee received several different offers for the total package from the two short listed firms. A statement showing the

comparative prices offered from time to time by these two firms during this period is given below :—

Comparative offers of Bofors & Sofma on different dates

BOFORS			SOFMA			DATE AND RATE OF CONVERSION
DATE	SEK MILLIONS	RS. CRORES	DATE	FF MILLIONS	RS. CRORES	
3-2-86	9872.195	1587.15				13-1-86 1 SEK = Rs. 1.6077
10-2-86	9652.510	1619.59	10-2-86	8759.843	1509.06	10-2-86 1 SEK = Rs. 1.6779 1 FF = Rs. 1.7227
21-2-86	8762.868	1470.32	23-2-86	8836.253	1522.22	10-2-86 1 SEK = Rs. 1.6779 1 FF = Rs. 1.7227
11-3-86	8456.906	1418.98	7-3-86	8659.527	1491.78	10-2-86 1 SEK = Rs. 1.6779 1 FF = Rs. 1.7227
		1440.72			1538.11	11-3-86 1 SEK = Rs. 1.7036 1 FF = Rs. 1.7762
21-3-86	8348.071	1427.02	21-3-86	8096.230	1436.76	21-3-86 1 SEK = Rs. 1.7094 1 FF = Rs. 1.7746
		1422.18			1438.05	11-3-86 1 SEK = Rs. 1.7036 1 FF = Rs. 1.7762

6.16 In reply to a question why several different offers were submitted by both the firms in a short span of time (January—March, 1986), the Defence Secretary stated :—

“The objective of the entire negotiations was to get the prices reduced. The objective of the new policy declared by the Prime Minister was also to get the best deal for the nation. If at certain stages the overall prices have shown an increase, it was primarily because the package of equipments that we wanted to purchase underwent changes at several stages.”

6.17 When questioned further about the reasons for making changes in the total package, he stated :—

“When the discussions were held with Bofors and Sofma, it was realised that the manufacturer’s spares provision should be enhanced from 2 years to 5 years. This itself was a major modification. We asked for an improved version of the land navigation system. We

asked for an improved version of hand-held calculator, battery computer etc. We also did not include in the earlier quotations items like cargo shells, smoke and illuminating ammunition. (24Km. range) All these items plus a few others like Fire Control Computer, Observers Data Modules were added in the package at different stages as the negotiation continued and the technical examination progressed. So, the package continued to change. On every occasion there was a negotiation and a close scrutiny of the contents of the package was made."

He added :

"Only on 10th February we reached a stage when we had finalised the package and the prices of Bofors and Sofma became comparable, i.e. the contents became comparable and like-to-like comparison was feasible. That was the stage when the prices started tumbling down under the impact of two factors namely, the elimination of the agents and the generation of a very keen competition... Bofors had quoted on 10th February, a price of Rs.1620 crores had come down to Rs.1427 crores on 21st of March which means that in a period of one month and 10 days there was a reduction of near about Rs. 200 crores.

Similarly, I will take up the case of Sofma. On 10th February, Sofma offer was Rs.1509 crores and on 21st of March, it came down to Rs.1436 crores, which was a reduction of roughly Rs. 73 crores. Such was the intensity of competition generated. As a result of negotiations and as a result of fresh conditions such as the elimination of agents, there was a massive and unexpected reduction in the prices."

The Defence Secretary further stated :—

"The CCPA had envisaged that this package would cost Rs.1600 crores and with price escalation and with additions of other various items, the package would have cost finally something like 1800 crores. On the other hand, it was brought down to Rs.1427 crores. From this point of view; this should be considered as an exceedingly successful contract."

6.18 During evidence, Shri Ganapati the then Secretary, Expenditure was asked by the Committee about his views on the procedure followed by the Negotiating Committee in the matter of selection of the Bofors gun. The witness stated :—

"There has been no flaw in the procedures or in the detailed negotiations. In fact, every possible precaution was taken to

ensure objectivity, impartiality in deciding the case and in securing the best possible terms not only financially but even more important securing the best possible weapon system that the user wanted
 As a matter of fact, the procedures followed were quite rigorous....”

6.19 In reply to a question why the negotiations were so protracted, he stated that this was on account of the fact that the negotiations embraced three aspects, *viz.* outright purchase of guns; licensing of know-how for manufacture and the question of purchase of ammunition. The view was rightly taken that all these three aspects have to be considered simultaneously to derive the maximum financial and other contractual advantages. The intention was to first buy outright and later to produce indigenously, which meant that the party which was selected should also be prepared to give the technology for producing the gun. The ammunition accounted for half the value of the contract.

He added :—

“If we had separated these three aspects, our feeling was that we would be at a disadvantage in the negotiations because once you conclude a contract the person with whom you signed the contract gets into the driver’s seat. So we decided that all these three aspects should be considered simultaneously. The complication was whether we could evaluate these offers in terms of the licensing know-how, which meant really the ultimate cost of manufacture of the gun in India. So, we decided that all the three aspects should be considered and that is what made the negotiations more prolonged and also, I would say more voluminous and more intricate.....”

6.20 The Committee enquired whether the various decisions taken in the Negotiating Committee with regard to the commercial and financial aspects were reported to the concerned Minister. The then Secretary, Expenditure, stated :

“.....We had held several meetings and crucial recommendations were made by the Committee. One was short-listing of firms and another was recommendations made during October-November, 1985 and March, 1986. These were put up to the Minister. In fact, in the Finance Ministry apart from myself, the decisions were seen by the Finance Secretary, because he is concerned with the credit aspect also, apart from the fact that he is the senior Secretary in the Ministry and also by the Finance Minister and the Defence Minister....so far as these contracts are concerned where the powers of the Secretary were very restricted, approval of the Minister in the administrative Ministry and the Finance Minister was taken.”

6.21 When asked whether the decision taken on 11th March, 1986 to ultimately recommend Bofors gun for selection was unanimous, the Secretary, Expenditure, stated :

“There has been absolutely no dissent even in discussions, final conclusions were unanimously subscribed to by one and all, without any mental reservations.”

He added :

“Even after the negotiations were concluded, i.e. in March, 1986, nobody has ever expressed any doubt and till today nobody has ever entertained any doubt about this.”

6.22 Asked whether the final recommendation of the Negotiating Committee selecting the Bofors gun keeping in view the technical, contractual and financial aspects was specifically brought to the notice of the then Finance Minister, the witness stated :

“What happened was after the Negotiating Committee had finished its deliberations, a note was put up by the Defence Ministry as the administrative Ministry on which the approval of the Finance Secretary, and the Finance Minister and the State Ministers in the Ministry of Defence and the Prime Minister, as Defence Minister was taken.”

6.23 The Committee pointed out that the final recommendation of the Negotiating Committee was approved by the then Finance Minister on 13th March, 1986. Asked whether the witness could recollect if any reservation had been expressed by the then Finance Minister (Shri V.P. Singh), the then Secretary, Expenditure, replied :

“Absolutely No. I can say this categorically because the moment I saw the file, I immediately sent it to the Finance Secretary saying that the matter was very urgent. It went to Finance Minister. If he had the slightest doubt, he would have asked the Finance Secretary or me. I was the senior officer in the Finance Department. I was the proper person to have been asked this question. Till the moment of my retirement, no question was raised.”

6.24 During evidence, the Committee pointed out that the Negotiating Committee took nearly two years to complete the work assigned to it and enquired whether this was a normal feature in such cases. In reply, the Defence Secretary stated that the negotiations got prolonged by a period of about six to eight months due to the developments in October/November,

1984 and the political changes which took place thereafter. He submitted that a period of one year for such a major negotiation should be considered reasonable.

6.25 Further elaborating the reasons why the Negotiating Committee could not meet till 7th August, 1985 after 23rd October, 1984, the witness stated :

“It is known to everybody what happened in this country on 31st October, 1984, the assassination of Mrs. Indira Gandhi and the installation of new Government and then the elections. We had a new Defence Minister on the 1st of January and the Budget Session was there. All these things took us to practically June, 1985 when we picked up the threads afresh in a more stable situation and started functioning on this again from that point onwards. As you would observe, we never looked back and it continued at a very rapid pace.”

6.26 In reply to further question whether all information and documents which the members of the Negotiating Committee wanted were supplied to them and whether every opportunity was given to them to express their point of view, considering that it was a very large deal, the Defence Secretary replied in the affirmative.

6.27 The Committee enquired from the then Secretary, Expenditure, about the main considerations with which he was concerned, as a representative of the Ministry of Finance in the Negotiating Committee. The witness stated that the Members of this Committee who were laymen necessarily had to go by the knowledge available with the experts who were also the users. His approach as a Finance representative was that it was for the user, who was technically qualified, to define his requirements and to state which system would suit him. He added :

“The financial and commercial considerations are undoubtedly important but I think they cannot be assigned the predominant role . . . particularly in this case, as things turned out, the weapon system which the Army considered most suited to them, also proved to be the cheapest. There is no conflict.”

Letter of Intent and finalisation of the Contract

6.28 In pursuance of the recommendations of the Negotiating Committee a Letter of Intent was issued in favour of M/s. Bofors on 14th March, 1986. The two Ministers of State for Defence [RRM(S) and RRM(A)] and the Minister of Finance gave their approval to the proposal on 13th March 1986 and the PM (as RM) on 14th March, 1986. Approval of P.M. (as RM) to the conclusion of the contract with M/s. Bofors was sought by the

Defence Secretary in a note initiated on 21st March, 1986 by the Joint Secretary (Ordnance) Ministry of Defence. The note sets out the various conditions/advantages of the Bofors offer. These are summarised below :—

- (i) According to the Ministry of External Affairs, the Memorandum of Understanding (MOU) was the least restrictive amongst similar MOUs. in that it ensured an uninterrupted flow of supplies and the only bar would be a U.N. Security Council (Arms Embargo) Resolution.
- (ii) The Swedish Government had given assurances for facilitating counter purchases from India for off-setting the purchases by us.
- (iii) The Swedish Government had indicated availability of credit to match our requirement of 3.1 billion kroners in a period of 90 months from the agreement. The credit will be both in Swedish and non-Swedish currencies.
- (iv) Bofors had agreed to the following further improvements in the Licence Agreement :—
 - (a) Bofors had agreed that the base prices for the SKDs would correspond to those for the equipment under the Supply Contract and would be fixed for a period of 30 months after which the escalation would be calculated on these base prices. Earlier, they had wanted the base prices (for purpose of calculating escalation after the 30 months period) to be 7.5% higher.
 - (b) Bofors had been insisting on a minimum purchase of kits at the rate of 50 guns per year in the initial 30 months to qualify for fixed prices. This would not have matched with the low production rate in the initial phases. They now agreed to a minimum quantity of 20 per year.
 - (c) Technical assistance worth 50 million Kroners was being provided free. However, Bofors were wanting to calculate this at the rate of 2,500 Kroners per man-day (although at one stage they had indicated 1800 Kroners per manday). The rate was fixed at 2250 Kroners per man-day. The price revision formula for technical assistance was also improved and an annual ceiling of 5% fixed.
 - (d) Though the transfer of know-how is free of cost, a facility of invoking the Performance Guarantee Bond to the extent of 40 million Kroners for any default was also retained.

6.29 It was further pointed out, in the above note, that as a result of successive reductions by both the competing parties, the cost of their packages had come down substantially. The position that had emerged after the latest reductions on the basis of exchange rates as on 10th February, 1986 (date of the offers), 11th March, 1986 (adopted for the last meeting of the Negotiating Committee) and 21st March 1986, is summarised below :—

Exchange rate as on	Sofma	Bofors
10-2-1986	Rs. 1394.74 crores	Rs. 1400.72 crores
11-3-1986	Rs. 1438.05 crores	Rs. 1422.18 crores
21-3-1986	Rs. 1436.757 crores	Rs. 1427.02 crores.

6.30 It was pointed out that seen from the 10th February rates, the Bofors offer would become marginally expensive but it was cheaper in terms of the exchange rates of 11th and 21st March 1986. If one were to view the discounted present values (i.e. considering the credit terms, repayment schedules covering 15 years, etc.) the Bofors figures would be slightly higher. However, this would not be a material difference considering the total values involved the technological advantages, quicker indigenous production schedule etc. in respect of Bofors.

6.31 It was further pointed out that the very substantial concessions obtained from the Bofors in the Licence Agreement had also to be kept in mind. Moreover, Bofors were providing commercial safeguards of a very sizeable magnitude by way of separate bank guarantees.

The note further pointed out the implications of the extra cost of manpower in the Sofma gun. Against a crew of 6 for the Bofors gun, the Sofma gun needed a crew of 7. Taking the large number of guns to be purchased and manufactured . . . , this would require an equal number of extra man plus followers (cooks etc.) This would mean a substantial recurring cost in terms of pay and allowances, housing, clothing, transport medicare, pensions, etc.

6.32 In conclusion, it was observed :

“Considering all these factors, it is proposed that the contracts and other Agreements may be signed with Bofors the connected financial institutions and the Swedish Government, with the assurance that we have chosen a Gun system which is better of the two as per its users. Our long association with Bofors in the defence production field (the L-70 A.A. Gun) should also mean a smoother process of setting up indigenous production.”

6.33 In his note recorded on 22-3-1986 the Defence Secretary stated that subsequent to the issue of the Letter of Intent, the following developments took place :

“The Prime Minister kindly discussed the credit aspect of the gun with his counterpart in Stockholm as a result of which we have now been assured of the availability of credit worth 3.1 billion SEK to cover the licence production of the gun system and ammunition for a period of 90 months from the date of the agreement. This has been a major break-through because this was an area of considerable uncertainty. Swedish Prime Minister has even gone on to assure that the concession in the credit rates for licence production would be of the same magnitude as for the supply contract.

(ii) Meanwhile, the French have not sat idle. They have sent a fresh offer which has two major features :—

(a) a 3.5 per cent across the board reduction; and

(b) a slight modification in the package inasmuch as they are now willing to give 30 guns free over 370 guns paid for instead of their earlier offer of 30 guns free over 400 guns paid for.

(iii) Secretary, (Defence Production & Supplies) has carried out a comprehensive discussion with M/s. Bofors on the licence production contract and has managed to obtain a number of concessions in terms of licence production.

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“After the revised offer was received, I had the benefit of a discussion with the Prime Minister who kindly advised me that we should try to get further reduction from Bofors. This I did. I, however, found that having made several concessions and having received even a letter of intent from us, they were most averse to make any further concession. Nonetheless, with very great difficulty, it has been possible to obtain from Bofors a further concession inasmuch as they would now give 10 guns free over and above guns paid for. This amounts to a concession of approximately Rs.10.5 crores.

In the offer for the package, we have achieved certain economies by deleting our requirements of Gyro Compass amounting to about Rs. 10.00 crores. The quotation of both parties has been reduced by the value of this equipment accordingly.

From the last position, keeping all the developments stated above into consideration and updating the foreign exchange rate to 21st March, 1986 the value of the quotations is as follows :

SOFMA

Rs. 1436.757 crores

BOFORS

Rs. 1427.02 crores”

The proposal to sign the contracts with Bofors was approved by the PM on 24th March, 1986.

6.34 The following agreements/documents were signed on that date :

- (1) Memorandum of understanding with Swedish Government.
- (2) Supply Contract with Bofors.
- (3) Licence Agreement with Bofors.
- (4) Cooperation Agreement with Bofors.
- (5) Credit Agreement for the supply with the Swedish Export Credit Organisation.
- (6) Credit Agreement for licence production with Swedish Export Credit Organisation.

C. Financial/Commercial Considerations in Selection of the offer of AB Bofors

(a) Terms of Credit

6.35. In the note dated 12th March, 1986 submitted for the approval of PM (as RM) to the placement of a Letter of Intent on M/s Bofors, it was pointed out that :—

“Both sides expect an advance payment of 20% and have arranged for credit for the remaining 80%. The arrangement suggested by Sofma for advance payment is better as it is in two instalments of 10% each (to be paid by 31-3-86 and 30-11-86 respectively). On the other hand, Bofors expect the 20% at one time.

Sofma have arranged for Seller's credit and there are no bank charges like commitment fee, management fee, agency fee, etc. The credit is in French Francs and the rate of interest is 8.15%. Sofma had offered to quote in Deutsch marks also and to arrange credit in that currency which might have had the effect of lowering the price in terms of Rupees. However, obtaining the quotation and credit in German currency would be speculative and is not recommended by the Department of Economic Affairs, considering the strength of that currency.

Bofors have arranged for Buyer's credit through two Swedish banks in two currencies — Deutsch marks for ammunition and goods of non-Swedish origin at an interest rate of 7.55% p.a. The net present value of the two packages.....has been calculated taking into account the credit terms (bank charges, interest rates, repayment schedules, etc.) and a discount rate of 10% p.a.”

Speaking of the credit arrangements for licensed production, the note records the following :

“Bofors had initially offered a credit of SEK 575 million till 54 months of the Agreement. On being told of its inadequacy, they have offered additional credit worth SEK 425 million in other currencies. They have offered a further credit worth SEK 2.1 billion for the following 3 years.....”

6.36 The implications of the credit offers of the two firms were explained by the then Secretary, Expenditure. He testified :—

“At that time of decision making, it has been acknowledged in the Negotiating Committee discussions that the French credit offer had a slight edge over the Swedish offer. In the evaluation made by the Department of Economic Affairs, Ministry of Finance, of the two credit offers, their view was that the two credit offers are equally acceptable. At the time when we considered and put upto the Minister for approval, it was made known that there was a slight edge in respect of cost of the credit, so far as the French system is concerned. In fact, the net present value of the French offer is less than the net present value of the Bofors offer. But, when considering the credit aspect one has to consider not merely the terms of credit and the period over which the credit runs, repayment etc. but one should also consider the quantum of credit. We were a little bit worried that the Swedish credit available for the licence production even might prove to be inadequate and did not run beyond 1990. So, after the decision was taken to give letter of intent to Bofors, further discussion took place at very high levels in regard to the expanding of the credit package. Initially, the credit availability for the licence manufacture phase was only 575 million SEKs. Thereafter, a further credit of 425 million SEK in other currencies was guaranteed and finally after discussions at higher level, the Swedish Government agreed to yet another tranche of 2100 million SEKs. In other words, the credit availability for the indigenous manufacture and assembly increased substantially from 575 million SEKs to 3100 million SEKs.”

6.37 The Committee pointed out that a view was expressed in the Negotiating Committee that the Swedish offer for credit was in two currencies viz. Swedish and German, and ultimately Government may have to pay more because of the German Deutsch mark element. Also the rate of interest on the German currency was higher in the Swedish offer than that quoted by the French. On the whole, the French credit offer appeared to have an edge over the Swedish one. Explaining the position, the Addl. Financial Adviser stated in evidence :—

“The fact that the Swedish had offered DM credit for the purchase of ammunition was fully considered in the Negotiating Committee meeting of 4th March, 1986.

Paragraph 5 of these minutes reads :

“The credit terms offered by the two parties for the purchase, as well as the licence agreement, were discussed in detail. It was noted that the Swedish offer for credit was in two currencies, and the German Marks element in the credit was a negative factor subject, of course, to how the currencies behave in the future.’

This has very clearly been put in the minutes of the meeting of the Negotiating Committee. You will also see that in the offer of both the parties, as far as the rate of interest is concerned, the interest rate for SEK is 8% while for DM, the rate of interest is 7.55%.”

He added :

“.....this was clearly recognised as a negative factor. Bofors insisted that because of the restrictions in the credit market they could not offer more than they had already offered. Therefore, it was not our asking in Deutsch mark. It is the credit which they offered..... But at the same time it was to be noted that DM was being offered at a lower rate of interest of 7.55% which was also being offered by the French party.”

(b) *Commercial safeguards*

6.38 The Committee were informed that Bofors provided commercial safeguards by way of separate Bank Guarantees for advance payments, performance and warranty at the rate 20%, 5% and 5% of the contract price, respectively, that last two being for 10 years. On the other hand, Sofma consistently resisted efforts of the Government to secure appropriate guarantees and, instead, took the line that a side letter of the French Government should suffice.

6.39 Elaborating the position about the due performance of the contract with regard to quality and technical specifications through Bank Guarantees, the then Secretary (Expenditure) stated during evidence :

“First of all there is a bank guarantee which Bofors gave for Swedish Kroners 1682 million, which represent the 20 per cent down payment or advance payment. Certain financial guarantees have been extended by Bofors for the due performance of the contract and for assuring the quality and adherence to technical specifications. All these financial guarantees are, in our estimation whenever we evaluate a contract very important because this represents a monetary assurance that we have that the contract will be carried out in the manner in which it is intended to.....when the proposition was put to the French that a similar guarantee should be given, they declined to do so. They stated that they were a Government organisation and that there could only be a letter from the French Government to the Indian Government stating that the French Government would ensure compliance with the provisions of the agreement. A paper assurance of this type cannot in my opinion, be regarded as a satisfactory substitute for substantial financial guarantees.

“The second guarantee is a bank guarantee for Swedish Kroner 420 million, being 5 per cent of the value of the contract on account of performance bond. A performance bond guarantee will allow an amount to be secured for breach of provisions of this contract by the seller. This guarantee shall remain valid until six months after the date of the last consignment as evidenced by the certificate of completion of deliveries to be provided by the buyer to the bankers.

“The third is the bank guarantee for Swedish Kroners 420 million being 5 per cent of the value of the contract on account of warranty bond for 10 years. Warranty means that the seller will supply the goods of presented quality specification. The warranty bond will be for 5 per cent of the value of the contract and shall be reduced after the expiry of warranty period and shall finally expire after the expiry of 96 months from the date of delivery of the last consignment. In other words, plenty of time is left to test the equipment after the date of delivery of the last consignment.

“Then, in respect of the details of the warranty clause, there is a significant difference between the two parties. For the Swedish gun the warranty clause is effective for three years from the date of delivery. In the case of Sofma it is three years or firing of

550 EFC rounds whichever occurs earlier In respect of the actual wording as applicable to different pieces of equipment, there is a slight edge in the Bofors warranty clause. But an important thing to note is that the warranty is backed by a financial guarantee.”

(c) *Product support*

6.40 On the question of prices for additional quantities of support equipment, which might be required in future, the witness stated as under :—

“In product support there is a significant difference between the two which is reflected in the prices that will be charged. About product support, in the Bofors contract it is stated that additional quantities of support equipment etc. shall be supplied at same prices. provided order is placed within 2 years from effective date. In the case of the French offer, it is a maximum of six sets provided the order is placed within 18 months of effective date. The price remains the same for Bofors for two years and for Sofma it is 18 months. After two years in the case of Bofors while escalation is provided at the rate of 5 per cent per annum over a period between two years and five years. The same provision is absent in Sofma clause. Then after five years the price has to be negotiated upto a period of 20 years. This negotiated price agreement applies in the case of Sofma contract immediately after 18 months. So, this gives us a greater degree of assurance that the prices would not be hiked in an unconscionable way for a longer period of time in the Bofors contract as compared to Sofma contract.”

d) *Price escalation clause*

6.41. When questioned about the price escalation clause in the contract, the then Secretary Expenditure stated :—

“In the matter of the price there is a distinct advantage in the Bofors offer in that there is much lesser order of escalation of price over a time period than in the case of Sofma because of the way the Clauses have been framed. In the case of Bofors, the basic prices are as on effective date and valid for a period of seven years from the effective date. There will be no escalation in prices ordered for delivery within 54 months and for other items ordered for delivery after 54 months, escalation will be applicable. The ceiling of escalation will be 5% per year in six years and thereafter 6% per year in respect of orders placed after 54 months. In the case of Sofma, for an order within three years from the effective date of licensed agreement, prices will be calculated

from the basic prices according to the price escalation formula. For an order coming into force after three years from the effective date, prices will be negotiated. It will be quite clear that we are leaving ourselves open in the case of the French offer to the probability of a much sharper and much earlier increase in prices of goods than in the case of Bofors. Obviously, it is not possible to quantify this because it all depends on the way prices behave but the formulation is such that advantage lies with the Swedish offer."

6.42. The Additional Financial Adviser informed the Committee that the original escalation formula for technical assistance proposed by Bofors was changed to our advantage to a great extent after considerable negotiation. Elaborating the proposal as it was ultimately agreed to, the witness stated :

"The formula which was originally offered by them had a higher component of labour. In the Western countries the labour element of cost has a tendency to go up. There is also a fixed element of cost and material cost in a formula. We were able to reduce the labour elements of costs substantially, i.e. to 54 as against 75 in the formula offered by them originally. In case of Sofma this kind of escalation formula we were not able to negotiate. So the formula which got incorporated in the contract, was much better than it originally stood. Bofors agreed to 54 for labour element, 34 for material and 12 for fixed element, as against Sofma 75 for labour, 15 for materials and 10 for fixed element out of a total of 100. You will see the difference between 54 and 75 for labour which is a major achievement."

(e) Patent Protection

6.43 The then Secretary, Expenditure, further informed the Committee that in the case of Bofors they had been able to provide for very good patent Protection Clauses which were otherwise very difficult to get. In the event of infringement of patent affecting critical items rendering the system un-exploitable, the entire contract value shall be refunded.

(f) Export Credit Insurance

6.44 The Clause relating to export credit insurance provides :

"If the buyer becomes liable to the Export Credit Corporation for any losses, costs premiums, penalties, etc. in terms of the credit agreement due to the default of the seller to perform any of its obligations under the credit agreement or contract, the buyer shall be entitled to recover such losses, cost, premiums and penalties from the seller."

(g) Production Licensing Contract

6.45 Explaining the distinct advantages of Swedish offer over the French one in the matter of production licensing contract, the then Secretary, Expenditure and the Additional Financial Adviser informed the Committee as follows :—

- (i) Bofors were prepared to give SEK 50 million worth of technical assistance and training free of charge. SOFMA had quoted 43.3 million French Francs for such assistance.
- (ii) Bofors also agreed to give feasibility report and the detailed project report free of charge, except for their fare, boarding and lodging for specialists. The French demanded 30 million French Francs for the same. The Bofors were also prepared to give the DPR in three months while SOFMA wanted eight months to do this.
- (iii) The technical literature for the manufacture of gun and vehicle was to be provided free by Bofors while it was free only for current ammunition in the case of SOFMA. The Bofors literature would be available faster as most of it was in English while in the case of SOFMA, it would have involved laborious translation. The delivery schedule of technical literature was 12 to 18 months in the case of Bofors while it was 18 to 27 months in the case of SOFMA.

6.46 Referring to the observations of the Department of Defence Production to the effect that they could not definitely say which of the two offers would be cheaper ultimately, the then Secretary, Expenditure, stated :—

“When you talk of detailed project report.....it really relates to production of two different gun systems. That is why I have confined myself only to those features in the collaboration agreement where we can make a valid comparison between the terms offered by Bofors and by Sofma. It will not be possible, as I said, unless you commission two different project reports from two different parties to see ultimately which would be the cheaper of the two in the total cost. Again there is no point in doing that when you say that the preferred gun system is the Bofors system. Surely there is no sense in preparing the detailed project report for the gun system which you do not want. That is why the Department of Defence Production took the stand that we should select the gun and then manufacture that particular gun.”

(h) Delivery Schedule

6.47 In the Ministry's note of 12th March, 1986, submitted to RM, it was pointed out that the delivery schedule of Bofors was better because the first lot of 12 guns was to be delivered within 3 months of the down payment. This would help the Army in training of personnel and in handling and maintenance of the equipment before the bulk supplies started flowing, from the 8th month of the down payment. The last delivery from Bofors would be in month 51. Against this, the delivery schedule of Sofma started in the months 8 (after the first down payment) and ended in month 52.

(i) Counter-Purchase Clause

6.48 In regard to the counter purchase Clause in the contract with Bofors the then Secretary, Expenditure, explained that the requirement of counter trade as a policy was announced at a very late stage when the negotiations had been practically completed. He stated :

“I had some doubts as to how effective this could be at this stage. If we want to have counter trade effectively, then the negotiations on the counter trade aspect had to be made virtually a part of the tender documents.”

6.49 When asked about the effectiveness of the counter trade clause, the witness stated :

“The point is that there is an enabling clause and that enabling clause has to be implemented. Of course, having signed the agreement it is not easy to implement it because the clause is of a general nature. If counter-trade has to be effective it must be discussed at an early stage of the contract with the different parties to know who offers the best package.”

(j) Savings on Manpower

6.50 Elaborating on the financial gains that would accrue on account of less manpower needed for deployment of the Bofors gun, the then Secretary (Expenditure) stated that the Bofors gun required 6 crew whereas the Sofma required 7 crew. The saving that would accrue in manpower deployed over a period of time and comprising a certain fleet of guns would have to be reckoned. If we assume 20 years cycle with the deployment of say 1400 guns, the saving over 20 years life cycle at today's cost of manpower in the army would amount to approximately Rs. 125 crores. As these savings would accrue over a period of time, the commonly accepted financial criterion that the value of money at a future date had to be reduced to the value of money at today's date would also have to be taken into account. On the other hand, if this amount of Rs. 125 crores is included on the basis of today's cost—and today's costs keep on escalating—the discounting that we take tion

account in reducing the future saving *vis-a-vis* the present value would be affected by and large by the fact of inflation and the fact that the future per man cost would be more than the present per man cost.

If, therefore, notice is taken of this broad factor, the difference in financial terms between the deployment of the Bofors system and the deployment of the other system would be in the region of Rs. 130 to 135 crores.

(k) *Net Present Value of the two contracts*

6.51 The Committee pointed out that in the agreement with Bofors it had been agreed that 20% of the contract amount would be payable in advance. The French, on the other hand, had demanded advance payment in two instalments of 10% each. Asked to state whether the financial implications of the advance payment to Bofors in terms of loss of interest, etc. had been taken into account, the Additional Financial Adviser stated :

“The various financial obligations like advance payments to be made to Bofors and Sofma as well as their repayments were computed through a computer. An expert team had gone into it very rigorously and according to the standard method of calculation and as per the computer result, the value that we arrived for Sofma was Rs. 1126.37 crores and for Bofors it was Rs. 1140 crores. This was also referred to when Shri Ganapathi stated that N.P.V. (Net Present Value) was calculated and the Negotiating Committee was made fully aware of the respective calculations.”

6.52 The Committee desired to be furnished a note giving detailed calculations of the Net Present Value of the offers made by M/s Bofors and Sofma. The Ministry of Defence accordingly furnished photo copies of the computer print-outs showing the working of the Net Present Value of offers of both the firms as on 11-3-86 and estimates for 21-3-86 consequent to further reductions in the offers made by the two firms after 11-3-86. The Ministry have pointed out that while computing the Net Present Value of the offers the delivery schedule of the gun and ammunition, all elements of cash flow, including advance payment, repayment of principal and interest, financing charges, etc., were included. The position that emerged is as shown below :—

Net Present Value as on

	11-3-1986	21-3-1986
Bofors	SEK 6757.755 Million (Rs. 1151.25 crores)	SEK 6670.776 Million (Rs. 1140.303 crores)
Sofma	FF 6788.831 Million (Rs. 1205.83 crores)	FF 6347.201 Million (Rs. 1126.37 crores)

[The figures in Rupees are on the basis of Exchange Rates as on the respective dates].

6.53 With regard to the financial effect of the offer of Sofma to accept the advance payment in two instalments of 10% each as against the Bofors' demand of 20% in one instalment, the Ministry have confirmed that this factor was also taken into account while calculating the Net Present Value and it was found that the Net Present Value of the Sofma offer was relatively lower than that of the Bofors offer by Rs. 8.84 crores on this account.

6.54 Asked to state his overall assessment of the quality of the gun *vis-a-vis* the outlay involved, the then Secretary, Expenditure, stated :—

“I can tell you without any reservation whatsoever—and this is a view I had expressed to my colleagues—that this is the best gun system that we could get at the best possible terms. I would also say that before we started these negotiations if you refer to the CCPA papers, you will find that on the basis of the budgetary quotations received and their own intelligence, the Army Headquarters had estimated the value of the package—which was Rs. 1600 crores way back in 1984—and in 1986 despite any escalation, we have managed to get the package at about Rs. 1400 crores. In my experience, I have rarely come across a case where the actual price obtained is well within the earlier expectations. In practice, we exceed budgetary quotations. Various reasons are given. But here is an example of keeping well below the indicative price, to which the approval of the Cabinet was received. I think this is any important plus-point. So, I do not think we could have done any, better. The feeling which I got was one of a very keen competition *i.e.* to get the order. That is why we got successive improvements in the matter. There is no point in discussing with the Austrians and others. In the very first meeting, I remember to have said that we should not go in for the three-nation gun, because thereby we would be exposing ourselves to the whims and policies of the Governments who control this. I can categorically say that we have got the best possible bargain. One important factor which we kept in mind and which cannot be quantified, but which is qualitatively important, is the very strong R&D back-up which would be available.”

6.55 Concluding, the then Secretary (Expenditure) stated :—

“Financially it was the cheaper offer. Commercially the terms were more to our advantage than Sofma offer. The third deciding factor was the credit terms, *i.e.* Swedish Kroner *vs.* the French credit terms. Credit terms were evaluated as practically the same. Whichever angle you look at it—from the point of view of technical factors or financial factors or commercial factors—Bofors offer had a distinct advantage over the Sofma offer.”

D. Observations/Conclusions of the Committee

6.56 The Committee find that in pursuance of the decision of the Cabinet Committee on Political Affairs, a Negotiating Committee under the Defence Secretary was constituted in May, 1984 (as per para 6.1) for detailed negotiations with the four supplier firms, namely IMS (UK), Bofors (Sweden), Sofma (France) and Voest Alpine (Austria). The Negotiating Committee commenced its work in June, 1984 and gave its final recommendation for placing of the contract with M/s. Bofors on 12th March, 1986. The Defence Secretary explained that the negotiations got prolonged by a period of about six to eight months due to political changes which took place during this period (in the aftermath of the assassination of the then Prime Minister). He submitted that a period of one year should be considered reasonable for finalising such a major contract.

6.57 The Committee note that the decision of the Negotiating Committee to initially invite all the four parties for negotiations even though it was known that the Army Headquarters were in favour of short-listing only two firms, viz. Bofors and Sofma, was to gain commercial advantage by generating competition amongst them. This strategy paid handsome dividends in so far as the Negotiating Committee were able to get substantial reduction in the prices both from Sofma and Bofors.

6.58 The Committee observe that a decisive stage in the negotiations with the two final contenders, viz. Sofma and Bofors, was reached on 10th February, 1986 when the package and the prices thereof quoted by the two firms became comparable. In the words of the Defence Secretary, "that was the stage when the prices started tumbling down under the impact of two factors, namely the elimination of the agents and the generation of a very keen competition." During a period of 40 days between 10th February and 21st March, 1986, the prices of the Bofors came down from Rs. 1620 crores to Rs. 1427 crores while in the case of Sofma the prices came down from Rs. 1509 crores to Rs. 1436 crores, i.e. there was a reduction of nearly Rs. 192.5 crores by Bofors and Rs. 73 crores by Sofma.

6.59 The Defence Secretary further pointed out to the Committee that the C.C.P.A. had envisaged that this package would cost Rs. 1600 crores and with price escalation and addition of various other items the total cost would easily have been of the order of Rs. 1800 crores. In actual fact, it was brought down to Rs. 1427 crores. He stated that from this point of view, this should be considered as an "exceedingly successful contract."

6.60 The then Secretary, Expenditure who has examined at great length by the Committee, with regard to the procedure followed by the Negotiating Committee as well as the financial and commercial terms of the offers of

various parties affirmed that there had been no flaw in the procedures and every possible precaution was taken to ensure objectivity and impartiality in deciding the case and in securing the best possible terms as well as the best possible weapon system that the user wanted. Accordingly to him, the procedures followed were "quite rigorous". He also affirmed that there had been absolutely no dissent in the Negotiating Committee and that the final conclusions were subscribed to by one and all without any mental reservations. He went on record to say that even after the negotiations were concluded in March, 1986, "till today, nobody has ever entertained any doubts about this."

6.61 In reply to a question whether the final recommendation of the Negotiating Committee selecting the Bofors gun keeping in view the technical, contractual and financial aspects, was specifically brought to the notice of the then Finance Minister, the then Secretary (Expenditure) affirmed that after the Negotiating Committee had finished its deliberations, a note was put up by the Defence Ministry as the administrative ministry on which the approval of the Finance Secretary and the then Finance Minister and the State Ministers in the Ministry of Defence and the Prime Minister, as Defence Minister, was taken. Further asked if the then Finance Minister had expressed any reservation, the witness replied :—

"Absolutely No. I can say this categorically because.....the moment I saw the file, I immediately sent it to the Finance Secretary saying that the matter was very urgent. It went to Finance Minister. If he had the slightest doubt, he would have asked the Finance Secretary or me. I was the senior officer in the Finance Department. I was the proper person to have been asked this question. Till the moment of my retirement, no question was raised."

6.62 As regards the procurement of the ammunition, which in value terms amounted to nearly half of the total cost of the contract, the Negotiating Committee decided, and quite rightly, that with a view to deriving the maximum financial, commercial and other contractual advantages, all the three aspects, namely outright purchase of guns, the ammunition and licensing know-how for their manufacture should be pursued simultaneously.

6.63 The Committee find that even though initially three ammunition manufacturers were short-listed and called for negotiations, the Negotiating Committee finally decided to go in for the gun and the ammunition from the same source when it was found that there were problems in obtaining guarantees from the various parties with regard to the compatibility of the gun with the ammunition, preparation of range tables, etc. It was also found that the prices offered by the manufacturers were in no way better while on.

the other hand, the credit terms offered by them were inferior. The Negotiating Committee decided to accept the advice of the Army Headquarters that it would be better, from the point of view of technical problems of acceptability, as also the need for test-firing of the ammunition with the guns, that the negotiations for the purchase of ammunition were entered into with the gun manufacturers themselves.

6.64 The Committee find that as a result of intense competition generated between the two firms, substantial reductions were obtained during the concluding stages of the negotiations, i.e. between February-March, 1986. The Committee note that M/s. Bofors reduced their offer of SEK 9872.195 million on 3-2-1986 by about 220 million SEK, to SEK 9652.510 million. On 10-2-1986, Bofors made a further substantial reduction of approximately SEK 890 million in their revised offer of SEK 8762.868 million, submitted on 21-2-1986. During the last stages of the negotiations, on 11-3-1986, M/s. Bofors again reduced their prices considerably from SEK 8762.868 million to SEK 8456.906 million, involving a reduction of about SEK 306 million. Finally, on 21-3-86, Bofors reduced their price from SEK 8456.906 million (as on 11-3-86) to SEK 8348.071 million, by offering 10 Guns free.

6.65 Similarly, the French firm also offered sizeable reductions in their revised prices. However, the quantum of reductions by the French firm were lower than those of the Swedish firm. On 10-2-86, the French firm reduced their price from FF 9740.501 million to FF 8759.843 million, involving a reduction of FF 980.658 million. On 23-2-86, Sofma readjusted their price slightly upwards, from FF 8759.843 to 8836.253 to include the price of PCB Module Repair which was not indicated by them earlier. The French firm reduced their offer of FF 8836.253 million to FF 8659.527 million on 11-3-1986 and finally to FF 8096.230 million on 21-3-1986, by offering 30 guns free.

6.66 The Committee further observe that on the date the Negotiating Committee made their recommendation, the offer of M/s. Bofors was cheaper than the offer of M/s. Sofma, by about Rs. 97 crores. The French firm offered their final rock bottom price of Rs. 1436.76 crores on 21-3-1986 which involved a reduction of Rs. 101.35 crore over their previous offer, made on 11-3-1986. This price could be considered the floor price for the French system because the letter of intent had already been placed on Bofors and the imminent danger of losing the contract would have prevented the French from keeping any margin in reserve. Even with such a large reduction, i.e. over Rs. 101 crores, Sofma could not match the final offer of M/s. Bofors. On 21-3-86, the final offer of Bofors was Rs. 1427.02 crores as compared to Sofma's offer of Rs. 1436.76 crores.

6.67 The Committee note that the Net Present Value of both the offers was computed by an expert team taking into account the delivery schedule

of the gun and ammunition, all elements of cash flow, including advance payment, repayment of principal and interest financing charges, etc. According to the standard methods of calculation and as per the computer result the value of the Bofors offer was Rs. 1151.25 crores on 11-3-1986 as against Rs. 1205.83 crores of the Sofma offer. The subsequent reductions made by the two firms resulted in the value of the Bofors offer being of the order of Rs. 1140.30 crores on 21-3-86 as against Rs. 1126.37 crores, of the Sofma offer. The Bofors demand of 20% advance payment in one instalment was duly taken into account while calculating the Net Present Value and it was found that the Sofma offer was cheaper by Rs. 8.84 crores on this account. Overall, the Net Present Value of the Bofors offer was lower by nearly Rs. 54.5 crores as on 11-3-1986 and marginally higher by Rs. 14 crores (approx.) on 21-3-1986 (due to fluctuation in exchange rate).

6.68 It is also to be noted that another invisible but substantial advantage which the Bofors gun provides is in the matter of man-power. Whereas the Sofma gun requires a crew of 7, the Bofors gun requires a crew of 6 only. Considering the number of guns to be developed eventually, the operating cost of the Bofors gun would be cheaper by about Rs. 125 crores at the current cost of manpower over a period of 20 years which is the normal life cycle of a gun. The Director General, Artillery is in fact on record having said that the gun could be handled even by a crew of two.

6.69 The Committee find that in several material respects, the Bofors offer had distinct advantages over the French offer as would be seen from the details given in the earlier part of this Chapter. The Committee would like to draw attention to a few of them.

6.70 To take the terms of credit first, the Committee find that the French offer had a slight edge over the Swedish offer. Sofma had offered to arrange for seller's credit with no bank charges like commitment fee, management fee, agency fee, etc. and the rate of interest offered was 8.15% p.a. They had also offered to quote as well as to arrange credit in German currency which might have had the effect of lowering the price in terms of rupees. The Department of Economic Affairs were of the view that obtaining the quotation and credit in German currency would be speculative. Considering the growing strength of that currency, they did not recommend this course of action. Bofors offered to arrange for credit through two Swedish Banks in two currencies, viz. Deutsche Mark for ammunition and goods of non-Swedish origin at an interest rate of 7.55% per annum and the other in Swedish Kroners. Regarding the quantum of credit offered in support of licence production arrangements, initially, Sweden offered a credit of SEK 575 million. On being told of its inadequacy, they offered another credit worth SEK 425 million in other currencies. Finally, after discussions at higher level, the Swedish

Government agreed to yet another tranche of 2100 million SEK. Thus, the total credit availability for licence production was of the order of 3.1 billion SEK (both in Swedish and non-Swedish currencies) available for a period of 90 months from the agreement.

6.71 Considering the quantum of credit and the need to cover the requirements of funds for indigenous manufacture and assembly of the gun system, it was decided to accept the Bofors proposal. However, the fact that this was a negative factor in the contract was clearly brought out not only in the meetings of the Negotiating Committee, but the relative credit terms were also taken into account while calculating the Net Present Value of the contract. In this connection, attention of the Committee was also drawn to the fact that the credit in German currency was being offered at 7.55% per annum interest, which was lower than the rate of interest of 8% p.a. on the Swedish currency. The French party had also offered credit in German currency at the same rate.

6.72 In regard to the price escalation clause for licensed production, the Committee find that the Bofors offer was distinctly superior in that it contained a much lower order of escalation in price over a period of time, compared to the French offer. It was provided in the Bofors offer that there will be no escalation in price for items ordered for delivery within 54 months. Thereafter, the escalation will not be more than 5% per year for the next six years and 6% per year in respect of orders placed after 54 months. In the case of Sofma the price escalation clause would have been applicable from the effective date of licence agreement and the prices were to be calculated from the basic prices according to a price-escalation formula, for orders within the next three years. Thereafter, the prices were to be re-negotiated. The then Secretary (Expenditure) was of the view that although it was not possible to quantify the financial gain on this account, taking into consideration the terms offered by both the parties it would be quite clear that "we are leaving ourselves open in the case of the French offer to the probability of a much sharper and much earlier increase in price of goods than in the case of Bofors."

6.73 The Committee further observe that Bofors had provided substantial commercial safeguards by way of separate Bank Guarantees for advance payments, performance and warranty at the rate of 20%, 5% and 5% of the contract price respectively, the last two being for 10 years. On the other hand, Sofma consistently resisted efforts of the Government to secure appropriate guarantees and instead took the line that a side letter of the French Government should suffice.

6.74 With regard to the production licensing contract, the Committee understand that the Bofors offer provides for 50 million SEKs worth of

technical assistance and training free of charge, whereas Sofma had quoted 43.3 million French Francs for such assistance. Bofors also agreed to give the feasibility report and the detailed project report free of charge, except for the air fare, boarding and lodging expenses for the specialists which would be paid by the Government of India. The French demanded 30 million French Francs for the same. The Bofors offer was also more favourable in so far as the DPR was to be given within three months, whereas Sofma wanted eight months to submit this document. Likewise, the delivery schedule of technical literature was 8 to 12 months in the case of Bofors while it was 18 to 27 months in the case of Sofma.

6.75 In the matter of prices to be charged for additional quantities of support equipment, the Bofors contract provides for supplies at the same prices for orders placed within two years while in the case of Sofma the offer was for a maximum of six sets provided the order was placed within 18 months of the effective date. Bofors offer also limited the escalation to 5% per annum over a period between 2 and 5 years whereas in the case of Sofma this provision was absent and the prices would have to be negotiated. Thus, the Bofors offer gave a greater degree of assurance that the prices would not be hiked in an unconscionable way.

6.76 Over all, the Committee find that the Bofors offer was not only financially cheaper but commercially its terms were much more advantageous than those offered by Sofma. Coupled with other factors, such as the availability of substantial credit and the assurance of uninterrupted flow of supplies contained in the Memorandum of Understanding between the two Governments, the Committee have no hesitation in saying that the Bofors offer had a clear edge over that of Sofma.

6.77 To conclude, the strategy adopted by the Negotiating Committee generated intense competition among the suppliers and it became possible to achieve a reduction of more than 15% during the final stages of the negotiations with Bofors over the offer made by them on 10-2-1986, which in terms of Indian Rupees amounted to a saving of approximately Rs.192.5 crores. So far as the other terms of the contract are concerned, the Committee find that the Bofors offer was in many respects more advantageous in financial and commercial terms as well as in the matter of licensed production compared to the Sofma offer. As stated by the then Secretary (Expenditure) : "Financially it was the cheaper offer. Commercially, the terms were more to our advantage than the Sofma offer.....Credit terms were evaluated as practically the same. Whichever angle you look at it—from the point of view of technical factors or financial factors or commercial factors—Bofors offer had a distinct advantage over the Sofma offer".

6.78 After a detailed consideration of various facets of the deal as discussed in this Chapter, the Committee have no hesitation in concluding that a superior gun system has been purchased from M/s. Bofors at less than the floor price offered by M/s. Sofma for a relatively inferior system. Considering the substantial financial gains and the various terms of the contracts, the Committee consider that the Negotiating Committee was eminently successful in the task assigned to it and the considerable time taken (about a year and 9 months) in concluding the contracts ultimately proved to be highly advantageous to the country.

VII

PAYMENTS MADE BY BOFORS

7.1 The Committee are required to ascertain the identity of the recipients of the payments ranging from SEK 202-282 million (as per the report of the Swedish National Audit Bureau) and the services for which they were paid. If there is *prima-facie* evidence of Bofors having made any other payments for securing the Indian contract, the Committee are also required to ascertain the identity of those who received such payments.

A. Agents in defence deals

7.2 The former DCOAS Lt. Gen. H. Kaul (Retired) in his evidence informed the Committee that the practice of utilising the services of agents in procurement of defence equipments had been in vogue earlier. According to him, this practice had definite advantages as through this process the Army came to know about the developments taking place in the field of equipments in various countries as also the shortcomings of different systems.

7.3 The former Secretary, Expenditure, (Shri R. Ganapati) also stated that as per Government of India's extant instructions at that time, engagement of Indian agents for any transaction in regard to import of services, technology, equipment etc., was not precluded. The only requirement was that the Indian agent had to be identified; he was required to declare his commission; and the same was to be paid in Indian rupees. He further added that normally whenever there were agents, they also participated in the discussions held in the Ministries. According to him, the Indian agents were inevitable concomitants of foreign parties.

7.4 The question of appointment of Indian agents in relation to the purchase of 155 mm guns was first raised in the Negotiating Committee meeting held on 31st July, 1984. Para 10 of the minutes reads as under :

“The Committee discussed about the appointment of Indian agents by the four firms. The Committee were also informed in the meeting about the details of the Indian agents appointed by the four firms. Secretary (Exp.) was of the view that while conducting negotiations, an exercise may be undertaken for reducing cost by reducing the percentage commission being offered to the Indian agents.”

7.5 When asked to explain the circumstances in which the question of appointment of agents was raised at the sitting of the Negotiating Committee, the Defence Secretary stated :

“We had a standard practice that before negotiating, we asked the parties to give details regarding agents. So, in pursuance of that directive we had asked all the 4 firms to give details. These details had been received and these were reported to the Negotiating Committee. It was in this background that this subject came in.”

7.6 The Defence Secretary further added that prior to November, 1984 there were no directives that there would be no agents whatsoever. On the other hand, there was a system of regulation inasmuch as the firms were asked to declare if they had an agent and if so, to give details about those persons. According to him, the objective was (a) not to be taken unawares; (b) to reduce the commission; and (c) to make sure that the commission when paid was duly accounted for.

B. Prohibition on employment of agents

7.7 The Defence Secretary informed the Committee that in November 1984, when the new Government under the present Prime Minister took over, it was decided that henceforth defence contracts would be transacted and concluded totally without agents and that “the deal would be totally and exclusively between the Government of India on the one side and the manufacturers on the other”. Accordingly, the senior most representatives of all the four contenders for supply of 155 mm guns were called by him on 3rd May, 1985 and informed that the Government of India would not permit the involvement of Indian agents, acting for the foreign suppliers. They were therefore, requested to make suitable reduction in their offers in case they had kept any commission for payment to the Indian agents. They were also warned that the Government of India would disqualify a firm in case it came to notice that an agent had been appointed in connection with the contract.

7.8 Asked about the reaction of the four contending firms, the Defence Secretary stated :

“....M/s IMS of UK informed that they were a U.K. Government owned Public sector company The French firm informed on 7-5-1985 that they had agreed to consider as null and void the information handed over to Ministry of Defence in August, 1984 about their agent and this came through a letter. The letter reads as follows :

“Further to your request, we send you this letter to confirm that we agree to consider as null and void that certificate handed over

to your Services in August, 1984 concerning the role of H.E.I. (Hindustan Exports and Imports Company), Bombay, in this connection.”

7.9 In regard to the reactions of the Austrian and Swedish firms, it was stated that their revised quotations received on 10th May, 1985 were lower than the earlier offers but they did not specifically mention that the reduction in prices was on account of the removal of agency commission.

7.10 The committee enquired whether the prices were actually brought down as a consequence of removal of agents. The Defence Secretary stated :

“This had a very important impact on all the suppliers. They took notice of this warning. It was mentioned to them repeatedly when they met the Members of the Negotiating Committee as well as the Chairman of the Negotiating Committee separately. It was clarified to them that the new Government policy does not admit of any such employment of agents. This was a major factor which resulted in the reduction.”

7.11 The Defence Secretary further informed the Committee that the question was also raised in the talks between the two Prime Ministers—Shri Rajiv Gandhi and Mr. Olof Palme when they met in New York in October, 1985. In January, 1986 Prime Minister Olof Palme informed our Prime Minister that Bofors had declared their wish to conclude business directly with the Indian Defence Ministry without any middle-men. Bofors also wrote directly to the Defence Secretary in March, 1986 stating that there were no middlemen in the transactions.

7.12 In the course of his evidence before the Committee, the Defence Secretary further added :

“Upto the point the Price Negotiating Committee was functioning which is March, 1986 when the contract was signed, there was no such evidence. On the other hand, the advice given to us was that there will be no middleman. This is the assurance that we have received.”

7.13 In reply to a specific question, the Additional Secretary, Ministry of Defence stated in evidence :

“The Negotiating Committee much less the Chairman was never dealing with any agent of any of the companies.”

7.14 The Defence Secretary also affirmed that “to the best of our knowledge, there were no middle-men in this transaction” and that he had

never dealt with the Anatron General Corporation either before the contract or after signing of the contract.

7.15 The Committee drew the attention of the Defence Secretary to the fact that even though Bofors had been told about Government of India's policy with regard to agents in May, 1985, they informed the Government as late as on 10th March 1986 that while they did not have any representative/agent especially employed in India for this project, they did have M/s Anatron General Corporation for providing administrative services to their personnel in India. The Defence Secretary stated that they had not laid down any time limit within which they were expected to respond. He added :

“In fact after having put them on this warning, a formal response was not expected. But it was quite clear that we would satisfy ourselves fully before we entered into the final deal “....it was a condition precedent to the finalisation of the contract. We had not asked for any communication in writing when we talked to them on 3rd May (1985).”

7.16 The Committee enquired from the Defence Secretary as to why the condition that there would be no middleman in the deal was not incorporated in the contract signed with Bofors, to which he replied :

“With the understanding which we had arrived at, it was not considered at that time essential that it should also be incorporated. Perhaps with hindsight, it might appear that this could have been done. We are now trying to do this. But the question regarding its enforceability still remains open because we are advised legally that an infringement of such a clause, even if it were to have been entered into the contract; it would have been a very difficult one to enforce without the modification/amendment of the existing Act.”

C. Steps taken by the Ministry of Defence to ascertain details of pay-offs

(a) *Swedish Radio Broadcast*

7.17 It is seen that for the first time on 17th April, 1987, several newspapers carried reports of a Swedish Radio Broadcast the previous day that bribes had been paid to senior Indian politicians and key defence figures to win a contract which was awarded by the Government of India to M/s Bofors of Sweden on 24th March, 1986 for the purchase of FH 77B 155 mm guns. The Swedish Radio repeated the allegation on 17th April, 1987 adding that it had documentary proof of the pay-offs in four instalments to Indian accounts in Swiss banks.

7.18 During evidence the Committee enquired from the representatives of the Ministry of Defence as to what was their first reaction to the above allegation made by Swedish Radio. The Additional Secretary, Ministry of Defence stated as follows :—

“When the broadcast was published in our national media the Parliament was in session. Naturally there was a great deal of concern and excitement about the allegation which was quite serious by any standards. This prompted us in the Ministry of Defence directly and through the Ministry of External Affairs and our Ambassador in Stockholm to ask Bofors and the Swedish Government to tell us what exactly the allegation was.”

(b) *Correspondence exchanged between the Governments of India and Sweden and A.B. Bofors*

7.19 The correspondence that was exchanged between the Government of India and the Government of Sweden on the one hand and the two contracting parties, on the other, as well as the notes exchanged at diplomatic level between our Ambassador in Sweden and the Swedish Ministry of foreign Affairs were laid on the Table of the Lok Sabha by the Minister of Defence on 26th August, 1987, and are public knowledge. The Committee would therefore, not like to go into the details thereof except to recall in brief some of the important communications highlighting the position taken by the parties concerned *viz.* the Government of India, the Government of Sweden and AB Bofors during the period April to September, 7, *i.e.* till the time the Committee themselves started their inquiry into the whole affair.

7.20 On 21st April, 1987 in a *Note Verbale* to the Swedish Ministry of Foreign Affairs, the Embassy of India in Stockholm, requested the Swedish Government to investigate the matter and inform the Embassy whether there had been any violation of the commitment made to the Government of India and to take the required action on their side.

7.21 In their letter of 24th April, 1987 sent to the Indian Ambassador in Sweden M/s. A.B. Bofors clarified the position as to whether a middleman or middlemen had been used to win the contract of 1986. The said letter stated *inter alia* :

“Regarding India, the situation was that Bofors were represented by the firm of Anatronik with the principal owner Mr. Win Chadha until 1985. During 1985, when negotiations between Bofors and the Indian Government began to take on a concrete shape, it was stated that no agents could be accepted by the Indian Authorities. In view of that Bofors cancelled their agreement with

the firm of Anatronc and Mr. Chadha, and drew up a new agreement for administrative service which was for Bofors' own personnel in India. For these services, compensation of 100,000 Swedish kroners per month was to be paid starting from January 1, 1986.

The statement made by AB Bofors that no middleman/representative/agent was used by Bofors to represent the company with the Indian Authorities to win the contract in 1986 was correct. Contract negotiations and other contracts took place directly between the Ministry of Defence and Bofors'. Consequently, no middleman was used to win the contract of 1986.

Bofors has not made any payments of the kind alleged by the media. Those payments that were made during the time in question, and possibly have given rise to erroneous conclusions, were in accordance with the contract for the reimbursement of consultant services within the areas of marketing and counter purchasing. The payments referred to by Swedish Radio were made to a Swiss Company and are completely legal in accordance with the Swedish currency regulations and other relevant Swedish regulations. The stated payments have not been paid to any Indian company or Indian citizen and have no connection with the winning of the contract of 1986."

7.22 In their telex message dated 15 May, 1987 A.B. Bofors stated *inter alia* :

"The contract signed by the Indian Ministry of Defence and AB Bofors on March 24, 1986 contains no clause concerning payment of commission.

Neither does there exist any other contract with India, neither between the Indian Government, nor any other Indian party, and AB Bofors which provides for the payment of commission in connection with winning the said contract.

The allegation on Swedish Radio on May 13 1987, that AB Bofors "informed Swedish Central Bank that payment of commission to Indian agents was a part of the Indian Contract" is entirely wrong.

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The allegation that the contract signed by the Indian Ministry of Defence and AB Bofors in March 1986 includes a condition for the payment of commission is entirely false and we hereby state that no such clause exists.

As previously intimated, AB Bofors has placed itself at the disposal of the National Accounting and Audit Bureau in their

the contract were not borne out by the findings of the National Audit Bureau. The letter stated *inter alia* :

“In the context of your aforesaid repeated assertions, we are constrained to observe that :

- (i) The report of the Swedish National Audit Bureau establishes :
 - (a) that an agreement exists between M/s. AB Bofors and,*
.....concerning the settlement of commission subsequently to the FH-77 deal;
 - (b) that considerable amounts have been paid subsequently to, among others, M/s. AB Bofors' previous agents in India;
 - (c) that to wind up previous arrangements, costs of 2-3% of the order sum, *i.e.* SEK 170-250 million were incurred and the final payments were made during 1986; and
 - (d) payments totalling SEK 32 million were also made in Nov.-Dec. 1986.
- (ii) The aforesaid payments are in addition to payment at the rate of SEK 100,000 per month (*i.e.* SEK 1.2 million only during 1986) openly paid/payable to M/s Anatronic General Corporation, New Delhi, through an Indian Bank, for administrative services rendered to your company since January, 1986.”

Para 5 of this letter reads as under :

“In the aforesaid context, M/s. Bofors have not only gone against our explicit wishes but have also violated the solemn assurances given to us by your company. Consequently, we call on your company to furnish us complete information regarding the transactions in para 4 (1) above and specifically, all information in regard to the following aspects :

- (i) The precise amounts which have been paid and the amounts which are due to be paid by you by way of commission, secret payments, etc. in connection with the Indian contracts;
- (ii) The recipients of such amounts, whether they be persons or companies, and in the case of latter, their proprietors/presidents/directors, and place of incorporation;
- (iii) The services rendered by such persons/companies with reference to which such amounts have been paid;

*Names of parties withheld.

- (iv) Copies of the contracts, agreements and correspondence between your company and such recipients; and
- (v) All other facts, circumstances and details relating to these transactions, in your possession.”

7.28 In an *Aide Memoire* dated 17 June, 1987 the Government of India also requested the Government of Sweden to furnish, on the most urgent basis, complete information particularly on the following aspects :

- “(i) The precise amounts which have been paid and the amounts which are due to be paid by M/s AB Bofors.
- (ii) The recipients of such amounts whether they be persons or companies and in the case of the latter, their proprietors/presidents/directors and place of incorporation.
- (iii) The services rendered by such persons/companies with reference to which such amounts have been paid.
- (iv) Copies of all contracts, agreements and correspondence between M/s AB Bofors and such recipients.
- (v) All other documents, facts, circumstances and details relevant to these transactions.”

7.29 During evidence the Defence Secretary stated :

“.....in this *aide-memoire* we asked those very five questionsBut the basic thing in this *aide-memoire* was that at Govt. to Govt. level, we emphasized that the Swedish Government would use all their influence and their weight on the Company to furnish the information.....We also suggested that if in connection with giving clarifications to our questions it becomes necessary, over and above the report of the Swedish National Audit Bureau, to ask for investigations by any other agency, they should do so.”

7.30 In reply to the Ministry of Defence letter of 16 June, 1987 M/s. Bofors again denied *vide* their letter dt. 30 June, 1987 that any bribes were paid by them to win the contract. The Company reaffirmed that :

- “(i) They had paid winding up costs in accordance with normal practice. The said costs had not influenced the price of the contract.
- (ii) As a consequence of the requests from the Indian authorities Bofors had to reorganize their set up and marketing organization for the winning and fulfilment of the contract of 1986.”

7.31 The Defence Secretary, stated in evidence that the above letter from Bofors was examined and on 16th July, 1987 a letter was sent to Mr. Per Ove Morberg, President M/s. A.B. Bofors, Sweden stating *inter alia* :

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(2) We regret to observe, as was also pointed out by Mr. Vohra, during his brief discussions with Mr. Bredin on July 3, 1987, that your communication under reference does not answer any of the questions raised in para 5 of my aforesaid letter of June 16, 1987.

(3) Despite the lapse of a fortnight and more since my letter, your reply is based on generalities and is, to a large extent, a repetition of what had already been stated in your letter of April 24, 1987 to Mr. Bhupatray Oza, the Indian Ambassador in Stockholm.

(4) Your letter indicates that you had a cooperation agreement to generally assist you in areas such as marketing, technology transfer, engineering, counter-purchase, financing, etc. (but your external representatives were not directly involved in negotiating the supply of FH-77B because it is your Company's policy to use your own personnel based at Karlskoga when a material procurement becomes actual). It is also stated that this long standing cooperation was not limited merely to the Indian Market but to other countries as well. Finally, when, at the behest of the Government of India, these arrangements were wound up, your "counter parties" were compensated on the basis of the work carried out upto the time of termination, the length of the agreement and "certain compensation for loss of profit".

(5) It was, *inter alia*, pointed out to Mr. Bredin by Messrs Vohra and Banerji that the position taken by you raised the following further questions:—

- (i) What office/establishment was maintained by your "counter-party" in India to assist you with general marketing in this country (as, according to your own statement, your "counter-party" assisted you in more than one country) ?
- (ii) The specific circumstances in which the expenditure directly incurred by your "counter-party" in terms of the arrangements at (i) above, could be as large as SEK 282 million, as stated by the Swedish National Audit Bureau ?
- (iii) If not, the remaining amount could be accounted for only by "compensation for loss of profit". If so, how can general

marketing assistance entitle your "counter-party" to such an enormously large share in your profit/order sum ?

(6) We must, therefore, once again urge you to furnish the entire information asked for in para 5 of my letter of June 16, 1987 alongwith complete clarifications in respect of the additional questions listed in paragraph 5. As a good deal of time has already been lost, I request that your reply reaches us within a week at the latest."

7.32 In reply to Government of India's letter of 16th July, 1987 M/s. A.B. Bofors, *vide* their letter dt. 6th August, 1987 reiterated their position as under:—

"As Bofors has conducted their business for over hundred years in conformity with certain basic principles and practices, amongst which commercial secrecy has a very important place, we regret our inability to deviate from these basic principles and practices and sincerely hope that you will appreciate and accept the reasons for our inability.

We would however, like to restate that the termination costs were not paid to any Indian citizen or Indian company, consequently including any member of the Indian government and any other government official. We regret any inconvenience to those parties, who have falsely been alleged in news media.

We once again want to underline that Bofors won the contract in direct international competition and as a result of direct negotiations with the Government of India without involving any middlemen etc. We further confirm that said termination costs had no effect or influence on the total value of the contract.

It is important to stress the fact, that India, indeed, is treated by Bofors as most favoured customer, which means that the final prices in the contract are lower than comparable prices offered to any other customer.

We have learned that a parliamentary Committee is in the process of being appointed and we will of course extend our cooperation to the committee."

7.33 The Defence Secretary informed the Committee that not being satisfied with the reply of M/s. A.B. Bofors and in order to build up pressure on them to give the fullest possible information, the Government of India sent an *Aide Memoire* to the Government of Sweden on 18th August, 1987 requesting them to expedite replies to the five points raised in Govt.

of India's—*Aide Memoire* of 17th June, 1987 and an identically worded Note Verbale was handed over by our Ambassador in Stockholm to the Under Secretary of State for Foreign Trade in the Swedish Foreign Office on 22nd June, 1987.

(E) *Preliminary investigation by the Chief District Prosecutor*

7.34 In reply to the above *Aide-Memoire*, the Government of Sweden informed the Govt. of India that the Chief District Prosecutor in Stockholm (Mr. Lars Ringberg) had decided on 19th August, 1987 to initiate preliminary investigation concerning certain payments made by A. B. Bofors in connection with the Howitzer deal.

7.35 On 21st August, 1987, India's Ambassador in Sweden, sent a further *Aide Memoire* to the Government of Sweden which reads as follows :—

“Reference is invited to the press reports reporting the statement of the Chief Prosecutor, Lars Ringberg, that he has clear suspicions of bribe in Bofors contract with India and the statement of Harry Schein, Chairman of the Export Credit Board, admitting that the State subsidised export credit may have been used for paying the bribe.

The Swedish Audit Bureau's report handed over to Government of India did not give any indication of suspected bribes. Nor did the Swedish Government note forwarding this report give such an indication. This is the first time that the Government of India has learnt, and that too from the press reports that there are suspicions of bribes in this contract, although Government of India has all along asked for full report and complete clarity in the matter.

Keeping in view the gravity attributed to the statements of the Swedish public officials, the Swedish Government is requested to give the complete report of the Swedish National Audit Bureau, including the portions that have so far not been made available to Government of India, without any further loss of time. This information is vital to the work of the Joint Parliamentary Committee which is being set up by the Indian Parliament to investigate the matter. It is also necessary for the purpose of Government of India to proceed according to the law of the land against those suspected of bribery in this business.

Nothing less than complete information regarding the nature and circumstances of the payments by Bofors shall satisfy the Government of India.”

7.36 On 24th August, 1987, another letter was sent to M/s. A.B. Bofors asking some further clarifications namely:

- “(i) That your previous agent in India, who “among others” received part of “considerable amounts” was not an Indian citizen or an Indian Company. If so, why, on what basis, and for what consideration were such payments made in relation to the Indian contract ?
- (ii) Who precisely were the parties involved in your “international consultancy agreements”? Was it one party or more than one party? Was there one agreement or more than one agreement?
- (iii) If the amount paid for “winding up” or “termination” is not related to the winning of the Indian contract and would have to be paid in any case, then;
 - (a) Why and on what basis did your Company take the position before the National Audit Bureau that it was 2-3% of the order sum ?
 - (b) What was the basis of this amount to have been so large ?
- (iv) If the agreements had not been “terminated” or “wound up” what would have been the amounts payable under these agreements ?
- (v) (a) On what date/dates did your Company enter into the “international consultancy agreements” referred to in your letter?
 - (b) Whom were these agreements terminated ?
 - (c) What were the specific provisions for “termination”/“winding up” costs contained in these “international consultancy agreements” ?
 - (d) How do these compare with the actual arrangements made for “termination”/“winding up” ?
- (vi) Were the payments to the Swiss Company referred to in your letter of April, 24, 1987, part of “termination”/“winding up” of the “international consultancy agreements”?
- (vii) Does your Company have any knowledge or information in its possession, on payments made by your former agent and/or the “international consultants”, whose agreements were stated by you to have been “terminated”/“wound up”, to any Indian citizen or Indian company or any other party at the instance of any Indian citizen or Indian company; if so, please specify.”

The letter concluded by saying :—

“We demand complete and precise information be furnished to us most urgently as detailed in para 5 of our letter of June 16, 1987, and paras 5-6 of our letter of July 16, 1987, and para 3 in the present letter. We would like to make it clear that nothing short of clear and cogent answers to the various points and directions raised would satisfy us.”

(F) *Discussions by Ministry of Defence officials with officials of A. B. Bofors (Sept. 87)*

7.37 In a letter dated 4th September, 1987 the Ambassador of Sweden informed the Defence Secretary as under :

“Pursuant to our telephone conversation last night, I wish to confirm that the new Managing Director of Bofors —Mr. Per Ove Morberg together with the Chief Legal Advisor of Nobel Industries Mr. Lars Gothlin are anxious to come to Delhi for a meeting with the Minister of Defence hon. K. C. Pant, ready to come on 48 hours’ notice.”

7.38 In his reply dated 7th September, 1987, the Defence Secretary noted that the two officials of Nobel Industries were ready to come to Delhi and pointed out that :

“We have been persistently asking both Bofors and the Swedish Government especially subsequent to the Swedish National Audit Bureau’s Report to furnish us complete information regarding the payments made by Bofors, the identities of the persons/firms engaged as agents, consultants etc., the services rendered by them, the dates and details of specific amounts paid to such agents/consultants etc., copies of the contracts/agreements as well as all relevant facts relating to the transactions under reference. Despite repeated reminders, Bofors are still to supply this information..... It is suggested that Bofors team arrive in Delhi for meeting commencing on 15th September. We look forward to them to supply the complete information which we have all along been requesting from both Bofors and the Swedish Government.”

7.39 Discussions were held between the two officials of M/s. A.B., Bofors who had come to Delhi and those of the Ministry of Defence on 15th, 16th and 18th September, 1987. The information given by the representatives of the Company was passed on to the Chairman of the Committee and formed the basis of further investigation by the investigating agencies as will be seen from the paragraphs that follows.

7.40 Summing up the efforts made by the Government of India to obtain full information about alleged payments, the Defence Secretary stated :

“.....our Ambassador in Sweden and we in Delhi tried all conceivable methods of getting this information. We wrote letters; we sent telexes. Our Ambassador in Sweden talked to the Government of Sweden. We wrote letters to the Government of Sweden as well as to Bofors. Whatever could conceivably be done to collect the information was done. We took Parliament into confidence immediately. The correspondence which took place was placed before Parliament, the objective being that the entire picture should be as transparent and should be placed in as lucid and vivid a fashion before them as possible. I might say by way of general remarks that our letters were couched in stern language and sometimes we even made them threatening for the simple reason that we were wanting to put a lot of pressure on the supplier firm.”

G. Evidence of the officials of A B Bofors before the Joint Parliamentary Committee

7.41 On 16th September, 1987, the Defence Secretary, wrote to the Chairman of the Committee saying that Mr. Per Ove Morberg, President of Bofors and Mr. Lars Gothlin, Chief Jurist and Senior Vice President of the Nobel Industries were in Delhi to explain their position to the Government of India in the Bofors deal and that they would also like to appear before the Committee. He requested that the matter may be considered by the Joint Parliamentary Committee and their directions conveyed to him. At their sitting held on 18th September, 1987 the Committee agreed to avail the opportunity of examining the Bofors officials and, if necessary, to summon them again. The two officials of AB Bofors were accordingly examined by the Committee on 18th and 19th September, 1987.

7.42 In their evidence before the Committee the officials of AB Bofors, while explaining their system of working, stated that Bofors had very few subsidiaries abroad. In order to cover the world market, Bofors worked through representatives, and consultants in different countries. These consultants worked for Bofors in special areas like financing, counter purchasing and assessing the political situation in different countries. Bofors had entered into consultancy agreements of an exclusive nature with these consultants.

7.43 Towards the end of 1985 when the negotiations for the supply of 155 Bofors guns were going on, the then President of M/s. Bofors had been called by the Government authorities in Sweden and told that during

the conversations between the Prime Ministers of Sweden and India it had been made clear that Government of India would not deal with any agents while negotiating for the Howitzer deal. In order to comply with the assurances given by Bofors that no agents or middlemen will be involved in the negotiations, the Bofors terminated agreements with their consultants and agreed to pay winding up costs to these consultants.

7.44 Giving details of agreements entered into by Bofors with their consultants, the Chief Jurist of the Company gave the following figures of termination costs paid to three firms, 'A', 'B' and 'C' (names not disclosed), which had been assisting them in different fields such as marketing, technology transfer, engineering, counter purchase, financing etc. :

Agreement concluded in	Agreement terminated in	Termination cost	% of on delivery ex-works
Firm 'A' 1978	1986	188 million SEK	5.75
Firm 'B' 1979	1986	81 million SEK	3.00
Firm 'C' 1985	1986	50 million (Total : 319 SEK)	3.00

7.45. Asked to state the reasons for the discrepancies in the figures given by the witness and those given in the Report of the Audit Bureau, the Chief Jurist stated :

“.....the Audit Bureau did not take information from us and they had errors—it is perhaps the strongest word that I have. The Swedish Audit Bureau, as we know, only had the secret part of the Report read for us 30 minutes before they presented it to the Minister of Trade in Sweden.

As far as I remember from this reading, the Report does not cover what we have given you here today. We have given you much more information than the Report contained.”

He added :

“No payments based on the agreements have been made after December, 1986. The termination costs were substantially lower than the amounts which would have been paid if the agreements in force during 1985 had been applied. The final prices in the F. H. 77 contract to India are lower than comparable prices offered to any other customer.....even if we have paid winding up costs, that has not influenced the price of Indian order.”

7.46 In reply to a question whether Bofors would reimburse the amount of 319 million SEK to the Government of India, the Chief Jurist stated :

“I would not like to go into the debate concerning the violation of the contract. Our stand is very very firm and I think to have such debate in this forum is not correct. According to our opinion what we have done and the way we have handled this very extraordinary situation is in no way any violation against the contract and the clauses of the contract. this price was taken in very tough international competition. I must say that what you are discussing here is a matter between the Ministry of Defence as our customer and ourself. Just now I will not give any answer to it.”

7.47. When asked to furnish copies of contracts M/s. Bofors had with these companies and also the termination agreements, the Chief Jurist stated :—

“We will not hand over these types of information. it is because of commercial secrecy.”

7.48 In reply to a further question, the witness stated that all the three companies were domiciled outside India.

7.49 Referring to their Indian Agent, the witness stated that a representation agreement was concluded with Anatron General Corporation in 1978, with a commission rate of 2% on delivery ex-works. That agreement was terminated in early 1986 and a new agreement for administrative services was concluded. No termination costs were paid to this company.

7.50 Regarding the reasons for termination of the old contract and for entering into a new agreement with the Indian agent, the Chief Jurist stated as follows :

“The reason is very simple. The old contract was a commission contract and in order to follow up the requirement made by your Prime Minister, the company terminated the commission contract with Anatron General Corporation. That was quite a natural thing perhaps. Then the company found that they needed assistance for different kinds of services.

. that is to assist our personnel in different matters and to follow the Indian markets, so to say.”

7.51 About the payments made to M/s. Anatronics General Corporation, the witness stated that they were paid 100,000 SEK per year from 1983 to 1985. Figures for the years 1978 to 1982 were not available. He

added that the agreement provided for a 'minimum level for commission which was 100,000 a year and that had been applied for 1983, 1984 and 1985.....for 1982 there was a bigger amount.'

7.52 As regards the new agreement with the Anatron General Corporation, the witness stated :

".....The new agreement was a different kind of agreement. It was an agreement for administrative services. It was an agreement for five years with a charge of 100,000 SEK per month—1.2 million Swedish Kroner a year. The old agreement was a commission agreement, that is 0.25 million during 1985 and with a minimum amount of 1,00,000 Kroners per year."

7.53 The Committee enquired whether the amount of 100,000 SEK per month for administrative services alone under the new contract, was not excessive. The witness replied :

"That can always be disputed, the people negotiating this contract at least thought that it was an adequate amount of money."

7.54 In reply to another question, the witness reiterated that the payments to M/s. Anatron General Corporation for the services rendered by them during the period 1978 to 1985, were paid through Indian Banks.

7.55 Asked to furnish the details of amounts paid and dates on which these were paid through Indian and Swedish banks, the witness stated :

"These types of information we have not with us in Delhi. So, we can't really tell you. Only we can say is that the winding up costs were over 319 million Swedish Kroner and were paid through Swiss bank during 1986. There have not been any payments after December 1986 and there will not be any further payment concerning winding up cost. But we can't give the exact dates for the payment as we don't have this information with us in Delhi now."

7.56 On his attention being drawn to a statement of the Chairman of the Nobel Industries (Mr. Thunholm) that so far as he was aware, payments had been made to Indians or to an Indian company in connection with the contract, the Chief Jurist stated :

"Sir, now I am in a little awkward situation because Dr. Thunholm is the Chairman of my Board and the Company Secretary. I think he has been wrongly quoted by the Swedish Journalists, when he talked to them. He has no other views on these things than what we have expressed and we all very much regret that this interview and the answers were put in such a way that you, here in India, got

the impression that Dr. Thunholm did not bother about this matter. This is a deep concern for him and also for us all in the company and in the Board of Directors. You should know that, when you talk to the Reporters, you have to be very precise and I think the conversation between Dr. Thunholm and the Special Reporter is that, they twisted the words which Dr. Thunholm had made."

7.57 Asked further if they were aware of a company named SVENSKA which was stated to be a letter box company and to which payments were reported to have been made, the witness stated "we will not comment on that."

7.58 Asked to give his comment on the report of the Swedish National Audit Bureau, the Chief Jurist stated :

"....As the National Audit Bureau and we could not agree on the term of secrecy, they have given a report which perhaps does not reflect the whole situation and has given rise to more questions than before when it was published. In order to support the information the company gave to the Audit Bureau, we invited the Bureau to appoint a public accountant in Sweden because the Audit Bureau could not keep secret the information they got from us. As Mr. Morberg said in the beginning, commercial secrecy is of great importance to a company, specially in the business of armaments where most of your customers are States and State agencies with very high requirement of classified information and a very high requirement that the company can indeed keep confidential information secret and not talk about details, orders, numbers, etc. in contracts. We feel that this secrecy must be kept so that it does not go to the public. The Audit Bureau could not make any kind of compromise. So, they brought their Report with not so much information from us."

He added :

"....the information given in this report is based on other sources; for example, information in the National Bank of Sweden or the other Swedish Bank.....the National Audit Bureau has drawn some conclusions, and the Report was presented to the company about half an hour before the Report was given to the Swedish Government. So, the Company have had no opportunity of making changes or having discussions about the conclusions they have drawn in their Report. It is very difficult for us to discuss the information in this Report because we have not had the opportunity of discussing with them what they mean, how they have drawn some conclusions."

7.59 When the Committee enquired whether it was correct that the Bofors Company had been requested by the Indian Defence Ministry at different levels, to ensure that there should be no middlemen or agents in the negotiations for the 155 mm howitzers contract, the President, AB Bofors replied :

“It was absolutely direct negotiation between the Company and the Ministry of Defence.”

7.60 Asked when the payments on account of winding up charges were made and whether any such payments were made after the finalisation of the Indian Contract, the witness replied that the payments were made by them during 1986 after the signing of the Indian Contract.

7.61 While clarifying as to why the payments were made after the signing of the agreement, Mr. Morberg stated as follows :

“We had to pay the termination costs in both the situations— if we have an order and if we do not have an order. Naturally there would have been another termination cost if we have not received an order. But termination costs we have had to pay in all cases.”

7.62 About the currency in which the winding up costs were paid, the witness stated :

“All our payments concerning winding up costs were paid in Swedish Kroner and they were paid through Swiss Banks.”

7.63 As regards payments to M|s. Anatronik General Corporation, the witness stated :

“The payment concerning Anatronics, I suppose goes through the Indian banks.....But all payments were made in Swedish Kroner also for Anatronics.”

7.64 When the Committee wanted to know the names of the three international consultants, to whom winding up charges had been paid by Bofors, the Chief Jurist stated :

“When we go over to the International Consultancy Agreements, we would like to request you, the names which we think are rather sensitive, we would like to keep them in confidentiality and we would like perhaps not to mention them before the whole session but to give them perhaps to you. (The Chairman).”

7.65 The Bofors President added :

“You must understand that for us this is an extraordinary stand to take—a commercial company to give names (of companies) with which we have agreements. That has never

happened before in Bofors history since we started in 1646. So, this is a very special situation for us. We would appreciate if this information could be handled as secret as possible and that you may suggest us how to handle this situation.”

7.66 When pressed by several Members to give the names, the witness stated that they had given the names of the three consultants to the officials of the Ministry of Defence, during the course of discussions with them. He added :

“We highly respect this Committee and the work this Committee is doing. We have tried to explain the reason why we have given the names in one forum. Then, we learnt the procedure this Committee will have, and we understand that the other forum will in one way or other meet this Committee and discuss this issue.”

7.67 The Committee asked the witnesses that if India as a buyer asked the seller (Bofors) whether some payments had been made to a third party by the seller without the knowledge of the buyer, the question of commercial confidentiality could not come in the way. The Chief Jurist stated :

“I do not want to go into a sort of legal debate about this because that is an interpretation how you look at matters. If you have one contract which is not related to another contract, then naturally the two contracts are not related. If you have a situation where you have a contract with ‘A’ and another contract with ‘B’, and if contract ‘B’ is not mentioned in contract ‘A’, then it has nothing to do with contract ‘A’. That is the legal definition of it. I do not want to go into the different legal aspects of how you look at this supply contract and the interpretation of the supply contract because that, I think, is a matter between the customer and the company.”

7.68 The Committee pointed out that the National Audit Bureau itself had stated that the Swedish law did not allow absolute confidentiality and that Bofors could not refuse to disclose the names of the recipients. The Chief Jurist replied :

“This is a very tricky question, I must say. You have to see what you read in the context of the meaning of secrecy. The context of secrecy in that sense was the secrecy the State agencies and authorities have to obey. It is the secrecy code which the State Officials have to follow. I have not, in any way, tried to use that code here. I am saying that in the contracts we have with the different consultants there are secrecy clauses which do not permit us to tell a third party

about the contents of the contracts. It is exactly the same kind of clause as in the supply contracts.”

7.69 The Committee enquired how the winding up charges could be paid as a percentage of the contract value. Clarifying the position, in this regard, the Chief Jurist stated :

“I should start with the Audit Bureau’s Report. I think, they called the Chief Executive of Nobel Industries in this regard. I will give you a little background to that.

We were asked one day to meet the Managing Director of the Auditor’s Committee and give him some information about the background, etc. We gave him the information about the company, the marketing, etc., and the winding up costs. I must say regretfully the Chief Executive in order to simplify the case said around 2-3 per cent of the order. That I must say, we had regretted quite a lot since then because that has been published all around.”

He further explained :

“The situation is that I have before tried to show how the people tried to settle the agreements with the consultants and what they had to take into account when settling such agreements. You have to take into account a lot of questions. Mostly the time, the length of the agreement has some importance, the kind of work has some importance, loss of profit has some importance and the possibility that you have not been able to work for other companies has some importance and what you tried today is, so to say, to mix all these things together and try to come to some sort of a conclusion.

If we would have gone to court with these three agreements, I am sure that the Swiss Court would have looked at the situation and taken into consideration the possibilities the consultants have lost by this termination.”

7.70 Denying that winding up charges had any nexus with the contract value, the witness stated :

“It was not paid on the contract value. We have taken some account to that, I would say You have to see the situation. You were in the turn-around of 1985-86. You did not know whether you get the order or you don’t get the order. The situation was that you must in some way or the other come to a settlement in order to follow the requirements and for a company that was the most important thing that we followed the requirements and made arrangements to finalise the agreement.”

7.71 The Committee desired to know as to why the Government of India was not informed by Bofors that they would need to terminate the existing arrangements and consequently bear such significant expenditure. The Bofors President stated :

“There was a meeting in New York between the Prime Minister Olof Palme and your Prime Minister Rajiv Gandhi about this question.....when Mr. Gandhi demanded that there should not be any middlemen, representatives or agents in the negotiations between India and Bofors concerning this contract.

As Mr. Gothlin earlier mentioned this demand, request from your Prime Minister was sent to the former President of A. B. Bofors, Mr. Martun Ardbo sometime in November. He started the action to fulfil this demand and he also mentioned to the representative for the Swedish Government in December that Bofors had taken action to fulfil this demand. We have taken action to terminate agreements which we had with the representatives/consultancies. As now we have heard, this message was given from Mr. Olof Palme to Mr. Rajiv Gandhi when Mr. Palme visited Delhi in January, 1986. Why Mr. Ardbo did not inform the Ministry of Defence about the situation, we don't know.

You must see the situation we had been just in. He was in Delhi and we have said before that this was the hardest and the toughest negotiation, that our company ever had gone through. We had very hard competition and the discussions about how big the order should be, should ammunitions go to other suppliers or should it be by Bofors, were going on. This was very complicated to have always action at the same time. Perhaps it was behind that that he did not inform the Ministry of Defence. Today, we can regret it. But so is the situation.”

7.72 Asked whether the Indian Prime Minister knew that amounts would be required to be paid to the consultancy agencies by Bofors, the Bofors President replied :

“We have no exact facts about that. What they have told us about that is that Mr. Palme has given this information that the Company will fulfil the request.... We have no exact information about that. There are no notes of the meetings.”

7.73 The Chief Jurist added :

“If we make a note to an official within the Prime Minister’s Office or within the Government of Sweden that we have to terminate the contract or saying we will or we have to terminate the Agreements and that would cost money. We have made our part of this clear. We cannot say as to how this message has been sent to your Prime Minister.”

7.74 The Committee wanted to know how much Bofors would have had to pay by way of commissions, fees etc. had the Government of India not insisted that there should be no middlemen, the Chief Jurist stated :

“The commission then laid in the end of 1985 was around 12 per cent. The agreements have a fixed percentage—linear percentage. When you make agreements like this, you can choose between the linear percentage or you can have some kind of steps like up to a certain amount, you have certain percentage. And then from that amount to another amount, you have a linear percentage, etc., etc. In this case, there was this linear percentage. I think the question is a little hypothetical. What the company has paid in commission has not happened because, I think, the company would have tried to at least decrease this number to a certain extent because of the size of the order.”

The witness further stated :

“Sir, you know the price was, I must say, a very good price. We have said earlier that the negotiations with your people in the Ministry of Defence were very hard. We had a very competent and price conscious competitor all the time to compete with. I think the question is a little hypothetical because this was such a tough negotiation. So, I think, your people got to the bottom of the prices of both companies competing for this order.”

7.75 The Committee pointed out that the removal of middlemen had in fact resulted in lot of savings to the Bofors in the form of lesser payments towards charges for termination of contracts instead of the 12 per cent commission which would have been otherwise payable. Asked whether this also led to a reduction in prices, the witness replied in the affirmative.

7.76 Asked to confirm that winding up costs paid by Bofors had been paid only to companies domiciled outside India and no such

payment was made to any Indian Citizen or an Indian Company, as repeatedly stated in their letters to the Ministry of Defence, the witness stated :

“We have made payments to these companies domiciled outside India and we have not given any instruction to make payments to any Indian company or citizen.”

7.77 Asked whether, the payments were not excessive, the Chief Jurist stated :

“Sir, neither Mr. Morberg nor myself were involved in these discussions. When this matter was raised here we were forced to look into this issue. Afterwards you can always say that this amount is a little higher ; how could you pay out such large amounts. As the people have told me, the situation was a little hectic. They had to terminate and we may well say that in one (case) of the winding up charges we did not succeed well in the negotiations. Well, I have no opinion whether the amount is excessive or not.”

7.78 In reply to a further question as to how they could satisfy the Committee that the payments were not made for any illegal purposes, the witness replied :

“How shall we prove the opposite ? We cannot go into other company's books and prove so. What we can do is to show you here sincerely and at least try to make it clear that from Bofors side, we, in no way, have tried to conspire or tried to persuade some other company or some other persons to pay anything to some individual in the Indian Government or any other Government official in order to win this order. But the whole exercise, the termination of the contract and the termination cost was to avoid everything.”

7.79 The Committee pointed out that the media had mentioned names of several individuals who were reported to have received bribes or kickbacks. Asked what they had to say in this regard, the Bofors President stated :

...“We regret that we have this slander and so on—and people have been accused for such things. But it is impossible for us to give certificates about this matter. We can only state that we have not given any instructions to pay any persons through this company.”

7.80 Asked how they could be sure that the companies to whom payments had been made, did not indulge in illegal activities, the witness stated :

“...We do not know exactly what they have done with the money, but we can assure you that we have not given any instruction to pay the bribe or something like that.....we have not conspired with those companies to do any illegal activity.”

7.81 In reply to a question as to how the price of the Indian contract had been negotiated, the Chief Jurist replied :

“The contract negotiations started with our company and a French company before Christmas in 1985 and they lasted till the end of March 1986. During all this period, the price issue was on the table and the Ministry of Defence made a very thorough comparative study on prices. They worked out all the aspects in great detail. If you see the enclosure on price list to the contract, you find that details about prices and other aspects are given for thousands of components. During all the negotiations, on every possible situation your people tried to decrease the price. I think all the time they compared our prices with the French prices and if the rate offered by the French for certain components was lower than ours, they came back to us and asked us to reduce the price accordingly. We can say that your people drew on the two competitors all the time to see that the price was reduced. They have, indeed, a very experienced way of negotiating.”

7.82 The Committee enquired how the price of the contract negotiated by the Government of India compared with the prices settled by Bofors in other contracts for the same gun. The Bofors President replied:—

“We say that the final prices in the contract for India are lower than the comparable prices offered to any other customer. It means that India is treated as the most favoured customer. For example, for the same field howitzer, the price offered to India is lower than the price offered to the Swedish Army. This statement can be verified from the Public Accountant.”

H. Report of the Investigating Agency

7.83 During their discussions with the officers in the Ministry of Defence before they were examined by the JPC, on 18th and 19th September, 1987, the Bofors representatives Mr. Morberg and Mr. Lars Gothlin had passed on certain information to the Ministry of Defence, which subsequently

was passed on to the Committee. Following are the details of the three companies to whom M/s. A.B. Bofors had paid winding up charges:—

“(a) *Svenska Inc.*: registered in Panama.

Following are the Directors of the Company :

- (1) C.F. de Perez
- (2) V.C. de Rodrigues
- (3) M.R. Sarmiento

Its address in Panama is Post Box No. 5284 Panama-5. This company, though registered in Panama, functions mainly in Switzerland from the following address:—

2, Rue Du la Confederation,
Geneva, Switzerland.

This Company had a general consultancy agreement with M/s. A.B. Bofors regarding sales of their products and the territories to be covered included India and some other Asian countries. This agreement was entered into in 1978 and provided for payment of 5.75% commission on sales. The agreement was terminated in early 1986 and winding up charges amounting to SEK 188.4 million were paid to the company through normal banking channels.

(b) MORESCO/MOINEAO S.A. (PITCO)

MORESCO is not the name of the Company but a reference (code name) for MOINEAO S.A. registered in Switzerland (when the agreement was signed in 1979, the reference name was PITCO). Following are the Directors of the Company:—

- (1) J.P. ESBINO
- (2) M. BIGGS
- (3) M. ESTRIBI

The address of the Company is 30, Rue du Rhone, Geneva, Switzerland.

The bankers of the Company are *Credit Suisse*, 2, Place Belle-Air, 1204 Geneva and Manufacturers' Hanover Trust, New York, Geneva Branch, 84, Rue de Rhone, Geneva. This Company also had an agreement with M/s. A.B. Bofors signed in 1979 for providing general consultancy for their sales and they were to be paid 3% commission on the sales. The contract was terminated in January, 1986 and winding up charges were paid in three instalments as follows:—

- (1) SEK 37 Millions
 - (2) SEK 12 Millions
 - (3) SEK 32 Millions
- Total : SEK 81 Millions

The amount of SEK 32 m. was credited in a Swiss Bank account with code name 'LOTUS'.

Mr. La Fonte an employee in Credit Suisse is aware of these payments.

(c) A.E. Services Limited.

The Company is registered in U.K. The Directors of the Company are:—

(1) M.T. Stott

(2) R. Zumbrunnen

139, High Street, Guildford,
Surrey, G.U.-1, 3HL, U.K.

An agreement with this Company was entered into in 1985 and the company was entitled to receive 3% commission on sales. The Company represented M/s. A.B. Bofors in India and some other countries. The agreement was terminated in early 1986 and an amount of SEK 50 millions was paid as winding up charges through normal banking channels.

The Company's bankers are:—

Nord Finanz Bank,

1, Bahnhofsstrasse, C.H. 8022,

ZURICH."

The agreements entered into with these three companies for payment of commission on sales did not have any termination clause. According to M/s. A.B. Bofors negotiations were held with these companies and the agreements were terminated and winding up charges to the three companies amounting to SEK 319.40 million were paid.

(d) M/s. Bid Engineering Pvt. Ltd. Singapore:

40% of the capital of this Company is owned by a party in Bombay. It is reported that Nobel Industries, the parent Company of BOFORS had a company to look after their interests in Singapore. The Company is reported to be non-operational and the majority of the shares are held by a Swedish subsidiary of Nobel Industries.

(e) Anatronc General Corporation of Win Chadha

Agreement with this company was entered into in 1978 and initially 2% commission was to be paid on sales. The commission was reduced to 0.25% in 1984 and the agreement was terminated in January, 1986. No winding up charges in lump sum were paid to this Company, but SEK 100,000 were to be paid every month for

administrative support services for a period of five years from 1986. Total payments made to this Company so far are as follows:—

1978	Nil
1979	Rs. 72,542,00 & SEK 108859
1980	Rs. 2,03,159.00
1981	Rs. 12,09,740.00
1982	Rs. 5,71,573.00
1983	Rs. 1,59,863.00
1984	Rs. 1,36,148.00
1985	Rs. 1,39,870.00”

7.84 The Chairman, Joint Parliamentary Committee, sought the help of the investigating agencies of the Government of India *viz.* the Central Bureau of Investigation, the Directorate of Revenue Intelligence and the Directorate of Enforcement to verify the above information and investigate in the matter under inquiry and assist the Committee [in terms of paragraph (6) of the Motion for constitution of the Committee] in ascertaining whether any Indian resident in India or abroad or any Indian Company or foreign company associated with Indians was involved in the receipt of payments made by M/s. A.B. Bofors to these three companies.

7.85 The Investigating Agencies, after making inquiries both in India and abroad through personal visits and through our Missions and other sources abroad, particularly with the assistance of Interpol, tried to obtain the maximum possible information. Based on the available information they gave their Report to the Chairman on 22nd February, 1988. The Report was made available to the Members for study on 24th February, 1988 and thereafter. The main findings of the Investigating Agencies in relation to the three companies, which had been paid winding up charges by M/s. A.B. Bofors, are given in the following paras :—

(a) **M/s. Svenska Inc. Panama :**

The Investigating Agencies have reported that the information about the company ascertained through official sources revealed that the names of the three Directors were :

- (1) Carmen Fernandez de Perez—President
- (2) Virginia Cover de Rodriguez—Vice President
- (3) Marcela Rangel de Sarmiento—Secretary.

These are the same as given by M/s. A.B. Bofors.

The objectives of the Company are :

- (a) To establish, to promote and carry out import and export of securities, possessions and effects in all the branches; moreover the operations with financiers, capitalist, insurers, promoters of the shares emission.

(b) to establish companies, to construct, purchase, to rent and load vapor boats or any kind of this, indeed like airplane and ground transportation and used for transport crews or raw materials and any kind of products to any nature, between any country, port or airport in Panama and all the world."

Enquiries conducted in Panama revealed that the company was managed by an advocate, Ms. Marcela Rozas de Perez, who was also acting as the local representative of the company. The Investigating Agency also gathered that the President, the Vice President-cum-Treasurer and Secretary of the company were all ladies and were not persons of any means and that is why her office address had been given as their address. Initially, Jose Antonio Valdes Dutary was the President of the Company, but later Ms. Carmen Fernandez de Perez was made the President. The advocate informed that she had hired the Post Box for receiving the mail of the company, but to her knowledge since the incorporation of the company, there were hardly any transactions. However, she used to be paid her retainer fees and service charges from Switzerland. During the last 2 years she has not received her retainer fees and service charges etc. from the principals and, therefore, she has discontinued the payment to the Post Office for the Post Box. She did not know anything more about the functioning of the company and its activities. From the companies registration office, no returns or annual statements of accounts in respect of this company were found.

Enquiries conducted at the address in Geneva viz. 2, Rue Du la Confederation, disclosed that it is the office of the Swiss Bank Corporation and obviously this is the address of the bankers of Svenska Inc., Panama.

(b) Moresco/Moineao S.A. (PITCO)

According to M/s. Bofors one Mr. La Fonte, an employee of Credit Suisse (Bankers) was aware of the payments made to the company. The inquiries made by the Investigating Agencies revealed that no person by that name was working in this Bank.

Enquiries made at the Companies registration office, Geneva and scrutiny of published information in respect of all companies registered in Switzerland revealed that no company by the name of Moineao S.A. is registered in Switzerland. Similarly, the names of MORESCO and PITCO were also not found in these records. Physical verification at the address given by M/s. A.B. Bofors, viz. 30, Rue du Rhone, did not show the existence of any of the three companies, MOINEAO S.A., MORESCO or PITCO. There was no sign board showing any of these names at this address. However, since it had been learnt during initial enquiries that Moineao S.A. was registered in Lausanne, enquiries were made in the Lausanne Registry.

From the particulars given, it is seen that this is a company whose business is "Trade in Immovable properties". The address at Lausanne is C/o Bernard Nicod S.A., another local firm. The present Directors of the company are:—

- (1) Mr. Claude Blanehet, citizen of Clees, residing in Lausanne, Secretary.
- (2) Mr. Maurice Blyard, citizen of Riex residing at Lausanne, Administrator.
- (3) Mr. Willy Mock, citizen of Appenzell, residing at Payerne, President of the company.

The names of the three Directors, who all are residents of Switzerland are different from the names of Directors furnished by M/s A.B. Bofors.

However, M/s Credit Suisse, 2, Place Bol Air 1204, Geneva were aware of the transactions relating to receipt of payment by M/s MOINEAO S.A. This bank did not disclose any information to the Investigating Agencies on the ground that it would be a criminal offence under the Swiss Laws governing Banking Secrecy, particularly under Sections 271 and 273.

Further, Manufacturers' Hanover Trust, 84 Rue du Rhone, Geneva (the second banker whose name was given by M/s A.B. Bofors) did not have any transactions with M/s MOINEAO S.A. or MORESCO or PITCO and no transactions were made through them by the aforesaid Companies to make payments to any Indian residing in India or outside India through their Branch.

According to the Investigating Agencies, the functioning of this company seems to be mysterious as no trace of this company has been found at the address in Geneva given by M/s A.B. Bofors. It seems the company registered in Switzerland is only a front organisation being run for persons not residing in Switzerland.

(c) M/S A.E. SERVICES LTD.

The Investigating Agencies have found that a company called Target Practice Ltd. had been incorporated in London on 27th July, 1978 with a nominal capital consisting of 100 ordinary shares of £ 1 each. Only two shares of £1 each were subscribed. The promotor of the company was one Major R.A. Wilson, a retired army officer who was with the Gorkha Regiment in India till 1947 and later in the British Army upto 1962. He specialised in defence contracts and is supposed to be one of the important lawyers in the field. On 9th August, 1979, the name of the company was changed to A.E. Services Ltd. The ultimate Holding Company is CIAOU ANSTALT VADUZ,

registered in Liechtenstein. Among the new directors were Mr. Myles Teedale Stoot and Ms. Rita Zumbrunnen whose names were given by Bofors. They both had one share each of £1 while 98 shares all of £1 each were held by Division Beneficiaries Accrediteurs Ltd., 1501 Hutchison House, Hong Kong.

Major R.A. Wilson informed the Investigating Agencies that M/s A.E. Services Ltd., U.K. was connected with M/s. A.B. Bofors for the Bofors Contract with India. M/s. A.E. Services Ltd. had entered into an agreement with M/s. A.B. Bofors some time in 1985 to represent Bofors in India and some other countries. The A.E. Services—Bofors Contract contain carefully drawn secrecy clauses.

The Investigating Agencies were informed that this agreement had to be cancelled following pressures placed upon Bofors by the Swedish Governments' decision that there should be no middlemen. Cancellation occurred effectively on 5th March, 1986. At that time the only advice given by M/s. A.E. Services Ltd. to Bofors related to the manner and timing of negotiations and the content of the contract. The advice was given to Mr. Martin Ardbo personally. M/s. A.E. Services Ltd. had done no work in India. Bofors assured M/s. A.E. Services Ltd. that there should be a payment made embracing the work done and compensation for the loss arising to M/s. A.E. Services Ltd. upon cancellation. Payment would be made within six months of 5th March, 1986. The payment was to be of the order of US \$ 7.3 million. Mr. Wilson confirmed that M/s. A.E. Services Ltd., U.K. were paid US \$ 7.3 million on or around 11th September, 1986. He further stated that this amount has been kept in M/s. Nord Finanz Bank, 1, Bahnhofstrasse, CH 8022, Zurich. He stated that this amount has not been utilized so far. So that if any demand is received from the Inland Revenue Department on M/s. A.E. Services Ltd., U.K. the same would act as a cover. No Indian or any Indian legal entity whether resident or non-resident in India is connected with the holding company CIAOU which stands for Consortium for Information Assimilation and Output Unit. This organisation has a number of "units" in different countries (but none in India), consisting of lawyers, accountants, consultants and other experts to obtain vital information which is assimilated and processed into useful intelligence and made available to manufacturers/suppliers of defence equipment; in other words—in case a manufacturer of defence equipment/supplier is on the lookout for a market for his product, M/s. CIAOU helps "to open the door" to such markets. No Indian individual, received any payments whatsoever from the compensation given by M/s. A.B. Bofors to M/s. A.E. Services Ltd.

(d) *Anatronic General Corporation of Shri W. N. Chadha*

The enquiries made by the Investigating Agencies about the role of Shri W. N. Chadha revealed that prior to 1984 Shri Chadha used to receive his commission through Government of India, *i.e.*, after the delivery

was completed, the company used to get 98% and 2% was given to him by the Government of India. However, in 1984, the position changed. He and other Indian representatives were barred from participating in any negotiations regarding defence deals including discussions on technicalities and price structure.

The Investigating Agency was informed that Shri W. N. Chadha owns three concerns, viz, AGC, Hertz Agencies Pvt. Ltd. and AGCPL—the first being his sole proprietary concern and the other two being private limited companies representing various arms manufacturers. According to him he has received payments which were due to him or to his concerns except in one or two cases which were under dispute. He also mentioned that after the recent hue and cry, Bofors had not made monthly payments of 1 lakh SEK since July, 1987; he however, expected to receive these sums shortly.

Copies of Agreements signed in 1981 and 1984 by M/s Anatronie General Corporation (AGC) with AB Bofors were furnished by Shri Chadha on 6th January, 1988. He, however, failed to furnish a copy of agreement entered into in 1978. A copy of the agreement between AGCPL and AB Bofors effective from 1-1-1986 for providing administrative consultancy services was recovered and seized during search on 5th June, 1987.

Details of payments received by AGC and AGCPL from AB Bofors from 1979 to 1987 (upto June, 1987) are as follows :—

<i>Year</i>		<i>Total amt. received in Rs.</i>
AGC	1979	2,80,324.81
	1980	2,03,159.00 (Net amt. credited Rs. 2,01,158.86)
	1981	12,09,740.00 (Including Rs. 4,25,605 being trial expenses received separately).
	1982	5,71,573.00 (including Rs. 2,98,485 being trial expenses received separately).
	1983	1,59,863.00
	1984	1,36,148.00
	1985	1,39,870.00
	1986	84,033.62
AGCPL	1986	21,35,539.48
	1987	10,00,461.22
(Upto June 1987)		
Total		Rs. 59,20,712.13

Representation Agreements of 1981 and 1984

Under the agreement of September 12, 1981 Bofors appointed M/s Anatronc General Corporation, C-4, Main Market, Vasant Vihar, New Delhi-110057 (India) as their sole representative for the Republic of India "to promote the sales of Bofors ordnance and ordnance stores to the government authorities concerned and to their domestic suppliers of ordnance within the Territory".

Clause 6 of the agreement re. 'SECRECY' reads as follows :—

"During the time this agreement is in force, as well as after its termination, the Representative shall observe full discretion, both internally and externally, as regards all business matters relating to Bofors, such as pricing, designs, experiments and studies, operations and production conditions etc. Information of the kind herein mentioned must not be used in any way other than as required in order to carry out the activities of the Representative according to this Agreement.

Bofors agree, during the life of this Agreement and thereafter to treat all information received from the Representative in connection with the Representative's performance of this Agreement as strictly confidential and for its own use hereunder, unless it is evident that such information can be forwarded to a third person without any damage to the Representative."

Clause 7.1 provides for remuneration as under :—

Remuneration and Commission :

"Bofors shall pay the Representative as compensation for its activities under this contract and as reimbursement for its expenses an amount of SEK 100,000 (Swedish Crowns One hundred thousand, per annum counted from October 1, 1981, of which 1/4 (One Fourth) is to be paid in January, April, July and October, respectively."

Clauses 7.2.1 and 7.2.2 provide for payment of commission of 2% on payments received by Bofors on sales of licences or plants for the manufacture of ordnance within the time of validity of the contract.

The agreement of 10th May, 1984, provided for payment to the representative as compensation for its activities and as re-imbusement for its expenses an amount of SEK 100, 000 per annum from October 1, 1984. In addition, the representative was entitled to a commission of 0.25% on the ex-works value of orders for ordnance or for sales of licences or for sales of Plants for manufacture of ordnance within the time of validity of the contract.

(Cl. 6 was the same as in the earlier agreement).

7.86 The Committee have also been furnished with a position note on a case of FERA violation involving Shri W.N. Chadha subsequent to the receipt of the Report of National Audit Bureau, Sweden, which *inter-alia* pointed out that AB Bofors have paid considerable amounts to their previous agent in India. It has been stated that the payments, as referred to above, have been duly reflected in the books of accounts of the company. So far, no other evidence is available regarding any other payments having been due or received by AGC, AGCPL or Shri W.N. Chadha.

(V) Inquiry in Sweden :

7.87 As directed by the Chairman, JPC, the investigating team met the following officials in connection with the inquiry :—

- (1) Mr. CARL JOHAN ABERG,
Under Secretary of State, Ministry for Foreign Affairs,
Trade Development, Fredsgatan 85-10333,
STOCKHOLM
Sweden.
- (2) Mr. AKE GUSTAFFSON, WN
Director, Legal Division,
SVERIGES RIKSBANK,
S-10325, STOCKHOLM,
Sweden.
- (3) Mr. SVEN HIRDMAN
Inspector General of Military Equipment.

The following points emerged from the meetings/discussions held with the above officials :—

Ministry of Foreign Affairs, Stockholm :

- (i) Mr. Carl Johan Aberg, the Under Secretary of State, Ministry of Foreign Affairs and Trade Development stated that the Chief District Prosecutor, Mr. Lars Ringberg, had, after conducting the preliminary investigation, issued a statement on 25-1-1988 to the following effect :—

“Representatives of the Nobel Group have been questioned. In this connection, special importance has been attached to the questioning of executives of the subsidiary company Bofors. Admissions of the disbursements in question have been made and also explanations and motives for them given. It has not been possible, however, to obtain details of which persons received payments.

A judicial inquiry similar to our preliminary inquiry concerning possible bribery offences has not been commenced in India. Thus, neither written nor oral evidence has been obtained through the inquiry undertaken with regard to whom payments were made and the reasons for them.

In view of this, and since it cannot be expected that information of decisive importance for the matter of prosecution could be obtained by continuing the inquiry, the preliminary inquiry is withdrawn."

- (ii) In view of the fact that no Swedish Law had been violated, Mr. Aberg stated that the evidence secured by the Chief District Prosecutor, Mr. Ringberg would not be available to the Joint Parliamentary Committee. Mr. Aberg also stated that no evidence of any kind was found by the Chief District Prosecutor, Mr. Ringberg, to show that bribes were paid to any Indian, whether resident or non-resident in India to win the Indian contract by AB Bofors.
- (iii) As the Chief District Prosecutor (Mr. Lars Ringberg) did not find violations of any Swedish Law, he did not continue his investigation further to find out whether in terms of the contracts, the payments made by AB Bofors to their agents are in fact "winding up costs" and not commissions as payable under the original agreements.
- (iv) The information relating to the details of the payments of SEK 319 million was given by the SVERIGES RIKSBANK (The Bank of Sweden) to the Chief District Prosecutor on the strict promise and understanding that the said information will be kept secret as it is protected by Section 5 of the Official Secrets Act of Sweden. In the circumstances, it may not be possible for anyone to confirm or deny whether the details published in the Swedish Newspapers regarding amounts paid, names of recipients, account numbers, etc. are in fact correct.
- (v) As far as the Government of Sweden is concerned, they are not doing anything further in the matter, and it is for AB Bofors to clarify, if necessary, the position and dispel any doubts.

The Sveriges Riksbank, Stockholm :

- (i) The Director, Legal Division, Sveriges Riksbank (The Central Bank of Sweden) stated that "AB Bofors complied with the procedure and registered the remittances to be made by AB Bofors to their agents abroad in connection with the Indian

contract for supply of FH: 77 Field Howitzers, and there was no violation of Swedish Law.

- (ii) Under Chapter 9, Section 5 of the Official Secrets Act, "Secrecy applies at the Riksbank for matters regarding issuance of permits and supervision according to the foreign exchange legislation as to information about the personal or economic circumstances of an individual or a legal entity, unless it is evident that the information can be disclosed without causing harm or damage to the individual or the legal entity.
- (iii) RIKSBANK did give the details of payments/remittances made by AB Bofors to their agents, to the Swedish National Audit Bureau, as well as the Chief District Prosecutor, Mr. Lars Ringberg, but both of them are bound by Section 5 of the Chapter 9 of the Official Secrets Act of Sweden.
- (iv) In view of the legal position explained, Mr. Gustafsson (Director, Legal Division, SVERIGES RIKSBANK) regretted that he was not in a position to assist the visting team with details of the transactions and for the same reasons both the Swedish National Audit Bureau and the Chief District Prosecutors' Office will not be able to give the documents which were secured by them during the course of their respective proceedings.

(c) Inspector-General of Military Equipment, Ministry of Foreign Affairs, Stockholm:

- (i) The Inspector-General of Military Equipment, Mr. Sven Hirdman, stated that he had personally gone through the documentation from 1975 till date and there was nothing to indicate that the Swedish Laws were violated as far as the Indian contract was concerned. He added that it was a good contract, in as much as, the Swedish Government gave assurances of continuity of supplies, good financial and credit terms and there were solid and good reasons for both the Governments to enter into a Memorandum of Understanding and the contracts between AB Bofors and the Ministry of Defence of the Government of India.
- (ii) Mr. Hirdman stated that he had gone through the Swedish National Audit Bureau's report and there is nothing in that report to indicate that bribes have been paid to Indians resident or non-resident in India to win the contract.
- (iii) Mr. Hirdman further stated that while he could confirm that an amount of SEK 319 million was paid by AB Bofors to their agents in the context of the Indian contract, he did not have

any details to give the break-up as indicated in the Swedish newspapers regarding amounts paid, names of recipients, bank accounts nos., etc. He was also not in a position to clarify whether the amount of SEK 319 million paid by AB Bofors to their agents in the context of the Indian contract constitutes "winding-up costs" and not "commissions" as payable under the original arrangements. Only AB Bofors will be able to clarify this question.

- (iv) The Swedish Parliament's Committee on Constitutional matters, will be holding its hearing shortly in March-April, 1988, and the focus of the proceedings would be:-
- (a) Whether the Memorandum of Understanding between the two countries is in accordance with the Swedish Law; and
 - (b) The role of the Swedish Government in concluding the contract.

Findings of the Investigating Agencies

In the light of the facts stated in the preceding paragraphs, the Investigating Agencies have concluded:-

"(i) It has not been possible to identify the real owners of the three companies, whose names were furnished by M/s. A.B. Bofors, viz. :

- (a) M/s. Svenska Inc. Panama
- (b) M/s. Moineao S.A. Lussane, Switzerland
- (c) M/s. A.E. Services Ltd., U.K.

The companies have been registered in tax havens obviously for the purpose of tax avoidance and secrecy. Svenska Inc. Panama is not reported to have done any business during the last two years and perhaps even earlier.

- (ii) The nature of services provided by the foreign companies to M/s. A.B. Bofors in securing the Indian contract, till the termination of the Agreements with them by payment of winding-up costs are not known except to a limited extent in the case of M/s. A.E. Services Limited.
- (iii) Even in the case of M/s. A.E. Services Ltd., from the available details it seems that this company was brought into picture in November, 1985 and at the insistence of the Indian Government that no middlemen should be employed in the contract being executed by M/s. A.B. Bofors, this agreement was terminated and a lump sum payment was made to M/s. A.E. Services Ltd.

- (iv) The information furnished by Shri W.N. Chadha of Anatron General Corporation, shows that no payments of a large scale were received by him prior to 1986 and the payments received in India upto 1985 were for services rendered during the trials of the guns and negotiations of the contract. The details of the amounts paid to him as given by M/s. A.B. Bofors tally with the details of the amounts furnished by him in his income tax returns.
- (v) The information available at this stage does not show the involvement of any Indian, residing in India or outside India or any Indian associates in the large payments amounting to 319 million Swedish Kroners. M/s. A.E. Services Ltd., one of the three companies has categorically stated that no payment has been made by them to any Indian residing in India or abroad or to any Indian associates and has even signed a declaration to that effect."

I. Comments of the Ministry of Defence on the Report of the Investigating Agencies

7.88 As per the decision of the Committee, opportunity was given to the Defence Secretary to give his reactions/comments on the findings of the Investigating Agencies. The Committee closely questioned the Defence Secretary on the subject at their sittings held on 26th and 29th February, 1988. In reply to most of the questions, Defence Secretary stated that since neither he nor any of the officials of his Ministry were associated with the work of the Investigating Agencies, they were in no position to give their reactions. However, information on some of the points on which they had personal knowledge was given by them to the Committee as under.

7.89 The Committee drew the attention of the Defence Secretary to the information given by the Investigating Agencies that MORESCO had received 81 million Swedish Kroners of which an amount of SEK 32 million was credited in a Swiss Bank account code-named as 'LOTUS'. Asked whether the Ministry were aware of this payment, the Defence Secretary stated:-

"The expression of LOTUS first came to notice through the media and subsequently when we talked to the representatives of the Bofors, they mentioned about it..... We questioned them specifically on this issue. They pointed out that it is an accepted convention in Swiss banking circles that if somebody wants to adopt a specific name for an account, that is permitted."

7.90 The Committee pointed out that inquiries made by the Investigating Agencies about La, ' Fonte, who was stated by Bofors to be an employee of Credit Suisse (Bankers) and who was stated to know everything about these payments, had revealed that no person of that name was on the staff of the Bank. The Defence Secretary stated that Bofors were not very definite about this person. As the name had appeared in the media, the Bofors' representatives were specifically asked about this person. To this, they had replied: "He is, perhaps, an employee of the Swiss-Geneva Bank who handled this account known as LOTUS".

7.91 The Committee pointed out that the Investigating Agencies had in their Report stated that Shri W N Chadha had received a commission of 2% through the Government and enquired whether Government was aware of any such payment. The Additional Secretary, Ministry of Defence, stated :

"I would like to say that as far as this particular statement is concerned, we are not in a position to tell you unless we are aware of the contract.... But I would submit for your kind consideration that according to the authorised policy of the Government, commission up to 2 per cent at that time, *i.e.*, before the period that we are talking about was payable for large value contracts. Now Sir, whether that 2 per cent was payable only in rupees and whether in this particular case that you are talking about—because he has been representing them from 1978-79—was payable through Government, it is not possible for us to say anything unless we know the contract. 2 per cent was acceptable percentage because the policy allowed such payment."

7.92 Asked whether in the light of the Report of the Swedish National Audit Bureau, the Ministry of Finance were asked to carry out investigations to find out if any offence had been committed under FERA, etc., the Defence Secretary stated :

".....we had written to the Finance Secretary. I have with me letters dated April 20, 1987, April 22, 1987 and April 23, 1987 in which I have requested the Finance Secretary who is in charge of the Directorate of Economic Intelligence as well as the Directorate of Enforcement, to take steps in this matters."

J. Further evidence of AB Bofors

7.93 On 7th April, 1988, the Committee recorded further evidence of the representatives of AB Bofors.

7.94 The Committee pointed out that the inquiries made by the Investigating Agencies had shown that details furnished by them regarding S/88 LSS/88—11

the three companies to whom 'winding-up' charges totalling about 319 million SEK were paid by Bofors were not susceptible of verification. They pointed out that the names and addresses of the companies given to the Ministry of Defence were not found to be correct. The Committee, therefore, wanted to know the details of payments made to these three companies, and for what services, banks through which the payments were made, the names of persons paid and their account numbers. Mr. Morberg of AB Bofors stated :

"You must see that all the information we have given is an extraordinary step from our side. We have given this information because India besides Sweden is our most important customer and we have also given all the relevant information because we respect the Parliament of India. All the details had been passed on to the Prosecutor concerning payments, account numbers and so on, though all the details are not important. I think the Prosecutor had confirmed what we stated to the Committee in September last year that we have paid to three companies and we had paid 319 million Swedish Kroners by way of winding up costs. Therefore, we will not go further and give more information over and above what we have already given."

7.95 The Committee pointed out that in respect of two of the companies, the Directors named by Bofors could not be traced and it appeared that they were merely 'letter-box companies'. To this, Mr. Morberg replied :—

"Winding up charges have been paid to these three companies. We will not give any further information concerning these companies more than what we have already given. This is the stand we have taken before the Prosecutor in Sweden."

7.96 In reply to a further question whether there were any Indians who might have been directly or indirectly connected with the three companies, Mr. Morberg of AB Bofors stated :—

"We have already answered that question in our letter to the Ministry of Defence dated August 6, 1987 (pl. see para 7.33 *ibid*). We would, however, like to say again that termination costs were not paid to any Indian citizens or any Indian subsequently included as a member of Indian Government or other Government officials. We regret the inconvenience caused to these parties who have been falsely held in the news media."

7.97 Further asked whether they had given all the information that the Ministry of Defence had required from them in the various letters

that they had addressed to the company, the Chief Jurist (Mr. Lars Gothlin) replied :—

“We have given very substantial information to the Ministry of Defence. The last letter with the Ministry of Defence was in the beginning of November not with us where we gave additional information concerning the companies and other matters.”

7.98 The Committee enquired whether the witness could produce copies of agreements with the three companies in support of their stand that the payments made to them were only winding up costs. Mr. Morberg stated :—

“That is not possible for us to hand over the agreements because of commercial secrecy. Let me say that the Prosecutor has had full accessibility to these agreements and you have the information about the conclusion he has arrived at. But now it is not possible for us to hand it over to you.”

7.99 The Committee pointed out that there could be no commercial confidentiality at least with regard to the termination agreements with the three companies and there was no reason why Bofors should not make available the termination agreements to the Committee. The Chief Jurist (Mr. Lars Gothlin) stated :—

“I can very well understand the argument which is put forward here. The company has nevertheless, whether it is good or bad judgement we could from the confidential point of view, not produce the contracts in question.”

He added :—

“The position is that we always take into consideration the commercial secrecy; protection of commercial secrecy and naturally for giving information to the Committee to find a solution to this matter, we have also come to the conclusion that we cannot give any more information. We have taken extraordinary steps in protecting our commercial secrecy which could harm our reputation.....and we cannot give any more information.”

7.100 The Committee pointed out that refusal of the company to produce the copies of the contract and the termination agreements left room for suspicion and that it was necessary to dispel the same. The Chief Jurist replied :—

“Sir, as we said before, we have deep respect for the argument you put forward and as Mr. Morberg has said, based on reasons we have given to you earlier, we have made the decision that we cannot give any more information than we have given. That may be good or bad, but that is the decision the Company has taken.”

7.101 Asked to comment whether the press reports regarding payment of commissions were correct, Mr. Morberg stated:—

“We do not want to comment on the information that appeared in the press.”

7.102 Asked to state how the papers in Sweden and in India were able to give the account numbers and the dates of payments in various accounts, the Chief Jurist, (Mr. Lars Gothlin) stated:—

“Sir, it is a very difficult question to answer from where different newspapers get the information and at least in Sweden it is most impossible to get the source..... I have no idea from where they have got different kinds of information. But at least we feel that it is not correct.”

7.103 The Committee enquired about the number of international consultants employed by Bofors for marketing and technological assistance in various countries. The Chief Jurist informed the Committee that they had about 100 people working for them in 40 countries all of whom were their permanent representatives.

7.104 In reply to a further question as to how many consultants they had through out the world, for negotiating or marking in India, the Chief Jurist replied, “We have three consultants or representatives or agents for India and the agreements with them have been terminated.”

7.015 The Committee enquired about the specific services which each company rendered to Bofors to merit such large payments. The President of M/s. AB Bofors stated:—

“There are different types of services and I can mention some of them. For example, one company’s services were advice on marketing activities on Bofors products, advice on products of interest for customers and advice on technology transfer and cooperation. For another company, the services were consultancy on international banking relations and counter trade, advice on the general development in different markets; and for third company, the services were advisory, consultancy and support services, for instance to perform comparative analysis and to advise and suggest solution of important problems that may arise during our performance.”

7.106 Asked about the basis of paying different amounts to different companies, the Chief Jurist stated that they had to take into account several aspects, such as the work actually carried out, the length of the agreement and compensation for loss of profit, etc.

7.107 The Committee enquired whether Bofors had made any other payments besides winding up charges to the three companies. To this the Chief Jurist replied:

“Bofors has paid no money to any other person for the purpose of this contract.”

7.108 On his attention being drawn to the fact that the payments in the Swedish Bank had been shown as ‘commission’, the Chief Jurist replied:—

“Unfortunately, there is no number for winding up costs... . There is no code number for the winding up.”

7.109 Asked whether it would not be correct to infer that the winding up costs were in fact commissions paid to the three companies, the Chief Jurist (Mr. Lars Gothlin) stated:—

“I would not agree to your interpretation because I think there lies a difference in the matter concerning winding up costs and paying a commission.”

7.110 The Committee pointed out that Bofors had entered into an agreement with A.E. Services as late as in November, 1985 and then terminated the contract in January, 1986. The Committee enquired why the contract was entered into when Bofors had been told as early as in May 1985 that there should be no middlemen. The Chief Jurist stated:—

“According to the information we have got, this was specifically told to the Company for the first time in November, 1985. We have tried to go through files etc. in order to find out about what you said that the Company was told in May 1985 about this thing. But, we have not found anything about that.”

7.111 The witness further stated that the contract with AE Services had been concluded in the beginning of September, 1985 but it took some time to complete the formalities and it could be signed only on November, 15, 1985.

7.112 The Committee pointed out that it was on record that the Chairman of the Negotiating Committee had called the various contenders on 3rd May 1985 and had told them in clear terms that there should be no middlemen. The Chief Jurist replied that he had made inquiries from the former President (Mr. Martin Arco) in this regard and he had told them that the demand not to use middlemen came in November, 1985.

7.113 The Committee pointed out that a company like SVENSKA with which Bofors had a close relationship was in fact set up by a person

called Mr. Steven Stanes who had become notorious for international drug trafficking. The Chief Jurist replied :

“Now again you are quoting an article in the Swedish Newspaper Express and other Indian Express. You have exactly the same articles in both the newspapers and I do not think that we have to comment on the different allegations in these two newspapers”.

He added that Bofors had had no dealings whatever with the above-named individual.

7.114 The Committee further pointed out that Bofors' representatives had informed the Ministry of Defence in September, 1987 that so far as payments to A.E. Services were concerned, one Mr. La Fonte, an employee of the Swiss Bank, was aware of these payments. However, the Investigating Agencies could not locate him on the address given by Bofors. The Chief Jurist replied that so far as he was aware, he (Mr. La Fonte) was an employee of the Swiss Bank, Geneva.

7.115 In reply to further questions regarding the findings of the Investigating Agencies about the firm SVENSKA, the Chief Jurist stated :—

“We have no knowledge at all. As Mr. Morberg said, we are not prepared to comment on the companies more than what we have done.”

7.116 To a further question whether they were prepared to reimburse the amount of Rs. 64 crores paid to the three companies as winding-up charges, the President of AB Bofors stated :—

“Mr. Chairman, I very much disagree..... We have this time and last time met and we have given answers and commented on how we have acted, after the request from the Prime Minister, a very unusual request. Such request came at the late stage of negotiation, etc. We have, as a company, acted very carefully and tried..... in a very diligent way to handle this question and to terminate the contracts with the agents. We have also explained the importance of confidentiality. You may have another point of view on that. But for the company, the confidentiality and the reputation as a company is very very important and we have, in a lot of respects, as Mr. Morberg has put it, gone far beyond what we usually do in order to try to get these things. As a company, we have very much suffered because of these unproven allegations against the Company. No one has so far given any kind of evidence or proof that the Company has done anything wrong.”

7.117 To a question whether Bofors had employed any agent or intermediary to contact any official or any political leader in India for the purpose of the contract, Mr. Morberg replied in the negative and affirmed that the negotiation was conducted directly with the Ministry of Defence.

7.118 In reply to a question whether the winding-up costs paid to three companies were not a violation of the understanding between the Govt. of India and the Bofors, the Chief Jurist reiterated : "I very firmly think that it is in no way any kind of violation." It was only in pursuance of the talks which the Indian Prime Minister had with the Swedish Prime Minister in New York in October 1985 that the Bofors management decided to negotiate for termination of the existing contracts in pursuance of the understanding between both the Prime Ministers that no middlemen were to be allowed in the Contract. At that stage, they had three choices : either they could disregard such demand or cancel the contracts through court proceedings or do so by negotiations with the parties concerned. A decision was taken by the Bofors management to negotiate and cancel the agreement "and that cancellation ended in winding up costs which is quite natural."

7.119 Asked why did they not inform the Govt. of India about their decision to terminate the existing contracts with the three companies till after the disclosures made by the Swedish Radio, Mr. Morberg replied :—

"The allegation was that Bofors had paid bribe. We have told the Ambassador of India in Stockholm that we have not paid any bribes and we have not conspired to pay any bribes. When the discussion came up with the National Audit Bureau, we at once took up with them the whole question about the winding-up costs and also we wrote a letter to the Ministry of Defence and gave this information. May be we made a mistake by not giving full information in our first letter to your Ambassador in Stockholm."

7.120 The Chief Jurist added :

".....Neither Mr. Morberg or myself were taking part in discussion concerning the termination of the contracts in that situation. I have asked the people responsible, why they did not take up this with our counterpart, the Minister of Defence. We also got that question from the Ministry of Defence when we met them last September. The only explanation I can give to that is, our people did not evaluate this as relevant because they have followed the demand made

by them and cancelled the agreement. That was their understanding. They have made what was requested from them and they did not see any reason to take this up."

7.121 The Committee drew the attention of the witness to the interview reported to have been given by the Chairman of the Nobel Industries (Mr. Lars Eric Thunholm) to the Swedish Radio on 26th August, 1987 wherein he had stated :—

"We wanted to be released from that agreement. So we had to pay money. We have paid the money in the way they wanted."

7.122 Asked to comment on the above remarks, the Chief Jurist stated that it was difficult for him to comment on what the Chairman of Nobel Industries had said but he thought it was "a rather loose expression from him. I think he was caught by the reporters when he was not at all prepared to say as he did."

7.123 On his attention being drawn to the statement by the Chairman of the Noble Industries that he could not guarantee that bribes had not been paid, the Chief Jurist stated :—

"It is most ridiculous to put it from the mouth of our Chairman, I must say because he is very well aware of the company's policy concerning this kind of matters. The company is not prepared to pay and bribes in order to get any advantages and I think if this interview is held today, he would express himself in a much more careful way. I do not know why he said it in the Press like that."

7.124 Further asked why moneys have been paid through the Swiss Banks, the Chief Jurist replied :—

"I think what Mr. Thunholm meant is that to make payments through Swiss Bank channels is a very normal thing. If we look at the streams of payments from companies in Sweden, they more often go via Swiss Banks because the Swiss Bank's system is one of the most important banking systems in Europe. I would say that a very large number of payments from our company are made via the Swiss Bank's system."

7.125 The Committee enquired about the findings of the Chief Public Prosecutor, Mr. Lars Ringberg, who had started preliminary investigations in the Bofors deal. The Chief Jurist stated that the Chief Public Prosecutor had started his investigations in August, 1987, and concluded the file in January, 1988, after a very thorough investigation when he searched the records of the company and interrogated

a number of executives of the company, including the former executives like Mr. Martin Ardbo (former President) and Mr. Ifans Ekblem (Head, Ordnance Division of Bofors). He had access to all the documents and made "rather a tough job during the investigation".

7.126 The witness added that two press releases were issued by the Prosecutor, the first one on January 25, 1988 wherein he pointed out that representatives of the Nobel Group of Industries had been questioned and explanations and reasons for the payments were given to him. He also stated that in India no legal investigation of bribery had been opened. His own preliminary investigation had indicated that continued investigation would not be expected to reveal further information as regards prosecution of the company. Two days later, he issued another press release saying that there was nothing in his report to show that the payments made by Bofors in connection with the large order from India were not in fact winding-up costs. His justification for decision to close the file was that it was not possible to prove that the management of Bofors had any decisive influence on being awarded the contract. The Prosecutor had found the explanation provided by the Bofors spokesmen as reasonable. He further stated that he had got the lists of payments made by Bofors "with the assistance of the Bank of Sweden and the National Audit Bureau."

7.127 The witness added that the Chief Public Prosecutor was an independent authority and was not amenable to any influence from any sources. According to the Swedish Procedural Law, the formal decision to close the file was communicated to the company without giving any explanation for doing so. This indicated that there was no evidence at all concerning the allegations.

7.128 A copy of the statement issued on 28th January, 1988 by the Chief District Prosecutor after concluding the preliminary investigation is reproduced in Appendix X.

7.129 The Committee pointed out that the information which Bofors had refused to give to the Committee on grounds of commercial confidentiality had already been given by them to the Public Prosecutor and, therefore, there should be no difficulty in disclosing those facts to the Committee. The Chief Jurist replied :—

"I think there is rather a big difference. The disclosure about the contracts and other particulars to the Prosecutor was completely in accordance with the procedure and laws of Sweden and of course the Company follows those laws. What we have stressed before the public prosecutor was the importance of confidentiality and to treat the information that we had given to him accordingly. According to the procedure

and laws of Sweden, when a prosecutor closes a file, every bit of information in the file is confidential and non-public. If something comes out from the file, the Police Department and the Prosecution Office step in.”

He added :—

“.....in Sweden we are of course obliged under a Prosecutor’s investigation to hand over documentation, etc. to him. I meant that that if any Swedish company is involved in the investigation, it has to be handed over to the public prosecutor. What I also said was that under the Swedish law, if the Public Prosecutor closes the file, then everything is secret.”

7.130 In reply to a further question, the witness affirmed that the Swedish Prime Minister during his evidence before the Constitution Committee had declined to give details on the same ground i.e. under the Swedish law what the Bank of Sweden had disclosed to the National Audit Bureau could not be disclosed.

7.131 On his attention being drawn to the Statement of the Vice-Chairman of the Constitution Committee that the classified documents made available to the Committee showed that the contract with Bofors involved the Gandhi family, the Chief Jurist replied :—

“I have not seen the comment of Mr. Anders Bjork, the Vice-Chairman of the Standing Committee. My only comment is, what we have already said last time when we met them and what we have said in the minutes in September last. That is, the company has made no kind of payment or conspired to pay to Gandhi family.....We have no such material in the classified documentation.”

7.132 On his attention being drawn to an earlier statement by the Bofors’ representatives that they had supplied the FH-77 gun to India at the lowest price, the Chief Jurist stated :—

“We could produce and show the certificate our auditors have made about the prices and what Mr. Morberg concluded from that.”

7.133 Mr. Morberg added :

“We have appointed Auditors who have made a certificate. About the price, it says that the final price regarding supply of the Field Howitzer to India is the lowest comparable price offered to any other customer. As far as price is concerned, India is treated as the most favoured customer. It

means also that the Swedish Army have paid a higher price for this Howitzer than India. Therefore, it shows that the Company had sold the Howitzer at the lowest price.”

7.134 The witness added:—

‘in the document (copy reproduced in Appendix XI) before you, by a public accountant—there is a reputable public accountants firm in Sweden linked to international chain of public accountants—a certification which gives facts and support what the company has said in this respect.”

7.135 In reply to a further question, the witness affirmed that Mr. Caj Nackstad, who had signed the document, had certified the statements made by the Chief Executive Officer of the Nobel Industry concerning the deal in his capacity as a Public Accountant.

7.136 It would be seen from the certificate of the Public Accountant that—

- (i) termination costs for the consultancy agreements.....were paid out during 1986. No payments based on the agreements have been made after December, 1986.
- (ii) The termination costs were substantially lower than the amounts which would have been paid if the agreements in force during 1985 had been applied.
- (iii) The final prices in the FH 77 contract to India are lower than comparable prices offered to any other customer, i.e. India is treated as the most favoured customer.

K. Evidence of Shri W. N. Chadha

7.137 The Committee recorded the evidence of Shri W. N. Chadha, Chairman, Anatron General Corporation, at their sittings held on 15th April, 1988.

7.138 The Committee enquired how Shri Chadha happened to be associated with Bofors and for how long he was representing them. Shri Chadha stated that in the seventies he was representing a Company in Sweden called AGA AEROTRONICS. When the Company was taken over by Bofors, he was requested sometime in 1978 to represent Bofors in India as they were not satisfied with the representative whom they had posted in India for many years. He agreed to represent the company and entered into a Representation Agreement with them in October, 1978 for a period of three years ending September, 1981. Under this Agreement, he was required to help Bofors in providing information on Indian customs, the way of doing business here and to help the company's representatives

to travel around in the country and to distribute the literature that the company wanted to be distributed in India. He was also required to help them in logistics in case any of their weapons equipment was required to be evaluated in India and to that end make arrangements for transporting the equipment for trials and also to make all necessary arrangements regarding boarding, lodging travel, medical assistance, etc. to the Bofors representatives during their visits to India. He had made clear to them right at the outset that he would "neither accept nor perform any services of any type that were against the Indian laws and the rules of the Government."

7.139 Shri Chadha added that the Agreement of October 1978 was extended on 11th March, 1981, i.e. six months before its expiry for another period of three years. This was followed by another agreement which was signed by Bofors with Anatron General Corporation, which was his sole proprietary concern. That arrangement also was for three years, i.e. valid upto September, 1984 and for performance of the same services. He did not have copy of the agreement of 1978 but stated that it was identical to the agreement of 1981.

7.140 Shri Chadha further informed the Committee that in May, 1984, Bofors offered him revised terms at reduced rates because they had not been able to do much business in India during the intervening period. As per the revised offer, he was to receive commission only @0.25 per cent on the ex-works value of the equipment sold by Bofors as against 2 per cent under the previous agreements. On a careful evaluation of the options available to him, he accepted the reduced rate since Bofors threatened to cancel the contract. A fresh agreement was accordingly signed by Bofors with the Anatron General Corporation Private Ltd. on 30th November, 1984 valid upto 30th September, 1987.

7.141 Towards the end of 1985, Bofors informed him that the Prime Minister of India had insisted that under no circumstances any of the contenders in the gun business will have any middlemen involved in the negotiations or sales in any way whatsoever and that this was the precondition which they were required to fulfil in order to go ahead with the negotiations. They, therefore, wanted the existing agreements to be terminated. As he had learnt from the newspapers that the deal was to be worth Rs. 600-700 crores, he found that his entitlement was going to be around Rs. 1½ crores in matter of two years. After making allowance for tax deductions, he would have been left with not more than Rs. 70 to 80 lakhs. He, therefore, told the Bofors that they should give him a definite agreement for a period of five years and pay him 100,000 SEK per month (the then exchange rate was Rs. 1.80—1.90) irrespective of whether they

got any business in India or not. As the payments would be staggered over five years, it would enable him to save considerably on income tax and the net amount in hand would be still quite reasonable. While agreeing to this condition, Bofors stated that he would have nothing to do with the sales either directly or indirectly. As he had till then nothing to do with sales, he signed the revised agreement with Bofors in January, 1986. Bofors sent him a letter dated 3rd January, 1986, which reads as follows :—

“All representation agreements or any other agreements between Anatron General Corporation C-4, Main Market, Vasant Vihar, New Delhi-110057, and Antiebolaget Bofors S-691 B Bofors, Sweden, were terminated as per December 31, 1985.

Furthermore, all obligations of any kind whatsoever between Anatron General Corporation and A.B. Bofors are null and void as per December 31, 1985.”

7.142 Shri Chadha added that the agreement of January, 1986 conceded the terms that he wanted. A copy of the same had been filed by him in the Delhi High Court in connection with his writ petition.

A copy each of the Representation Agreements of 1981 and 1984 and Administrative Consultancy Agreement, 1986 was handed over by Shri Chadha for perusal of the Committee.

7.143 The Committee drew the attention of the witness to Bofors' letter dated 30th November, 1982 which reads as under:—

“With reference to the Agreement dated September 12, 1981, between Anatron General Corporation and A.B. Bofors or its division, subject to contract becoming effective not later than September 30, 1984 between the Government of India and A.B. Bofors ordnance division for delivery and for licence manufacture of Bofors Howitzer FH 77-B weapons system and its ammunition, accessories, parts, semi-manufacturers etc., the validity of the agreement shall be prolonged until September 30, 1987. Only for the promotion of sales of the Bofors FH 77-B weapons system as described above, in case the agreement as intended is prolonged according to above, it is hereby agreed that with the exception of dropping sub-para 1 and 2 of para 9 of the above referred agreement, i.e. 1981 agreement, all other terms and conditions of the agreement remain valid.”

Asked whether this did not indicate that Bofors were expecting to secure the contract even as early as November, 1982, and that they had, therefore, agreed to extend the validity of the Agreement till September 30, 1987, the witness stated that they were not expecting to receive the order and in

fact wanted to get rid of him. At that time the trials of the guns were still going on. "In 1982, they were not hoping (that this agreement would come through).....Looking at the terms offered, it was quite obvious that they were far out of line."

7.144 Shri Chadha's attention was drawn to Clause 1.1 of the Representation Agreement of 1981 and 1984 which stipulated that he had been appointed as their sole representative for the Republic of India "to promote the sales of Bofors ordnance and ordnance stores to the Government authorities concerned and to their domestic supplies of ordnances within the territory (of India)". Shri Chadha stated that the logistic support provided by him in presenting the guns for trials was a pre-requisite to the sales and it was only to that extent that his services were utilised by Bofors. He could in no way be called a middleman or an agent for he had no authority to make deals on behalf of the Principal, to make commitments, to make sales, to reduce the price or to fix terms.

He added:—

"There is a big difference. A representative has no authority to go and discuss the financial terms or fix the prices or to negotiate or do sales business on their behalf. Representative is only to give them information. And the information too is of a specified nature. So, the term differs from representative to representative. And the representatives are never involved in direct negotiations as far as Bofors go. I know it from my own experience."

He further added:—

"I don't think Bofors wanted to give authority to anyone other than Swedens to negotiate or contract for them or to fix prices for them. They will not give that authority to anyone, to make any commitment on their behalf unless he is a Swede of a long-term standing, or working with them as an employee."

7.145 On his attention being further drawn to Clause 4 of the Agreement which provides that "direct business negotiations are to be handled by Bofors with the participation of the representative", Shri Chadha stated :—

"When the original agreement was made, the Government of India had no objection to the participation of the representatives in the discussion. Unfortunately, the same agreement they were using year after year even though Government of India issued instructions that it would not allow anybody to come in. So it is provided in the agreement that we will be there but we were never there."

He added :—

“ they (Bofors) wanted to act through the agreement that had been approved by the Legal Department. They said: ‘if your Government does not permit you to attend, you are under no obligation to attend. But when your Government permits you to attend, you shall have to come with us’. ”

7.146 On his attention being further drawn to the fact that the agreements provided for payment of remuneration as well as commissions, Shri Chadha stated :—

“The words ‘commission’ and ‘remuneration’ both are same in Swedish language. They prepared the original agreement in Swedish and then they gave it to somebody who knew both the languages. You will find many grammatical errors also. But when they got the translated agreement, they did not want to alter any wording of that. So, we had to accept the wording as it is without protest.”

7.147 The witness affirmed that he had no information about the three companies named by Bofors as their consulting agents. He had never met them and had never heard of them till their names appeared in the newspapers.

7.148 Asked whether he was aware that Bofors had paid termination costs to the extent of SEK 319 million to these companies, Shri Chadha stated :—

“I do not know whether they have commitments. I do not know what considerations forced them to do it. I do not know anything about it.”

7.149 Asked whether he had ever made any compensatory payments to any persons, Shri Chadha stated :—

“Full details—details of the receipts, payments as well as the proof—are available with the Enforcement Directorate They were fully satisfied. The payments were received before and some amounts were paid back to them or to the people to whom they wanted to pay. We have never made any compensatory payment to the persons which had appeared in the press. We have never been charged for any such offence by the Government authority.”

7.150 Asked whether he was aware of the inquiry initiated by the Swedish Public Prosecutor against SAB Bofors and whether he had sought

any information either oral or documentary from him or from any of his concerns, Shri Chadha stated :—

“No. He took all the papers concerning us from Bofors and in one of his statements, he made it clear—I do know whether it has reached India or not—I read it in the press in States—that he has gone through the payments made to Anatronics and the agreement with Anatronics; He is fully satisfied that those are on valid grounds and are justifiable. He does not see any kickbacks or bribe or anything of that sort, and the explanation given by him is quite satisfactory.”

7.151 The Committee enquired whether the amounts mentioned in the report of the Investigating Agencies as payments received by the Anatron General Corporation/Anatron General Corporation Private Limited from AB Bofors were correct Shri Chadha stated :—

“...Whatever we have received, we have accounted for, and we have received nothing beyond that. Whatever my office has given, you can take it as absolutely correct. I was in America when they made these statements to them. I did not get the copies but I made a blanket statement that details of all the payments submitted to the Enforcement Directorate given either by me or by my office, were correct.”

7.152 In reply to a further question, the witness affirmed that neither he nor his companies had received any payments other than those mentioned by the Investigating Agencies.

7.153 Further asked whether he had disclosed the said payments in the various Income Tax Returns, the witness stated “Yes Sir and also to the Reserve Bank of India.....All these assessments were completed on the basis of these figures. They have reopened it now and it is a different issue.”

7.154 Further asked whether the amounts mentioned had been received directly from Bofors or through the Reserve Bank of India, Shri Chadha stated :—

“In almost all cases, it came by cheque drawn in Sweden on a bank in India or it was a banker's cheque drawn in Sweden and they were cashed through our accounts and the same was reported to the R.B.I. and later on certificates have been received which were attached with our future applications for exchange control. There are more than half a dozen people who know it.

He added,

“I wish to reiterate and repeat categorically and clearly that all payments that we have received from Bofors have come through banking channels with the knowledge of Reserve Bank. They have been duly reported to Income Tax and they have been confirmed by the Reserve Bank to us in the foreign remittance certificates granted to us from time to time. We have not received any other payment at any time from Bofors.”

7.155 The Committee drew the attention of the witness to the press reports to the effect that kickbacks or bribes were paid in the deal and that these had been routed through him to some people in India or outside India. Shri Chadha replied :—

“They printed in one breadth all this and this is mentioned in one article of Arun Shourie. It is inconceivable to imagine that a large amount could have been channelled through a small fry Mr. Win Chadha because I know his status and it will be like trusting you watchman with five crores of rupees, which he did not say—it is my addition. Many things have been said in the press.”

7.156 When specifically asked whether any payments had passed through him to any persons in India or to any politicians in particular, Shri Chadha stated :—

“Sir, it is absolutely fabricated lie. When they are talking of political persons. I did not have the fortune of knowing anyone. I have never been around any political personalities nor have I developed intimate contacts with any such person.”

7.157 Asked whether any case was pending against him or against any of his companies in any court in India, excepting the one for non-appearance in response to the summons issued by the Enforcement Directorate, Shri Chadha affirmed :—

“There is no case of any nature pending in any court against any of the companies or me or my son, and there has been no case pending throughout our whole life.”

7.158 In reply to a further question, the witness stated that he had filed writ petitions in the Delhi High Court and the Supreme Court for defreezing of his bank account. He had not been told of the FERA violations he had committed. No further summons had been served on him nor any charge made against him.

7.159 During his examination, Shri Chadha further affirmed as under :—

- (i) He was never a middleman or an agent of Bofors insofar as he never performed any functions of a broker or a commission agent and was not engaged in any selling activities.

He added :

“Agent is primarily involved in sales. He has to have the authority to be able to conduct any sales and he should have much wider powers than a poor representative here whose work was only to arrange the transportation of some equipment or weapons.”

- (ii) His contacts with the Ministry of Defence were confined to procuring some literature or information that the Ministry wanted from time to time.
- (iii) He never met any key figure in the Defence Ministry or any other political leader in the performance of his activities.
- (iv) He never participated in any negotiations with any Defence personnel or officer in the Ministry of Defence or any political leader.
- (v) He was not aware of any other consultants who were helping Bofors to secure the deal. According to him, “Bofors are very secretive people. The people I deal with are mostly operational people, those who knew how to fire and repair the gun. They did not tell me anything. Nor did I ever try to sniff around to know their secrets.”
- (vi) During the period of trial of the gun, he provided logistic support only and never participated in the technical or financial negotiations.
- (vii) He had employed a retired Brigadier (Brigadier Bhatnagar) for technical assistance. Shri Bhatnagar had left him recently as his accounts were frozen and he had no money to pay. Another ex-Army officer employed by him was one Mr. Verma who was a retired engineer. He left him several years back.
- (viii) In addition to representing or working for Bofors as consultant, he was in the leasing business.

(ix) He did not contact Bofors when he came to know that the Swedish Radio had made allegations of bribes having been paid in the Bofors deal for the reason that Bofors had their own representatives in India.

He added, "it was none of my business. I did not want to get involved in this controversy".

- (x) He had not fled India in May, 1987 or 'absconded' as reported in the Press. He had gone to the United States on business. After two weeks or so, he fell ill and his family had to be summoned. The expenses on his medical treatment were met by his younger brother who was settled in Alabama and by his sister-in-law whose husband was a doctor in California. He had another brother who was 'perhaps' a Dutch citizen and a non-resident for 10 years. Besides, he had several other relations abroad and they were all prosperous and well to do. Being the oldest, he had brought up his brothers like his own children and they looked to him as their father. He added : "The annual income of my sister-in-law and brother-in-law is a few hundred thousand dollars and it is a flea bite for them to look after a man who had raised them."
- (xi) He had obtained a B-2 Visa a year before leaving India. It was valid for five years.
- (xii) He was given a Green Card in 1969 and 1970 on the basis of certain criteria laid down by the U.S. Government which he had more than fulfilled long back. It was not true to say that he had lost the Green Card status; on the other hand, he had surrendered the Green Card.
- (xiii) He had been informed by the Consul General of India in New York that his Passport had been revoked and was given a duplicate Passport to enable him to come to India to appear before the Committee.
- (xiv) On his attention being drawn to a photograph published in the Indian Express of 15th June, 1987, which, it was stated had been taken from the Journal of M/s. AB Bofors and which showed that he was present along with Mr. Svante Stahl, the Bofors Sales Manager, during the trials of the 155 mm gun, Shri Chadha stated :—

"The picture shown in the worthy newspaper is of another gun trial which was demonstrated several years before 155 mm

gun was negotiated. This gun was not even on the offer to India. Mr. Svante Stahl had already been moved from India several years before the 155 mm gun negotiations started. But the worthy newspaper shows this picture and links it with 155 mm gun. This is not information; this is misinformation."

- (xv) Shri Chadha denied the charge that he had helped the Bofors to obtain the contract or that he had surreptitiously managed to disburse any commissions to any Indian leaders or politicians or that he had deposited those moneys in different Swiss Banks.
- (xvi) Press reports to the effect that the Investigating Agencies had interrogated only his Advocates and not himself personally were, according to Mr. Chadha, incorrect. "The Advocates were present; but they were not allowed to utter a word even; not even a word of advice to him."
- (xvii) He had no bank accounts either in his own name or in the name of his son or any member of his family or in the name of anyone with whom he had financial dealings as a business partner or even as a friend.

He had not received any payments other than those under the provisions of the various agreements with Bofors for the purposes of sales promotion, nor had he received any money except through the banks. He added :—

"I have neither any receivables.....The only thing which I received was a car which they exported to India (under the agreement)".

- (xviii) He had never visited Panama, but so far as U.K., Switzerland and other places in Europe were concerned, he had visited these countries several times during the last 10 years partly in connection with his business and partly to canvas for more business. He added :—

"We live virtually on consultancy services of foreign companies and consultancy services need not be in India."

7.160 Asked why he had not clarified matters in view of the fact that his deposition before the Committee differed very much from what it appeared in the press, the witness stated :—

"Sir, I had the previous experience, as I mentioned earlier and the hon. Chairman told me not to elaborate on it. When I was sitting here in India, they said "he has flown away".

This was going on for weeks, when I was here in the month of April. I made a statement to the Press which was not taken note of. I telephoned the hon. M.P. Shri Jaipal Reddy who gave a statement in the Press about me, and asked him to correct the statement, made at Hyderabad. After a day or two, in Delhi, when he came to Delhi I telephoned him. He said that he wanted to do, he did not have the time, and said that he would do it in a day or two. I invited him to come and have a cup of tea and clear it. He said he would come. After one more day, when I rang up again he said he promised that he would do it next day. He did not come. When I telephoned him again, he said, that he would not be able to come, and also added that he was not going to do. He said that he was not going into it because he had some other information.

“I reported to the Press and wanted a correction to be published. I wrote to the *Indian Express* as it published the information earlier. I told Arun Shourie about this and asked him to issue a correction. He said that he would publish my letter, and asked me to write a letter, which I did. He published any letter, no doubt, but he also added that it was not correct, and he mentioned about my being a tenant of a relation of his, that he knew the goings on about my company and so on. The fact is that six years before that, I was a tenant of his uncle, when Bofors gun was not in the run. And he is talking six years later and says that I am telling a lie.

As if that was not enough he gets hold of diaries which were printed four years back on which it was written “Anatronics, Executive Diary, Presented with compliments” and so on and photographs it. Very cleverly the year of the diary was covered with ink, and so this diary was printed in the Press. These are two or three lies. If a keep going on there will be dozen more. I have refrained from raising a noise because an honest citizen’s name has been besmeared or besmirched and he has been tried by Press, not by jury. If I get well, if I get an opportunity to appear before a responsible body like this I thought I would tell them that this is the true story or these are the facts. When I appear before this Committee, and after the true facts are stated and the report is submitted to Parliament, then I may take each of these people to task, to my last rupee, and take them to court, to tell the sordid and sorry story about an honest citizen of the country.”

Observations/Conclusions of the Committee

7.161 The Committee note that till November, 1984 when the new Government came to power, the practice of utilising the services of agents in procurement of defence equipments was not precluded. However, it was essential for the supplier to identify the Indian agent, declare the commission payable to him and the same was to be paid in Indian rupees. Earlier the agents could participate in the discussions held in the Ministry. This practice had the definite advantage of enabling the Indian side to know about the developments taking place in the field of equipment in other countries and also the shortcomings of different systems.

7.162 The Committee find that the question of appointment of Indian agents in relation to purchase of 155 mm. gun was raised in the meeting of the Negotiating Committee held on 31st July, 1984. The committee were given details of the Indian agents appointed by the four firms. A view was expressed by the then Secretary (Expenditure) that while conducting negotiations, an exercise may be undertaken for reducing costs by reducing the percentage of commission being offered to Indian agents.

7.163 While the negotiations were on, the new Government decided that henceforth defence contracts would be finalised totally without agents and that negotiations will be held directly with the foreign suppliers. The Defence Secretary accordingly called the representatives of the four contenders on 3rd May, 1985 and told them in clear terms that the Government of India did not permit the involvement of Indian agents acting for foreign suppliers. They were, therefore, asked to make suitable reduction in their offers in case they had kept any commission for payment to the Indian agent. In response to the above request, the UK firm informed the Government of India that they were a Government Company and did not have any agent. The French firm stated that they had agreed to consider as null and void the information handed over to the Ministry of Defence in August, 1984 concerning the role of Hindustan Exports and Imports Company, Bombay, in this matter. The Austrian and Swedish firms stated that their revised quotations of 10th May, 1985 were lower than the earlier offers, but they did not specifically mention that the reduction in prices was on account of removal of agency commission. The Swedish firm had, however, informed the Ministry that Shri W.N. Chadha of Anatomic General Corporation had been acting as the representative for Bofors for several years and was still acting as such and that they would consider the advice of the Defence Secretary and take necessary action.

7.164 The Committee note that the matter was discussed by the Prime Minister, Rajiv Gandhi, with Mr. Olof Palme, the Prime Minister of Sweden when they met in New York in November, 1985. Later, in January, 1986,

the Swedish Prime Minister informed Prime Minister of India that Bofors had declared their wish to conclude business directly with the Indian Defence Ministry without any middleman. In their letter of 10th March, 1986 to the Ministry of Defence, Bofors confirmed that they did not have any representative/agent especially employed in India for this project. However, they did have M/s. Anatronc General Corporation for providing administrative services to their personnel in India. The Defence Secretary affirmed in evidence that no agents had been involved in the commercial negotiations. He further affirmed that he, as Chairman of the Negotiating Committee, had never dealt with the Anatronc General Corporation either before or after signing the contract.

7.165 The Defence Secretary further stated in evidence that when the broadcast of the Swedish Radio was published in the newspapers on 17th April, 1987 alleging that bribes had been paid to senior Indian politicians and key defence figures to win the contract, the matter was viewed with great deal of concern. The Ministry of Defence immediately took up the matter with the Swedish Government through the Ministry of External Affairs and also contracted our Ambassador in Stockholm to ask Bofors to clarify the matter.

7.166 Later, when the Swedish radio repeated that it had documentary evidence of pay-offs in four instalments to Indian accounts in Swiss Banks, the Government of India approached the Swedish Radio authorities to give them the source of their information and the evidence in their possession. They said that their correspondent in India had supplied them this news. The Government of India then contacted this correspondent, but he refused to give any documentary evidence. Between April 1987 and September, 1987 when the Committee started their investigations into the matter, a good deal of correspondence had been exchanged by the Government of India with Bofors and the Government of Sweden. Several notes were also exchanged at diplomatic level between our Ambassador in Sweden and the Swedish Ministry of Foreign Affairs. Governments correspondence with Bofors and the Swedish Government was laid on the Table of the Lok Sabha by the Minister of Defence on 26th August, 1987, and is public knowledge. The points that emerge out of this correspondence can be summarised as under :

- (i) Bofors consistently denied that they had used any middleman, representative or agent to represent the Company with the Indian authorities in order to win the contract. The contract negotiations and other talks took place directly between the Ministry of Defence and Bofors.
- (ii) Bofors had never paid or conspired to pay any bribes in connection with the contract.

- (iii) The allegations that the contract of March, 1986 included a condition of payment of commission or that any Annexures to the contract contained any such provision were false.
- (iv) In pursuance of Govt. of India's wishes, Bofors cancelled their agreement with the Anatron General Corporation and drew up a new agreement for administrative services for Bofors' own personnel in India. For these services, compensation of 100,000 Swedish Kroners per month was to be paid, starting from January 1, 1986.
- (v) In order not to risk coming into conflict with the request of the Govt. of India, Bofors terminated the International Consultancy Agreements signed by them long before the commencement of the Howitzer Contract negotiations. As these agreements were not related to the winning of the FH 77B contract, termination costs would have to be paid even if Bofors had not been awarded the contract. Further, the total amount of the termination cost was not related to the contract value.

7.167 Not satisfied with the replies of the Company the Ministry of Defence continued to pursue the matter with the Swedish Government as a result of which the latter instructed the Swedish National Audit Bureau on 29th April, 1987, to audit the relevant records.

7.168 On 4th June, 1987, the Swedish Embassy forwarded a copy of the Swedish National Audit Bureau Report to the Government of India.

7.169 The observations of the National Audit Bureau are, in summary, as follows :—

- “(a) An agreement exists between AB Bofors and.....*concerning the settlement of commission subsequently to the FH 77 deal;
- (b) that considerable amounts have been paid subsequently to, among others, AB Bofors' previous agent in India.”

7.170 The Committee find that on receipt of the report of the Swedish National Audit Bureau, the matter was again taken up by the Government of India with AB Bofors. In a detailed letter sent on 16th June, 1987, it was pointed out that Bofors “have not only gone against our explicit wishes but have also violated the solemn assurances given to us by your company”. The company were consequently asked to furnish complete

*This information was excised from the copy of the Report supplied to the Govt. of India.

information regarding the transactions, *i.e.* the precise amounts paid/to be paid by way of commissions, secret payments, etc., the recipients thereof, the services rendered by such recipients together with copies of relevant contracts, agreements, etc. The Government of Sweden were also requested to use all their influence and weight on the company to furnish the requisite information.

7.171 In their reply dated 30th June, 1987, Bofors reaffirmed that they had only paid winding up costs in accordance with the normal practice and that the said costs had not influenced the price of the only contract.

7.172 In his letter of 16th July, 1987, the Defence Secretary pointed out that the Company's communication of 30th June, 1987 did not answer any of the questions raised earlier.

7.173 In their communication dated 24th August, 1987, the Ministry of Defence asked Bofors to furnish further clarifications *inter alia* on the following points :—

- (i) Why and on what basis and for what consideration, were payments made in relation to the Indian contract ?
- (ii) Who precisely were the parties involved in the Company's "International Consultancy Agreement" ? Was there one agreement or more than one agreement ?
- (iii) If the amount paid for "winding up" or "termination" was not related to the winning of the Indian contract and would have to be paid in any case, then—
 - (a) Why and on what basis did the Company take the position before the National Audit Bureau that it was 2-3% of the order sum ?
 - (b) What was the basis of this amount to have been so large ?
- (iv) If the agreements had not been "terminated" or "wound up", what would have been the amounts payable under these agreements?
- (v) Does the company have any knowledge or information in its possession of payments made by their former agent and/or the "international consultants", whose agreements were stated to have been terminated/wound up, to any Indian citizen or Indian company or any other party at the instance of any Indian citizen or Indian company ?; if not, please clarify.

7.174 The Ministry of Defence demanded complete and precise information on the points as detailed in para 5 of their letter of June 16, 1987, paras 5-6 of their letter of July 16, 1987 and para 3 of the letter. The Ministry

further stated "we would like to make it clear that nothing short of clear and cogent answers to the various points and directions raised would satisfy us".

7.175 The Committee find that in response to this communication, the company decided to send two of its senior officers—the President (Mr. Per Ove Morberg) and Senior Vice President/Chief Jurist (Mr. Lars Gothlin)—for discussions with the Govt. of India. Accordingly, discussions with a team of officers headed by the Defence Secretary held on 16th and 18th September, 1987. The information furnished by the Bofors executives was passed on by the Ministry of Defence to the Chairman of the Committee and formed the basis of further investigations by the Central Investigative Agencies.

7.176 The Committee note that during their discussions, in September, 1987 with the Government of India team, the Bofors officials gave the following information regarding the names of Companies and details of payments made to them by way of winding-up charges :—

- (i) SVENSKA INC., PANAMA —SEK 188.4 million
- (ii) MORESCO/MOINEAO S.A. —SEK 81 million in three
(PITCO) Geneva instalments of SEK 37 million, SEK 12 million and SEK 32 million.
- (iii) A.E. SERVICES LTD., U.K. —SEK 50 million.

7.177 Bofors officials further informed Government that they had an agreement with ANATRONIC GENERAL CORPORATION, C-4, Main Market, Vasant Vihar, New Delhi, who were functioning as their sole representative in India since 1978. They were being paid a commission of 2% on sales till May, 1984 when the commission was reduced to 0.25%. The agreement with this company was also terminated in January, 1986. No winding up charges were paid to this company, but an amount of SEK 100,000 per month was payable for five years from 1986 for administrative support services.

7.178 A joint team of C.B.I., the Directorate of Revenue Intelligence and the Directorate of Enforcement assisted the Joint Parliamentary Committee in verifying the information furnished by Bofors and ascertaining whether any Indian, resident in India or abroad, or any Indian Company or foreign company associated with Indians was involved in the receipt of payments made by M/s. AB Bofors to the three companies mentioned above. After making thorough inquiries—both in India and abroad—and with the assistance of INTERPOL, the Investigating Agencies furnished a comprehensive report.

7.179 The Committee find that so far as the company based in Panama, namely M/s. SVENSKA INC., is concerned, the names of the three Directors were found to be the same as given by Bofors to Government. However, inquiries by the Investigating Agencies revealed that the President, Vice-President-cum-Treasurer and Secretary of the company were all ladies and were not persons of any means. A Post Box had been hired for receiving the mail of the company but there were hardly any transactions since its incorporation. The legal representative of the company was being paid her retainer fee and service charges from Switzerland. As these had not been received over the last two years, the Post Box had been de-hired. No records of annual statements of accounts in respect of the Company were found. Inquiries conducted at the address in Geneva disclosed that the address given was that of the bankers of the company. This company received bulk of the payments made by Bofors viz. SEK 188.4 million out of a total of SEK 319 million.

7.180 With regard to MORESCO/MOINEAO (PITCO), inquiries revealed that there was no person by the name of Lafonte, who according to Bofors, was aware of the payments made to this company. No company by any of these names was registered in Switzerland. However, inquiries made in Lausanne showed that a company by the name of MOINEAO was registered there but the names of the three directors, who were all residents of Switzerland, were different from the names of directors furnished by Bofors. The Swiss Bank/CREDIT SUISSE, GENEVA refused to disclose any information relating to receipt of payments by M/s. MOINEAO on the ground that it would be a criminal offence under the Swiss laws. The second banker, namely MANUFACTURERS HANOVER TRUST, GENEVA, whose name was given by AB Bofors did not have any transactions with any of the three companies nor any payments were made through them by the aforesaid companies to any Indian residing in India or outside India. According to the Investigating Agencies, the functioning of this company seems to be mysterious and it appears to be only a front organisation being run for persons not residing in Switzerland.

7.181 With regard to A. E. Services, the Investigating Agencies found that the two directors named by AB Bofors were having a share of £1 each while 98 shares all of £1 each were held by a Hong Kong based company. Originally, this company was called TARGET PRACTICE LIMITED, and had been incorporated in London in July, 1978 with a nominal capital of £100 consisting of 100 ordinary shares of £1 each. In August, 1979, the name was changed to AE Services Limited. The company is a subsidiary of the holding company called CIAOU (Consortium for Information Assimilation and Output Unit)/ANSTALT VADUZ registered in Liechtenstein. M/s. A.E. Services had entered into an agree-

ment with Bofors in November, 1985 to represent Bofors in India and some other countries. This agreement contains carefully drawn 'Secrecy' clauses. Cancellation costs were paid to this company amounting to US \$ 7.3 million. On and around 11th September, 1986, the amount was stated to have been kept in M/s. **NORD FINANZ BANK, ZURICH** and has not been utilized so far so that if any demand is received from the Inland Revenue Department, U.K., the same would act as a cover. No Indian or any Indian legal entity whether resident or non-resident in India, is connected with the holding company **CIAOU**.

7.182 The Committee find that the agreement with **A.E. Services Limited** was cancelled effectively from 8th March, 1986 through a written declaration to that effect made on 8th September, 1986, whereby **A.E.S.** acknowledged to have received from the Company (**Bofors**) "for the benefit of **A.E.S.** parent company **CIAOU Anstalt Vaduz**, the sum of **SEK 50,463,966 (US \$ 7,343,951.98)** in full and final settlement of all **A.E.S.** rights and entitlements to fees under the said agreement". It was further declared that the only advice given to the company prior to 8th March, 1986, related to the manner and timing of negotiations and the content of the projected contract and that neither **A.E.S.** nor any of its associated companies had done any work in India prior to 8th March, 1986. It was further certified that no Indian individual or Indian legal entity or non-Indian person or legal entity connected with any Indian received any payment from the compensation figure. The above declaration was signed by **Shri M.T. Stott, Director**, and counter-signed by **Shri R.A. Wilson** as **Head of Legal Affairs, CIAOU Group of Companies**.

7.183 So far as the **BID ENGINEERING, SINGAPORE**, is concerned, the Investigating Agencies have reported that it did not receive any winding-up costs and hence no further inquiries were made.

7.184 The Committee thus find that a total of **SEK 319 million** were paid by **Bofors** to their agents in the context of Indian contract as 'winding-up' costs. Inquiries made in Sweden with the Ministry of Foreign Affairs showed that the Chief District Prosecutor had not been able to find any evidence to show that bribes were paid to any Indian, whether resident or non-resident in India, to win the Indian contract by **A.B. Bofors**, nor did he find any violation of any Swedish law. He had, therefore, discontinued his investigation. Even though details of payment were given to the Bank of Sweden, the Swedish Ministry of Foreign Affairs took the stand that the said information would be kept secret as it was protected by Section 5 of the Officials Secret Act of Sweden. Therefore, so far as the Govt. of Sweden were concerned, they were not in a position to do anything further in the matter.

7.185 Inquiries made with the Bank of Sweden (SVERIGES RIKS BANK) also proved to be of no avail.

7.186 The Inspector-General of Military Equipment, Ministry of Foreign Affairs, Sweden, informed the Investigating Agencies that he had personally gone through the documents—from 1975 till date and there was nothing to indicate that the Swedish laws were violated so far as the Indian contract was concerned. However, he was not in a position to clarify whether the amounts paid by AB Bofors constituted “winding-up costs” or “commissions”. This was a matter which only AB Bofors could clarify.

7.187 The Committee again summoned the Bofors officials on 7th April, 1988, to examine them afresh, based on the findings of the Investigating Agencies. The Bofors representatives reiterated what they said in their Communications to the Ministry of Defence and their earlier deposition before the Committee in September, 1987. The witnesses re-affirmed that :—

- (i) Termination costs were not paid to any Indian citizen or any Indian including, any member of the Indian Government or any other Government Officials;
- (ii) They had given ‘substantial’ information to the Ministry of Defence and that it was not possible for them to give any more information;
- (iii) They were not prepared to hand over to the Committee the agreements signed by them with the international consulting agencies because of ‘commercial secrecy’;
- (iv) They would not part with the termination agreements also for the same reason;
- (v) The contracts had been terminated in pursuance of the wishes of the Indian Prime Minister ending, in winding up costs which was quite ‘natural’;
- (vi) They had not paid any bribes nor conspired to pay any bribes;
- (vii) It was “most ridiculous” to attribute to the Chairman of the Noble Industries the statement that “he could not guarantee that bribes that had not been paid”;
- (viii) Payments through Swiss Banking Channels was a normal affair;
- (ix) Payments in the Swedish Bank had been shown as “Commissions” as ‘unfortunately’ there was no code number for “winding up costs”;

- (x) The Chief District Prosecutor who had access to all the documents had closed the preliminary investigation and there was nothing in his report to show that payments made by A.B. Bofors in connection with the large order from India were not "in fact winding-up costs";
- (xi) The prosecutor had formed the explanation provided by the Bofors spokesmen as reasonable;
- (xii) Closing of the file by the District Prosecutor proved that the management of Bofors had no decisive influence in obtaining the contract;
- (xiii) There was no evidence at all concerning the allegations; and
- (xiv) Bofors had sold Howitzer guns to India at prices lower than what Swedish Army had paid to them for the same guns.

7.188 The representatives of A.B. Bofors declined to give any more information regarding the three consulting agencies domiciled outside India than what they had given already. While confirming that payments of the order of S.E.K. 319.4 million were paid as winding-up costs, Bofors representatives stated that no further payments were due for proposed to be paid. On the question whether they were prepared to re-imburse the amount of Rs. 64 crores paid to these companies, the reaction of Bofors representatives was that since no one had given any kind of evidence or proved that the company had done anything wrong, such a question did not arise. Under compulsion to maintain commercial secrecy, Bofors representatives expressed inability to give more details of the nature of payments on the names of recipients. For the same reason, they expressed inability to hand over copies of agreements, including termination agreements with these companies.

7.189 The Bofors' representatives have admitted that three companies, not domiciled in India, were assisting them in connection with the contract for the FH-77-B Howitzer gun under consideration of the Ministry of Defence. They have, however, denied that these companies were anything more than Consultants to Bofors, and stated that they were not used in any manner within the territory of India. Bofors also claimed that under their agreement of secrecy they were not in a position to divulge the names of the persons in actual control of the companies or the persons who actually received the money.

7.190 With the refusal on the part of Bofors to make these disclosures, in spite of very close questioning by the Committee, no headway could be achieved on this issue. However, it is to be noted that such disclosures, according to Bofors, might involve them in a breach of contract conditions

with the parties who were acting as their Consultants. According to the legal advice tendered to the Committee by the Attorney-General, Bofors can claim commercial secrecy to safeguard their interests, and that the Committee is not in a position to compel Bofors to make these disclosures.

7.191 In this connection, Bofors' representatives have emphasised that the complete record concerning these payments had been seen by the Swedish Public Prosecutor and that he had also interrogated the various executives concerned in Bofors. They contended that after the investigations, the Public Prosecutor came to the conclusion that no offence under Swedish law was made out. This, according to them, clearly shows that moneys paid to the three firms afore mentioned were not paid as bribe because bribe is an offence under Swedish law. The Attorney-General is of a similar view. The explanation given by Bofors' representatives, therefore, has force and their stand on this issue is not inconsistent with the legal position. As such, the Committee in the absence of any further reliable information or proof are of the view that while full details of the reasons for payments and names of recipients are not known, no direct evidence of documentary proof is available to sustain the allegation that the payments made by Bofors are of the nature of bribes or commissions paid to middlemen.

7.192 Bofors' representatives were closely examined on the huge amounts paid to the three companies which appeared to be excessive as compared to the services alleged to have been rendered by these consultants. In this connection, Bofors' representatives explained that the earlier agreements entered into with these companies had to be terminated consequent on the desire of the Government of India that there should be no middleman or agent involved in this contract. It was contended by Bofors' representatives that the winding up costs had to include compensation for loss of profits as also the fact that the Consultants lost the chance of undertaking other business while they were acting for Bofors. It was after detailed consideration of the various options available to them that the Bofors management decided, at that point of time, that the best option for them would be to pay winding up costs and terminate the earlier agreements. In this connection, Bofors' representatives furnished a certificate after due audit of their accounting records for the year 1986 and the period 1st January to 31st August, 1987 by a Public Accountant in Sweden. According to the certificate furnished by Bofors, the Public Accountant *vide* his opinion dated September 14, 1987, has supported the following statements :

- (1) AB Bofors has had an agreement for representation in India and general consultancy agreements, which under circumstances prevailing earlier would have been applied to sales of M/s. A.B. Bofors Products. Some of those agreements originated as long ago as in the late nineteen-seventies.

- (2) The agreements mentioned under item 1 have been terminated and are no longer applied.
- (3) Termination costs for the consultancy agreements (mentioned under item 1) were paid out during 1986. No payments based on the agreements have been made after December, 1986.
- (4) The termination costs were substantially lower than the amounts which would have been paid if the agreement in force during 1985 had been applied.
- (5) The final prices in the FH 77 contract to India are lower than comparable prices offered to any other customer, *i.e.* India is treated as the most favoured customer.

7.193 A copy of the certificate and the opinion of the Public Accountant is at Appendix XI.

7.194 In the absence of any other reliable evidence to the contrary, the presumption caused by the certificate (Appendix XI) goes in favour of Bofors claim that placed as they were in the year 1986, the exercise of the option to pay winding up costs was in their best interests.

7.195 Shri WN Chadha, Chairman, M/s. Anatronc General Corporation, in his deposition before the Committee reiterated what he had already told the Investigating Agencies earlier. He affirmed *inter alia* that—

- (i) he neither accepted nor performed any services for Bofors that were against the Indian laws;
- (ii) all along he had acted as a representative of Bofors and not as an agent or a middleman;
- (iii) he had never taken part in technical or financial negotiations and the only services that he had rendered to Bofors were to provide logistic support for movement of their equipment for trials in India, to look after their boarding, lodging, travel and other arrangements and to obtain the information desired by the Ministry of Defence from Bofors and supply the same to the Ministry;
- (iv) according to him, the words 'commission' and 'remuneration' used in the agreements with Bofors connoted the same meaning;
- (v) he had not heard of the three consulting agencies to whom Bofors had admitted having paid winding up costs till their names appeared in the newspapers;
- (vi) he was not aware of the commitments or the considerations which forced Bofors to make payments to those companies by way of winding up termination costs;

- (vii) whatever payments he had received from Bofors had been fully accounted for and declared in his Income-tax Returns and also reported to the Reserve Bank of India;
- (viii) he did not have any clout with any political personality in India or with any key figure in the Defence Ministry;
- (ix) he had not absconded from India in May, 1987 as reported but had gone to the United States on business and that he fell ill there;
- (x) all his medical expenses were borne by his brothers and other relations in the United States;
- (xi) he had surrendered the Green Card given to him by the U.S. Government and not 'lost' the Green Card status;
- (xii) he had not surreptitiously managed to disburse any commissions to any Indian leaders or politicians nor he had deposited any moneys in Swiss Banks; and
- (xiii) he had no bank accounts abroad either in his own name or in the name of any member of his family or in the name of anyone with whom he had financial dealings, etc.

7.196 The Committee find that prior to January, 1986 Shri W.N. Chadha was the Bofors' sole representative for the Republic of India under a Representation Agreement. The Agreement was signed in 1978 for a period of three years, was replaced by another Agreement in March, 1981 and again in November, 1984. The contents of the Agreements appear to have remained the same except for the remuneration provided in the form of commission on the value of sales. In the March, 1981 Agreement, the commission was shown as 2 per cent on payments received by Bofors, but in the November, 1984 Agreement this was reduced to 0.25 per cent. Agreements earlier to January, 1986 also provided for compensation as re-imbusement for expenses an amount of SEK 100,000 per annum. The January 1986 Agreement under which Bofors appointed Shri W.N. Chadha as Administrative Consultant on a remuneration of SEK 100,000 per month counted from January 1, 1986, but without any commission on sales. It is evident that the status of Shri W.N. Chadha *vis-a-vis* Bofors for their business in India, prior to January, 1986, was that of a representative entrusted generally with the promotion of sales of Bofors' ordnance and performing the various support services for the Bofors' personnel. The Agreements prior to January, 1986 did not, however, confer on Shri W.N. Chadha the status of a duly authorised agent to enter into any contract with a customer or bind Bofors in any way without their written consent. Even with regard to negotiations, the condition was that direct business negotiations were to be handled by Bofors, with the participation of the representative, and that the representative had no authority to make contracts on behalf of or any other way to bind Bofors. These are

important restrictions and they show that the role of Shri W.N. Chadha as representative was essentially a supportive one. Though the Agreement did provide for the participation of the representative, Shri Chadha has claimed that he never, in fact, took part in any negotiations or a meeting in the Ministry of Defence. This is borne out by the documents furnished and evidence tendered by the officers of the Ministry of Defence as also the Bofors' officials. The Committee find that in so far as the contract for the FH-77B Howitzer gun is concerned, Shri W.N. Chadha did not represent Bofors in any negotiations with the Ministry of Defence.

7.197 The Committee, however, does not accept Shri Chadha's contention that even prior to January 1986, he was not interested in the promotion of sales of Bofors' ordnance or that the words 'commission' and 'remuneration' have the same meaning. The provisions with regard to remunerations for Anatron General Corporation was on commission basis to the extent that sales of Bofors' ordnance in India were effected, Shri Chadha as the representative would have been entitled to receive a commission on payments received by Bofors at the rate of 2 per cent under the March, 1981 Agreement till it remained in force, and one quarter of 1 per cent under the November 1984 Agreement till and of 1985.

7.198 The Committee find that Bofors paid a total amount of Rs. 59.20 lakhs to the A.G.C. (Anatron General Corporation) and A.G.C.P.L. (Anatron General Corporation Private Limited) during the period 1979-87 (upto June, 1987). This includes an amount of Rs. 9.25 lakhs received by A.G.C. as re-imbusement of trial expenses for the gun during the years 1980-82.

7.199 On the basis of the foregoing, the testimony of Shri W.N. Chadha together with the testimony of the Bofors' representatives and the records furnished and evidence tendered by the officers of the Ministry of Defence, the Committee feel that Shri W.N. Chadha cannot be described as a middleman between Messrs. A.B. Bofors and the Ministry of Defence, Government of India.

7.200 As regards investigations under FERA into the affairs of Anatron General and Shri W.N. Chadha, the Committee understand that the Directorate of Enforcement are making further investigations and some cases are also *sule judice*. The Committee would, therefore, refrain from making any comments in this regard.

LEGAL POSITION

Opinion of the Attorney-General for India

8.1 The Committee had the benefit of the opinion of the Attorney-General for India who addressed the Committee on two occasions during sittings held on 15th February, 1988 and 8th April, 1988. During his address, the Attorney-General explained the legal position and possible further action in this case.

(a) Payment of commissions

8.2 The Attorney-General expressed the view that since the Government of India had made it clear that they would deal with Bofors directly and had insisted that there should be no middleman in the transaction, it became a condition precedent to the contract. Therefore, Bofors were bound to fulfil that condition. He added :

“The condition precedent to the performance of the contract that there shall be no middleman can be proved in a court of law though it is not found in the terms of the contract. Such a question has arisen before the Supreme Court. There is a ruling of the Supreme Court also.”

8.3 Asked whether it was not necessary that a clause to that effect should have been specifically included in the contract, the Attorney-General replied :

“No, I won't say it is absolutely necessary to incorporate because terms are between two parties. Condition precedent can also be oral. It is not enjoined that it should be necessarily in writing.”

He added :

“Here there is no controversy between the two parties. This question will be relevant only when one party disputes with the other party affirming about the understanding regarding this clause. Since in this case there was no dispute between the parties concerned, there was no need to put this clause.”

8.4 The Committee pointed out that had this clause been included in the contract with Bofors, there would have been no occasion for Bofors to refuse information by claiming "business confidentiality". To this, the Attorney-General replied that even if that clause had been put in the contract, Bofors could still have raised to confidentiality question.

8.5 The Committee pointed out that Bofors had taken the stand that they had paid no commissions, that they had terminated the consultancy agreements in pursuance of the wishes of the Government of India and had, therefore, paid only winding up costs. Reacting to this, the Attorney-General stated that in the absence of the contracts, which M/s. Bofors had entered into with the three companies to whom winding up costs had reportedly been paid, it would be difficult to say whether the amounts paid constituted 'commissions' and were thus against the terms of the contract. He added :

"Unless we get the terms of the agreement it is very difficult for us to take any decision. I am not able to see any legal position by which we can proceed...So we are in a very difficult position without knowing the terms of the agreement whether the companies are true companies, or bogus companies, whether the amounts were paid really, and so on. Again we are stuck up for want of material."

8.6 The Committee enquired whether, in the context of the contract with M/s. Bofors, the advisors or consultants of the company could be considered as middlemen. To this, the Attorney-General replied :

"A business activity, particularly an activity like this, cannot be carried out by one person. In order to carry out the business, sometimes the person may not even know anything and others will be advising him. So, a person carrying on a business activity is likely to have an expert advice *vis-a-vis* the business aspect; expert advice on legal aspects; expert advice on accountancy aspects; expert advice on market conditions, etc. Therefore, the appointing Advisors, Planners, Executives, Consultants; or Marketing Surveyors are not middlemen. Similarly, the Financiers and there are not middlemen. They certainly get a good share; sometimes the terms of the contract may specify it.

A "middleman" is really a person who brings two persons together in a transaction; and for the fruition, he is entitled for payment of remuneration. This sort of middleman will be there not only in a single transaction, but in a series of transactions, and in business transactions."

He added :

“The middleman either plays an important role in bringing about two contracting parties or he also plays an important part in the terms and conditions which the two parties are negotiating. That is, he plays a role in bringing those two parties together with regard to the transaction entered into by them.

8.7 Referring to the three companies, to whom winding-up costs were stated to have been paid by M/s. Bofors, the Attorney-General stated :

“If the evidence before the Committee clearly established to the satisfaction of the Committee that none of these three or four companies which are alleged to be middlemen had anything to do with this transaction in the sense that they came to India or certain Indian officials went and discussed about these transactions, they brought the Bofors and the Indian authorities together—if nothing of that kind is there, if no material is available—merely from the circumstances of Bofors having paid certain amount to certain company, one cannot draw the inference that they are middlemen.”

8.8 Asked whether the purchaser had a right to force the seller to give details of the middlemen and the payments, the Attorney-General stated :

“There is a legal problem in this context. When you ask somebody to prove that there is no middlemen, it means, you have asked him to prove the negative. How can I prove a thing which does not exist? Only positive things can be established. How can he prove a negative thing. Suppose in a given case, somebody accuses the other contracting party. And he says : “I do not have a middleman.” How can he prove when he does not have a middleman. On the other hand, if there is a middleman, he will be able to prove that because he is proving an affirmative thing. Under our law, under the Evidence Act, one cannot be asked to prove the negative...

If, according to him they are not commission agents or middlemen and if you are not able to prove that they are middlemen, there is no obligation on his part to disclose anything. You are only assuming that there is a middlemen and saying that he is not disclosing the amount. The burden of proof is on you.”

(b) *Commercial confidentiality*

8.9 Attention of the Attorney-General was drawn to Clause 26 of the agreement entered into between the Ministry of Defence and M/s. Bofors which provides as under :

“Both parties agree not to disclose to third parties, except as may be necessary for the execution of this contract, any confidential, private or proprietary information supplied in the course of negotiations or under this contract by the other party.”

Explaining the implications of this clause, the Attorney-General stated :

“It means there is a complete embargo on both the Government of India and the Bofors, from disclosing to third parties any information about this contract. The only narrow area and cover where they can depart from this mandate of secrecy is that such disclosure may be necessary for the execution or performance of this contract. Otherwise there is an embargo on both the parties.”

8.10 The Committee enquired about the implications that would follow from the refusal of Bofors' representatives to produce the relevant documents on grounds of commercial confidentiality. The Attorney-General stated :—

“When there is no means of compelling them for production of those documents, in certain situations there is one alternative and that is to draw an adverse inference against the party who refused to put in the document. But that inference can be drawn only if the document will be relevant to the question..... The second asset is that, we can draw adverse inference only if he cannot claim privilege of the documents. For instance legal advice given by a Lawyer to the Government. So the claim of Bofors of commercial confidentiality with regard to the transactions which they have entered into is right. They can claim commercial confidentiality. So they will be entitled to a privilege of documents. This will be the position.”

8.11 The Attorney-General further observed that just as Government of India could not be compelled by any third party to disclose the terms of the contract with Bofors, the latter also could not be compelled to do so in so far as their dealings with third parties were concerned. Therefore, the stand of the Bofors was 'correct'.

(c) *'Termination' of Contract*

8.12 The Committee enquired whether the Government of India could terminate the contract on the ground that the Bofors had violated the assurance given by them regarding involvement of middlemen. The Attorney-General observed that clause 16.1 of the contract dealt with termination of contract. The said clause provided only for a particular contingency namely terminating the contract by serving 180 days' notice. He added that if there was a breach of promise made by the Promisee or the Promisor, the other party had always got an option either to terminate the contract and sue the other party for damages or to keep the contract alive and compel the other party to pay adequate compensation.

The Attorney-General further opined :—

“So far as the legal aspect is concerned, if the Government of India, on proper advice, strongly feels that there has been a breach of contract on their part, it may issue a notice of breach and terminate the contract. If it is disputed by the other party then again it will go to the arbitrator. Therefore, whether we terminate the contract or do not terminate the contract, in either event, it will go to the arbitrator.”

8.13 The Committee pointed out that M/s. Bofors had deposed before the Committee that by not informing the Ministry of Defence about the payments on account of winding up costs of three companies they had committed a mistake. Asked whether, on this basis, the contract with M/s. Bofors could be cancelled by the purchasers, the Attorney-General stated :

“A contract can be cancelled only if there is a breach of the terms of the contract. If there is no breach of the terms of the contract, there cannot be unilateral cancellation of the contract. That certain persons are being implecated by rumours is not a ground for terminating the contract. Law recognises only facts which are capable of proof before a court of law. The Committee is examining whether there is a legal proof that there were middlemen. On the facts established, payments to certain companies are proved. The termination of the agreement is proved. They are saying during the evidence they made a mistake in not informing that they paid the winding up charges. From these I am not able to see how inference can be drawn that they were middlemen related to the Bofors deal. We cannot presume that a person is admitting a guilt unless he specifically admits it. When a person is giving defence you may treat it with suspicion. But for inducting any one there must be legal proof.”

(d) *Findings of the Public Prosecutor*

8.14 The Committee drew attention to the fact that the Public Prosecutor in Sweden, who had initiated an inquiry against M/s. Bofors for allegations of payment of bribes, had closed the case. The Committee wanted to know the legal effect of such a conclusion arrived at by the Public Prosecutor. The Attorney-General explained :

“He enquired into an accusation of payment of bribe. Bribe means payment of certain money or some valuable property, etc. to a person who is holding a public office, who is discharging public duties for showing favours.

If he feels sure that the so-called companies were not in that capacity, then it does not really become a bribe. He must have been investigating as to whether some public authority or public servant was paid any money; whether these transactions were really a cover for utilising the moneys for paying to some official person as a bribe.

His closing the investigation shows that there is no material or there is no evidence..Otherwise, if any amount of money has passed to any person holding a public office, then, he would have proceeded with the investigation.”

8.15 The Committee pointed out that Bofors' representatives had been absolutely categorical in saying that they had not paid any money either to an agent or to any person for securing the contract. Asked about his own assessment of the situation, the Attorney-General stated:

“If there is any payment, it is not necessarily related to commission.....It may be the service charges or other business connection charges or the consultancy payment made to them. Or it may be used for siphoning off the money. There can be three alternatives. Bofors on the other hand in their evidence commented that they paid it only to such and such companies for such and such reasons. There was some speculation in Sweden that some announcement was made in the Radio that bribes were paid. It said Swedish authorities are in motion and their prosecutor has also investigated it and has now closed it. At present there is not even any circumstantial evidence from which one can come to an inference that these payments were necessarily related to payments for middlemen.”

He added :—

“.....in the absence of evidence by which even the Swedish Prosecutor had said that I am not able to find any offence like giving

bribe, etc., one cannot draw an inference that the alleged payments to these three companies were really made for being utilised as bribes. So there is no material to say that the money was actually paid by way of commission to a commission agent."

(e) Concept of bribe

8.16 Explaining the charges of bribe, the Attorney-General stated :

"Jurisprudentially, it is related only to public servants or persons holding public offices, who have taken illegal gratification to show official favour. An arrangement by which some money is paid by a private person to another private person does not strictly fall in the concept of bribe. The Prevention of Corruption Act applies to public servants.

As far as private parties are concerned they can be related or involved in an offence relating to bribe as abettors. To that extent, they will be liable."

(f) Legal remedies :

8.17 The Committee enquired whether any civil or criminal action could be initiated under the Indian Law against M/s. Bofors for their refusal to give complete information regarding payment of commission which Bofors claimed were winding-up charges, the Attorney-General stated :

"Any matter which is a civil dispute cannot be taken to a criminal court. Here, the controversy between the two parties depends upon the interpretation of the terms of the contract. If they put one interpretation and claim what they have done is right, if you put another interpretation and claim something else, then it is a bona fide dispute and a civil court can go into it."

8.18 Asked how Bofors could be compelled to disclose information about commissions, the Attorney-General stated :

"The primary evidence to prove this will be from those alleged commission agents who received the compensation for termination of their contract and the terms of the contract entered into between the Bofors and them. But there is no proper law by which Committee may be able to compel the production of such information from those alleged commission agents."

He added :

“The primary evidence is only the contract which has to be terminated. In its absence, our terms of reference permit us to go in for secondary evidence. But in our case, it is not possible, unless the party to those transactions produces a copy of those contracts.”

8.19 Asked whether it meant that it was almost impossible to get out of this handicap, the Attorney-General replied :

“Yes, it is almost impossible. Regarding immovable property, there is a provision for registration before the Registrar. Suppose there is some such provision either in India or abroad to register this contract—or in Sweden—probably from that authority you can get secondary evidence. In its absence, there will not be any secondary evidence available. So, we have to go only to the original.”

8.20 The Committee enquired whether there was any provision in the Swedish Law which could be resorted to obtain evidence or information by due legal process either from Bofors or from anybody etc. The Attorney-General explained :

“I have been able to obtain through the help of the Law Ministry the regulations for both civil and criminal cases of evidence from the Swedish Court of Judicial Procedure. I have gone through those provisions. But this will be applicable in the proceedings before the Swedish courts or Swedish authorities. Indian courts or Indian authorities will not be able to resort to these provisions to compel either Bofors or any other persons in Sweden to provide any evidence or material which may be required. This is one aspect of the matters.”

8.21 In regard to the powers of the Committee to resort to legal proceedings for obtaining information, the Attorney-General stated :

“So far as the transactions with Bofors are concerned, in which the Committee is interested, that ultimately depends upon the terms of the contract itself and the alleged right to secrecy which Bofors has claimed.

This apart, as far as persons who are not Indian nationals are concerned, not only this Committee, but even courts in India will not be able to exercise effective jurisdiction unless they are amenable to our law courts. There may be certain situations when a foreigner may be amenable to our jurisdiction like if a

person is in this country and the court has been able to serve a notice on him or he is actually carrying on business in this country; otherwise a foreigner is not amenable to our law courts. This is the legal position in regard to the right of the Committee to resort to any legal proceedings.

8.22 As to the provisions in Swedish Law in regard to freedom of press and the right to information, the Attorney-General observed :

“I have been able to obtain the constitutional documents of Sweden. There is a chapter on the freedom of the press. This does not give any help to us as to what information we can obtain from the press or any body else. This contains the provisions to ensure the freedom of the press and, at the same time, safeguarding public interest so that freedom is not misused. Therefore, I don't think, from this we can get much guidance.”

8.23 The Attorney-General drew the attention of the Committee to Section 8 of Chapter 8 of the Swedish Secrecy Act which is analogous to the Official Secrets Act in India. The section reads as under:

“*Section 8*

Secrecy shall apply within the banking business of the Bank of Sweden and within the National Debt Office's borrowing activities to information about the economic conditions of any private subject.

Secrecy shall apply in any other borrowing activities or commercial lending activities, carried out by a public authority, to any information concerning a private subject's business or management conditions, if it can be assumed that the person concerned would suffer loss, should the information be disclosed.

Where such information to which secrecy according to the second paragraph has been given to another authority, the secrecy shall apply also within that authority. However, the secrecy shall not apply, if the information is contained in a decision by the receiving authority.

Secrecy regarding information contained in an official document shall apply for a period of not more than twenty years.”

8.24 The Attorney-General was of the view that so far as the banking business of the Bank of Sweden was concerned, they could claim secrecy under the provision of the above Section.

8.25 In reply to a further question whether the Committee could hope to get the information by going to Sweden and taking the assistance of the Swedish law, the Attorney-General stated :

“There, there will be no authority for this Committee to exercise any power. But if any statutory authority in Sweden had been conferred this power to compel them to furnish any information, the Committee might explore that position to compel Bofors. Otherwise, this Committee will have no power to compel any person there.”

8.26 In reply to a further question whether the investigations made by the Public Prosecutor of Sweden would be admissible before the Committee under Sections 42 and 43 of the Indian Evidence Act, the Attorney-General stated :

“Under the Swedish law, a number of things are confidential. So, it may or may not be available to us. There is no method by which we will be able to get that evidence. Secondly, even if those materials come, the material obtained during investigation, by itself, will not constitute legal evidence. They are *ex parte* investigations So, it will not help.”

He added :

“There is no proof whether a middleman was engaged or these payments were made to the middleman; that is the end of the matter. It may be that they may have told a lie. So far as this controversy is concerned, there is no proof.”

8.27 The Committee enquired whether, on the basis of available evidence, an inference could be drawn that the payments approximately made by Bofors could have influenced the winning of the contract. The Attorney-General observed that such a conclusion could not be drawn.

CONCLUSIONS

9.1 The Ministry of Defence supplied to the Committee all the information required by the Committee in respect of this inquiry. The information included secret and classified documents. The Central Investigating Agencies have also, within a short time, rendered the best possible assistance. The Bofors' representatives, who appeared twice before the Committee, have also furnished information and explanations in respect of various matters. They, however, declined to furnish, on grounds of commercial secrecy, details of agreements entered upon by them with their Consultants. Information regarding the transactions relating to the payments made by Bofors could not be procured on account of the secrecy claimed by the Banks in Sweden and Switzerland.

9.2 No person in public life or from the media approached the Committee for furnishing information or tendering any evidence in respect of any of the matters under inquiry by the Committee. It is to be recalled that the Prime Minister stated in both Houses of Parliament, on more than one occasion, that if any evidence was made available to establish allegations of payment of bribes, the severest action will be taken against the offenders. The Defence Minister had made similar statements. However, no one came forward to offer any information or tender evidence to the Committee.

9.3 Based on careful examination of the documents procured by the Committee from the Ministry of Defence, the Report of the Central Investigating Agencies, the testimony of the witnesses examined and the advice tendered by the Attorney-General on the various legal aspects, the Committee have arrived at the following conclusions :—

- (i) The Committee are firmly convinced that the procedure followed for the selection of the Bofors gun system was sound and objective, and the technical evaluation of the various gun systems considered was thorough, flawless and meticulous.
- (ii) The Bofors gun meets all the essential technical and operational parameters of a medium field gun. It is a fully integrated and automated system, which has a true burst fire capability, the requisite range, mobility and built-in stretch potential for full automation, both in barrel and design, acceptance of new types of ammunition etc. It is a sophisticated gun system which should remain in-date for very many years.

- (iii) The Negotiating Committee established by the Government was able to generate keen competition amongst the competing suppliers. No middleman was involved in the commercial negotiations leading to the finalisation of the price and the other terms of the contract with Bofors. As a result, the Government succeeded in securing the contract at the lowest price and on the best financial and other terms. The Committee have noted with satisfaction that the price of the Bofors gun system in the Indian contract was the lowest compared with prices in contracts with other customers.
- (iv) The Bofors gun contract is fully backed by financial and performance guarantees and a warranty bond which is also backed by a Bank guarantee; the price increase in the future is well contained, the purchase is supported by the provision of substantial credit on attractive terms and the uninterrupted flow of supplies is fully assured by the Memorandum of Understanding between the two Governments. The Swedish Government has also provided assurance to facilitate counter-purchases from India for offsetting our purchase.
- (v) No extraneous influence or consideration such as kickbacks or bribes as alleged in the media affected at any stage the selection and the evaluation of the gun systems or the commercial negotiations with the competing suppliers. The Committee have not come across any action or decision of any officer or member of the Government which could be viewed with slightest suspicion at any stage of the Bofors Contract. The evidence before the Committee conclusively establishes that the decision to award the contract to Bofors was purely on merits.
- (vi) Bofors paid SEK 319.4 million to three companies, not domiciled in India, as winding-up charges for terminating agreements for consultancy and marketing services etc. Despite persistent demands from the Government of India, Bofors declined to give details of these payments and the recipients thereof. On the basis of available evidence, two of these companies appear to be front agencies established in tax havens. The certificate rendered by the Public Accountant in Sweden, after auditing Bofors' accounts in respect of the Indian contract, supports Bofors' claim that the payment of winding-up charges to these companies in 1986 was to the advantage of Bofors and the Bofors' agreements with these companies were required to be terminated to fulfil the wishes of Government of India, that no middleman or agent should be involved in the contract for the supply of the gun system.

- (vii) Bofors have expressed inability to furnish copies of their initial as well as the termination agreements with the three companies to whom winding up costs were paid, on the plea of commercial secrecy. They have claimed that such disclosure would be a breach of their confidentiality agreement with these companies. According to the advice of the Attorney-General, the stand taken by Bofors is sustainable in the circumstances of the case.
- (viii) Shri W.N. Chadha was earlier Bofors' representative in India and, from January 1986, he was appointed as Bofors' Administrative Consultant. In the Agreements covering the period upto the end of 1985, there was a provision for the payment of commission on sales to Shri Chadha, but his role during this period was essentially supportive in nature and not that of a full-fledged agent who could bind Bofors in any way or enter into negotiations on their behalf. Evidence before the Committee shows that Shri Chadha did not take part in the negotiations and did not act as a middleman. In so far as the investigations under FERA are concerned, it would be for the concerned competent authorities to decide the matter.
- (ix) On the ground of commercial confidentiality, Bofors have not furnished full details of the persons to whom winding up costs were paid. Nobody has come forward with any evidence in regard to the identity of recipients of payments made by Bofors. The legal advice given to the Committee is that Bofors cannot be compelled to furnish the requisite information/documents to the Committee. It has not been possible for either our investigating agencies or any other source to find any evidence regarding the identity of recipients. The Committee have, therefore, not been able to reach any conclusion in regard to the identity of recipients. However, there is no evidence to show that any part of the winding up costs was paid to any Indian either resident in India or abroad.
- (x) The fact that the investigation initiated in this case by the Public Prosecutor in Sweden was closed after examining Bofors' Officials and the relevant records of the Company, suggest that no offence could be made out under the Swedish law. In other words, the Public Procecuter who had access to all the records in Sweden has not been able to establish any charges involving bribes and kick-backs in Bofors' Indian contract.
- (xi) There is no evidence to show that any middleman was involved in the process of the acquisition of the Bofors gun. There is

also no evidence to substantiate the allegation of commissions or bribes having been paid to anyone. Therefore, the question of payments to any Indian or Indian Company whether resident in India or not, does not arise, especially as no evidence to the contrary is forthcoming from any quarter.

- (xii) Mere suspicion as regards existence of middlemen and/or payment of commissions does not constitute sufficient ground for initiating action to terminate the contract with Bofors or to raise claims for the reimbursement to Government of payments made by Bofors to the three foreign companies. This is also the view of the Attorney-General for India.
- (xiii) There is no evidence to establish that the Bofors' payment totalling SEK 319.4 million involved a violation of any Indian law.
- (xiv) There is no evidence of any other payment having been made by Bofors for winning the Indian contract.

APPENDIX I

(See para 2.12 of Chapter II of Report)

Report of the Swedish National Audit Bureau

Unofficial

Translation

The Swedish National Audit Bureau

The Auditor General 1 June 1987 RRV Reg. No. 1987 : 478

UDH Reg. No. 483/1987, PR

The Government

Ministry for Foreign Affairs

Trade Department

Instructions to the National Audit Bureau.

On 29 April 1987 the Government instructed the National Audit Bureau, after consultation with the Military Equipment Inspectorate, to carry out an audit of the records underlying AB Bofors written report of 24 April 1987 to the Indian ambassador in Stockholm. The National Audit Bureau was also to go through any pertinent material at the authorities concerned. The audit was to be carried out without delay and the result was to be reported to the Government not later than June 1987.

The National Audit Bureau has been in contact with the following authorities to obtain any information relevant to the examination :

The Military Equipment Inspectorate, the Bank of Sweden, the National Police Board, the National Tax Board, the Customs Office, the Export Credits Guarantee Board, and the Public Prosecution Authority in Orebro. Furthermore, the National Audit Bureau has been in contract with the Newscast Editorial Office (Ekoredaktionen) at the Swedish Broadcasting Corporation.

The National Audit Bureau also contacted AB Bofors (in the first instance Mr Anders G Carlbers Chairman of the Board and President of the group Noble Industrier Sverige AB, Mr. Per Ove Morberg, President of AB Bofors, and Mr. Lars Gothlin, Chief Company Lawyer at Nobel Industrier Sverige AB) in order to obtain information of importance for the audit. An authorized public accountant, Mr. Ulf Gometz, Goteborg, who had

been appointed by the National Audit Bureau to assist in the examination of material at AB Bofors, participated in some of these conversations.

AB Bofors has conveyed in various contexts a wish to assist in shedding light on this matter, but has at the same time stressed the importance of confidentiality with regard to the company's business operations. The National Audit Bureau has informed AB Bofors that Swedish legislation does not allow absolute confidentiality. On 20 May 1987 AB Bofors informed us that since confidentiality could not be guaranteed, it deemed that it could not allow the National Audit Bureau further insight into the background material pertaining to some of the transactions specified in particular by the National Audit Bureau. Therefore, Ulf Gometz did not participate in the National Audit Bureau's subsequent investigations.

The information on which the National Audit Bureau bases its observations is mainly information submitted by AB Bofors in other contexts to the Bank of Sweden and Skandinaviska Enskilda Banken. Some supplementary oral information has also been given to the National Audit Bureau by AB Bofors. A central issue in AB Bofors communication to the Indian Ambassador was whether or not AB Bofors had made any payments of the type mentioned in the media. AB Bofors says in its letter of 24 April 1987, *inter alia* :—

“The statement made by AB Bofors that no middleman representative/agent was used by Bofors to represent the company with the Indian authorities to win the contract in 1986 was correct. Contract negotiations and other contacts took place directly between the Ministry of Defence and Bofors. Consequently, no middleman was used to win the contract of 1986.

Bofors had not made any payments of the kind alleged by the media. Those payments that were made during the time in question, and possibly have given rise to erroneous conclusions, were in accordance with the contract for the reimbursement of *consultant services* within the areas of *marketing and counter purchasing*. The payments referred to by the Swedish Radio were made to a Swiss Company and are completely legal in accordance with the Swedish currency regulations and other relevant Swedish regulations. The stated payments have not been paid to any Indian company or Indian citizen and have no connection with the winning of the contract of 1986”.

It should also be mentioned that the then president of AB Bofors, Mr. Martin Ardbo, pointed out; *inter alia*, in a letter of 10 March 1986 to the Under Secretary of State at the Indian Ministry of Defence, Mr. S.K.

Bhatnagar : "We hereby confirm that we do not have any representative/agent especially employed in India for this project." Mr. Ardbo added, however, that AB Bofors engages Anatronc General Corporation "for administrative services". (The costs of this "service" amount to about SEK 100,000/month, according to information received later from the company).

The result of the National Audit Bureau investigations shows the following :

AB Bofors has orally given the National Audit Bureau the following picture of the background to, and contents of, the Indian order and the company's working methods when marketing abroad.

Discussions with India about the delivery of FH 77 began as early as 1977 with ordnance material trials in 1981 and final negotiations during the period December 1985—March 1986)

A supply contract was signed on 24 March 1986. In this contract, which was signed by AB Bofors and the President of India represented by the Secretary of the Government of India, Ministry of Defence, there is no mention of commission. The order amounted to about SEK 8,400 million and delivery was to take place during the period 1986-1990. On the same day a licence contract was signed. In addition, a credit agreement between Svensk Export Credit and Indian Government and a Memorandum of Understanding between the Swedish and Indian Governments were signed. According to AB Bofors there are no other contracts, agreements or the equivalent. In the supply contract there is an agreement on "counter-purchasing" but according to AB Bofors no such counter purchasing has taken place to date.

Normally, AB Bofors has no permanent sales organisation, representative office or the like in the countries with which the company negotiates. On other hand, agreements are usually entered into with a person or persons in the respective country to assist with knowledge of local conditions, practical arrangements, etc. (But not with sales). They receive payment according to efficiency (in principle).

AB Bofors made use of such contracts in India. The company states that after the Indian Government had made the requirement that the deal should be concluded directly between the parties, without middlemen, they began to wind up these contracts. These "Winding up negotiations" began in 1985 and an agreement on them was reached before the deal was concluded. Bofors states that the costs of "winding up" amounted to 2-3 per cent of the order sum, that is SEK 170—250 million, and that all this money was disbursed during 1986.

The picture given orally by AB Bofors can thus be summarized as follows :

—That there are no agreements on commission—that local contacts have been used but that these had been wound up before the negotiations were concluded. That the costs of this assistance (“winding up costs”) amounted 2-3 per cent of the order sum, that is SEK 170-250 million and that the Final payment was made during 1986.

3 payments of commission specified in the media (the Swedish Radio Company), Eko-redaktionen, 16 April 1987. It was reportedly a matter of—

“Three part-payments made in the middle of November 1986 of a total of SEK 29.5 million, and a fourth payment of SEK 2.5 million made in December”.

However, in its letter to the Indian ambassador of 25 April 1987, AB Bofors, as may be seen above, has verified that payments had been made during the specified period and further more confirmed that they were related to the FH 77 deal but concerned payment to a Swiss company. At the direct request of the National Audit Bureau, the Bank of Sweden has considered making enquiries at the Swiss banks in question, but after careful consideration, has decided, in view of current central bank practice, that it should not do so.

The National Audit Bureau has assessed that the assignment—“To carry out an audit”—comprised examining whether or not payments were made and, if so, to whom, at what time, in what amounts and under what classification.

Furthermore, the National Audit Bureau has formed the opinion that since the Bank of Sweden did not consider it should make such an enquiry, an application to the Swiss Banks to obtain information about which payments were possibly forwarded should in that case be made through the Government.

The observations of the National Audit Bureau are in summary as follows :

- that an agreement exists between AB Bofors and _____ concerning the settlement of commission subsequently to the FH 77 deal and
- that considerable amounts have been paid subsequently to, among others, AB Bofors previous agent in India.

The National Audit Bureau hereby submits this report and the material on which it is based on to the Government and, by doing so, has completed what it was charged to do.

A decision in this matter has been taken by Director-General Mundebo in the presence of Audit Director Sandberg, presenting the report.

Ingemar Mundebo

Bo Sandberg

APPENDIX II

(See para 2.15 of Chapter II of report)

Motion moved by the Defence Minister in Lok Sabha on 29th July, 1987

“That a Joint Committee of both the Houses consisting of 21 members, 14 from Lok Sabha and 7 from Rajya Sabha, be elected in accordance with the system of proportional representation by means of the single transferable vote and the voting at such election shall be by secret ballot, to enquire into the following issues arising from the Report of the Swedish National Audit Bureau on the Bofors contract :

- (i) to inquire into and establish the identity of the persons/agencies/firms who received payments of the following amounts :
 - (a) SEK 170-250 million;
 - (b) SEK 29.5 million; and
 - (c) SEK 2.5 million;

From M/s. Bofors in connection with their contract to supply 155 mm Howitzer guns and associated equipments to India (as referred to in the Report of the Swedish National Audit Bureau, received by the Government of India on June 4, 1987.);

- (ii) to inquire into and determine the Indian laws, rules and regulations which were violated by the concerned persons/agencies/firms by receiving the payments referred to in (i) above;
- (iii) to make suitable recommendations, based on the findings on (i) and (ii) above.

2. That the Joint Committee shall make a report to this House by the last day of the first week of the next Session of Parliament.

3. That the Rules of Procedure of this House relating to Parliamentary Committees shall apply with such variations and modifications as the Speaker may make.

4. That this House recommends to Rajya Sabha that the Rajya Sabha do join the Committee and communicate to this House the names of the members elected from amongst the members of the Rajya Sabha to the Committee as mentioned above.”

APPENDIX III

(See para 2.19 of Chapter II of Report)

Substitute motion moved by Shri Somnath Chatterjee, M.P.

- “1. That for the original motion, the following be substituted, namely :—
- ‘That this House resolves that a Joint Committee of the Houses be appointed consisting of 30 Members, 20 from this House as may be elected and 10 from Rajya Sabha as may be elected by the said House :
- (a) to examine the Government policy and decisions in relation to purchase and procurement of Defence equipment, stores and ancillaries since January, 1980, and procedures laid down, from time to time, for purchase of such equipments and stores in pursuance of GSR (General Staff Requirements);
 - (b) to enquire into and investigate the payment of commissions and any other illegal payments to certain persons and agencies by the Swedish Firm, Bofors, for securing the contract for the supply of Howitzers 155MM Guns and other Defence equipment to Government, in the context of the announcement made by the Swedish Broadcasting Company and the enquiry Report of the National Audit Bureau of Sweden;
 - (c) to enquire into the alleged payment of commissions in the purchase of West German submarines by Government, as mentioned in the statement made on the floor of this House by the Minister for Defence; and
 - (d) to enquire into all matters incidental and consequential thereto.
2. That this House recommends to Rajya Sabha that Rajya Sabha do join the said Joint Committee and communicate to this House the names of ten members to be appointed by the Rajya Sabha to the Joint Committee.
- That Prof. Madhu Dandavate be appointed Chairman of the Committee. The Chairman will have the power to choose a Secretary and other members of the staff from among the Lok Sabha/Rajya Sabha in consultation with the Secretary-General of the respective Houses.
4. That the quorum of the Committee shall be one-third of the total strength of the Committee.

5. (a) That the Committee shall have power to hear and/or to receive evidence, oral or documentary, connected with the matters referred to the Committee or relevant to the subject-matter of the enquiry and it shall be in the discretion of the Committee to treat any evidence tendered before it as secret or confidential;
 - (b) That the Committee shall have power to hear and/or receive evidence from any foreign national or companies or any other agencies including the Governments and for this purpose visit any foreign country; and
 - (c) That the Committee shall have power to summon any person, including a Minister, for oral examination and call for the production of any document relevant for the purpose of the enquiry.
6. That the Government shall render such assistance to the Committee as may be required by the Committee for the purpose of this enquiry, including production of files, papers and other documents, notwithstanding the Official Secrets Act.
7. That the Comptroller and Auditor General of India, the Attorney General and all investigating agencies of the Government of India shall render such assistance to the Committee as may be required by the Committee for the purpose of this enquiry.
8. That the Committee shall make a report to this House by the first day of the Budget Session of 1988 of this House’.”

APPENDIX IV

(See para 2,19 of Chapter II of Report)

Substitute motion moved by Shri Dinesh Goswami, M.P.

“That for the original motion, the following be substituted, namely :—

‘That this House resolves that a Joint Committee of both the Houses be constituted to—

- (a) enquire into all aspects of the deal relating to the purchase of guns from the company known as Bofors including the question of employment of middleman by Bofors for the deal and the procedure of purchase and quality of the guns;
- (b) enquire into all aspects of the purchase of West German Sub-marines;
- (c) enquire into the various aspects of the engagement of the company known as Fairfax;
- (d) all matters incidental to above.

2. That the Committee will consist of 15 members from Lok Sabha, 8 from the ruling party, and 7 from the opposition parties to be nominated by the Speaker in consultation with the Leader of the House and the leaders of the opposition parties, respectively.

3. That following the convention of the P.A.C., the Chairman of the Committee will be from the opposition.

4. That the Committee will have all powers of a Parliamentary Committee including summoning of witnesses and calling for the documents. The Committee shall have power also to ask for the members of Council of Ministers to appear before the Committee.

5. That the Committee will have the power to ask for assistance in the probe by the Attorney General of India, the Comptroller and Auditor General of India and the other Governmental agencies including intelligence and investigating agencies.

6. That one-third of members will constitute quorum.

7. That the Joint Committee shall submit its report to the House by the last week of the Winter Session.

8. That this House recommends to Rajya Sabha that the Rajya Sabha do join the Committee and nominate 7 members to the Committee in accordance with the procedure that the House may decide and communicate the names of the members so nominated to this House.”

APPENDIX V

(See para 2.19 of Chapter II of Report)

Substitute motion moved by Shri C. Madhav Reddy, M.P.

“That this House resolves that Joint Committee of the Houses be appointed in consultation with the leaders of the various political parties consisting of 30 Members, 20 from this House and 10 from Rajya Sabha:

- (a) To examine the Government policy and decisions in relation to purchase and procurement of Defence equipment, stores and ancillaries since January 1980, and procedures laid down, from time to time for purchase of such equipments and stores in pursuance of GSR (General Staff Requirements);
- (b) to enquire into and investigate the payment of commissions and any other illegal payments to certain persons and agencies by the Swedish Firm Bofors, for securing the contract for the supply of Howitzers 155 mm Guns and other Defence equipment to Government, in the context of the announcement made by the Swedish Broadcasting company and the enquiry Report of the National Audit Bureau of Sweden ;
- (c) to enquire into the alleged payment of commissions in the purchase of West German submarines by Government, as mentioned in the statement made on the floor of this House by the Minister for Defence ; and
- (d) to enquire into all matters incidental and consequential thereto.

2. That this House recommends to Rajya Sabha that Rajya Sabha do join the said Joint Committee and communicate to this House the names of ten Members to be appointed by Rajya Sabha to the Joint Committee.

3. (a) That the Committee shall have power to hear and/or to receive evidence, oral or documentary, connected with the matters referred to the committee or relevant to the subject-matter of the enquiry and it shall be in the discretion of the Committee to treat any evidence tendered before it as secret or confidential;
- (b) That the Committee shall have power to bear and/or receive evidence from any foreign national or companies or any other agencies including the Government and for this purpose visit any foreign country ;

(c) that the Committee shall have power to summon any person, including a Minister, for oral examination and call for the production of any document relevant for the purpose of the enquiry.

4. That the Government shall render such assistance to the Committee as may be required by the Committee for the purpose of this enquiry, including production of files, papers and other documents, notwithstanding the Official Secrets Act.

5. That the Comptroller and Auditor General of India, the Attorney General and all investigating agencies of the Government of India shall render such assistance to the Committee as may be required by the Committee for the purpose of this enquiry.

6. That the Committee shall make a report to this House by the last day of the first week of the next session of this House.”

APPENDIX VI

(See para 2.19 of Chapter II of Report)

Substitute motion moved by Shri K.P. Unnikrishnan, M.P.

“That for the original motion, the following be substituted, namely :—

“That this House resolves to constitute a Joint Committee of both Houses of Parliament consisting of 30 members, 21 from Lok Sabha and 9 from Rajya Sabha, to enquire into the following matters of grave public importance and to submit to the House for its consideration, a report with such part of the evidence as the Committee thinks fit to be made public appended thereto, and particularly :

- (i) Government policy and procedures laid down in relation to purchase and procurement of Defence equipment, stores and ancillaries since January, 1980 and subsequent amendments since December, 1984, if any, for purchase of such equipment and stores in pursuance of GSR (General Staff Requirements);
- (ii) Agency arrangements of leading international manufacturers and suppliers of Defence equipment and stores in important areas of purchase since January, 1980 and nature of services performed by them and commissions, allowances and retainers received by such agents and their relationship with Government of India ;
- (iii) Procedure adopted for selection of 155 mm HOWITZER System, sub-systems and ammunition and its procurement and details of such bids and proposals, its technical and commercial evaluation including field trials and negotiations and nature of involvement of the Governments of manufacturing countries and companies, as on January, 1986 and final mode of selection adopted, conditions imposed or guarantees sought from manufacturers/suppliers ;
- (iv) Agreement entered into with Messrs Bofors AB of Sweden, mode of payments adopted by Government of India first field trials and scrutiny, if any, after arrival of shipment and procedures adopted to rectify these including despatch of technical evaluation team to Sweden and the report of their discussions;

- (v) Report of the National Audit Bureau of Sweden received by the Government of India on June 4, 1987 ;
- (vi) Efforts made by Government of India to enquire into and establish identity of persons/agencies, firms of Indian or non-Indian origin who received payments as referred to in the Report of the National Audit Bureau of Sweden ; and
- (vii) To determine whether such payments have violated existing laws, rules and regulations of India and to make suitable recommendations for the consideration of the House.

2. That the Rules of Procedure of this House relating to the Parliamentary Committees shall apply with such variations and modifications as the Speaker may make.

3. That the Speaker may nominate 21 members from the House in Consultation with the Leader of the House and the Opposition Parties and Groups.

4. The Committee shall have the right to send for papers and records and investigate the issues referred to it as per Rule 269 of the Rules of Procedure and the Government also to request the Comptroller and Auditor General of India and the Attorney General of India to provide such assistance as may be required by the Committee.

5. That the Government may place at the disposal of the Committee assistance of the Central Bureau of Investigation or any other investigative agency as the case may be.

6. That the Joint Committee shall submit its report to this House by the last day of the Winter Session of Parliament for its consideration and discussion.

7. That this House do recommend to Rajya Sabha that the Rajya Sabha do join the Committee and communicate to this House the names of members nominated or elected to the Committee as mentioned above.”

APPENDIX VII

(See para 2.19 of Chapter II of Report)

Substitute motion moved, by Shri Indrajit Gupta, M.P.

That for the original motion, the following be substituted, namely :—

“That this House resolves that a Joint Committee of the Houses be appointed consisting of 30 members, 20 from this House as may be elected and 10 from Rajya Sabha as may be elected by the said House :

- (a) to examine the Government policy and decisions in relation to purchase and procurement of Defence equipment, stores and ancillaries since January, 1980 and procedure laid down from time to time for purchase of such equipment and stores in pursuance of GSR (General Staff Requirements);
- (b) to examine whether the purchase of Howitzer 155 mm Guns from the Swedish firm Bofors was in conformity or not with the above mentioned policies and decisions ;
- (c) to enquire into and investigate the payment of commissions and any other illegal payments to certain persons and agencies by the Swedish firm Bofors for securing the contract for the supply of Howitzer 155 mm guns and other Defence equipment to Government in the context of the announcement made by the Swedish Broadcasting Company and the enquiry Report of the National Audit Bureau of Sweden ;
- (d) to enquire into the alleged payment of commissions in the purchase of West German submarines by Government as mentioned in the statement made on the floor of this House by the Minister for Defence ; and
- (e) to enquire into all matters incidental and consequential thereto.

2. That this House recommends to Rajya Sabha that Rajya Sabha do join the said Joint Committee and indicate to this House the names of ten Members to be appointed by the Rajya Sabha to the Joint Committee.

3. That like the P.A.C., the Chairman of the Committee will be from the Opposition.

4. (a) That the Committee shall have power to hear and/or to receive evidence, oral or documentary, connected with the matters referred to the Committee or relevant to the subject matter of the

enquiry and it shall be in the discretion of the Committee to treat any evidence tendered before it as secret or confidential ;

(b) That the Committee shall have power to hear and/or receive evidence from any foreign national or companies or any other agencies including the Governments and for this purpose visit any foreign country ; and

(c) That the Committee shall have power to summon any person, including a Minister, for oral examination and call for the production of any document relevant for the purpose of the enquiry.

5. That the Government shall render such assistance to the Committee as may be required by the Committee for the purpose of the enquiry including production of files, papers and other documents notwithstanding the Official Secrets Act.

6. That the Comptroller and Auditor General of India, the Attorney General and all investigating agencies of the Government of India shall render such assistance to the Committee as may be required by the Committee for the purpose of this enquiry.

7. That the Committee shall make a report to this House by the last day of the second week of the next Session of this House.”

APPENDIX VIII

(See para 2.19 of Chapter II of Report)

Substitute motion moved by Shri C. Janga Reddy, M.P.

That for the original motion, the following be substituted, namely :—

“That this House resolves to constitute a Joint Committee of both Houses of Parliament consisting of 21 members, 14 from Lok Sabha and 7 from the Rajya Sabha, to enquire into the following matters of grave public importance and to submit to the House for its consideration, a report with such part of the evidence as the Committee thinks fit to be made public appended thereto, and particularly :—

- (i) Government policy and procedures laid down in relation to purchase and procurement of Defence equipment, stores and ancillaries since January, 1980 and subsequent amendments since December, 1984, if any, for purchase of such equipment and stores in pursuance of GSR (General Staff Requirements);
- (ii) Agency arrangements of leading international manufacturers and suppliers of Defence equipment and stores in important areas of purchase since January, 1980 and nature of services performed by them and commissions, allowances and retainers received by such agents and their relationship with Government of India ;
- (iii) Procedure adopted for selection of 155 mm Howitzer System, sub-systems and ammunition and vehicles and its procurement and details of such bids and proposals, its technical and commercial evaluation including field trials and negotiations and nature of involvement of selection adopted, conditions imposed or guarantees sought from manufacturers/suppliers;
- (iv) Agreement entered into with Messrs Bofors AB Sweden, mode of payments adopted by Government of India, first field trials and scrutiny, if any, after arrival of shipment and procedures adopted to rectify these including despatch of technical evaluation team to Sweden and the report of their discussions ;
- (v) Report of the National Audit Bureau of Sweden received by the Government of India on June 4, 1987;

- (iv) Efforts made by Government of India to enquire into and establish identity of persons/agencies, firms of Indian or non-Indian origin who received payments in the context of the announcement made by Swedish Broadcasting Company and the Report of the National Audit Bureau of Sweden ;
- (vii) To determine whether such payments have violated existing laws, rules and regulations of India and to make suitable recommendations for the consideration of the House;
- (viii) To enquire into the alleged payment of commissions in the purchase of West German sub-marines by Government ; and
- (ix) To enquire into all matters incidental and consequential thereto.

2. That the Rules of Procedure of this House relating to the Parliamentary Committees shall apply with such variations and modifications as the Speaker may make.

3. That the Speaker may nominate 14 members from the House in consultation with the Leader of the House and the Opposition Parties and Groups so that the Committee consists of 7 members from the ruling party and 7 from the Opposition parties.

4. Following the convention of the P.A.C., the Chairman of the Committee will be from the Opposition to be nominated by the Speaker in consultation with the Opposition leaders.

5. The Committee shall have the powers to send for any papers and records and investigate the issues referred to it as per rule 269 of the Rules of Procedure and the Government also to request the Comptroller and Auditor General of India and the Attorney General of India to provide such assistance as may be required by the Committee.

6. That the Government may place at the disposal of the Committee assistance of the Central Bureau of Investigation or other investigative and intelligence agencies as the case may be.

7. That the Joint Committee shall submit its report to this House by the last day of the First week of winter Session of Parliament for its consideration and discussion.

8. That this House do recommend to Rajya Sabha that the Rajya Sabha do join the Committee and communicate to this House the names of members nominated or elected to the Committee as mentioned above.

9. That Committee shall have power to ask for the members of Council of Ministers and also ex-Ministers to appear before the Committee.

10. That the Committee shall have power to hear and/or receive evidence from any foreign national or companies or any other agencies including the Governments and for this purpose visit any foreign country.”

APPENDIX IX

(See para 2.29 of Chapter II of Report)

Amendment to the original motion moved by the Minister of Defence

“That the original motion may be amended to read as follows :—

“That a Joint Committee of both the Houses consisting of 30 members, 20 from Lok Sabha and 10 from Rajya Sabha be elected on the basis of proportional representation to enquire into the issues arising from the Report of the Swedish National Audit Bureau relating to the Bofors’ contract to supply 155mm Howitzer guns to India.

2. The Committee shall enquire into the following matters:

- (i) whether the procedures laid down for the acquisition of weapons and systems were adhered to in the purchase of the Bofors’ gun;
- (ii) to ascertain the identity of the persons who received and the purpose for which they received payments of the following amounts:—
 - (a) SEK 170–250 million
 - (b) SEK 29.5 million.
 - (c) SEK 2.5 million.

from M/s. Bofors (as referred to in the Report of the Swedish National Audit Bureau, received by the Government of India on June 4, 1987);

- (iii) arising out of the enquiry, if there is *prima facie* evidence that M/s Bofors have in addition to payments mentioned in (ii) above, made any other payments for securing the Indian contracts, the identity of the persons who received such payments shall be ascertained;
 - (iv) to determine if any Indian laws/rules/regulations have been violated either by M/s. Bofors or by persons as indicated in (ii) and (iii) above.
3. That the Speaker shall nominate one of the Members of the Committee to be its Chairman.
4. That the quorum of the Committee shall be one third of the total strength of the Committee.

5. That the Comptroller and Auditor General of India and the Attorney General of India will provide assistance to the Committee, as necessary.
6. That the investigating agencies of the Government of India shall render such assistance to the Committee as may be required by it for the purposes of its enquiry.
7. The Committee shall have the power to ask for and receive evidence, oral or documentary, from foreign nationals or agencies provided that if any question arises whether the evidence of a person or the production of a document is relevant for the purposes of the Committee, the question shall be referred to the Speaker whose decision shall be final.
8. If the Committee wish to nominate a sub-Committee to visit a foreign country for specified purposes connected with the enquiry, the matter shall be referred to the Speaker who may take such decisions and give such directions as he thinks fit, provided that such sub-Committee shall not hold sittings, record evidence or take decisions in a foreign country.
9. That in other respects the Rules of Procedure of this House relating to Parliamentary Committees shall apply with such variations and modifications as the Speaker may make.
10. That the Committee shall make a report to this House by the last day of the first week of the next session of Parliament.
11. That this House recommends to the Rajya Sabha that the Rajya Sabha do join the Committee and indicate to this House the names of the Members from amongst the Members of the Rajya Sabha to be on the Committee."

APPENDIX X

(See para 7.128 of Chapter VII of report)

Unofficial translation of the statement issued on 28 January, 1988 by the Chief District Prosecutor, Sweden

By a decision of 19 August 1987 it was ordered that preliminary inquiries should be commenced concerning whether or not bribery offences had been committed in connection with the contract for supply of field Howitzer FH 77 by AB. Bofors to the Indian state. The basis for the decision was, *inter alia*, information in the National Audit Bureau's report to the Government of 1 June 1987.

Through the inquiry it has emerged that AB Bofors during 1986 disbursed about SEK 319 million to three foreign companies with accounts with different banks in Switzerland. A request was made through the agency of the Ministry for Foreign Affairs to the competent authority in Switzerland for information concerning which person/s were authorized to make withdrawals from the accounts in question and what transactions had taken place. However, in view of Swiss legislation such information could not be obtained.

Representatives of the Nobel Group have been questioned. In this connection, special importance has been attached to the questioning of executives of the subsidiary company Bofors. Admissions of the disbursements in question have been made and also explanations and motives for them given. It has not been possible, however, to obtain details of which persons received payments.

A judicial inquiry similar to our preliminary inquiry concerning possible bribery offences has not been commenced in India.

Thus, neither written nor oral evidence has been obtained through the inquiry undertaken with regard to whom payments were made and the reasons for them.

In view of this, and since it cannot be expected that information of decisive importance for the matter of prosecution could be obtained by continuing the inquiry, the preliminary inquiry is withdrawn.

APPENDIX XI

(See para 7.134 of Chapter VII of report)

Certificate of the Public Accountant retained by AB Bofors to examine their accounting records.

This is to certify that Mr. Anders G. Carlberg, Managing Director of Nobel Industries Sweden AB, and Caj Nackstad, Managing Director of Bohlins Revisionsbyrå AB, personally signed the enclosed document. . .
Karlskoga this 5th of February 1988.

Sd./—

Albin J. Nilsson.

Notary Public in and for
the district of Karlskoga, Sweden.

Exp. avg. Kr. 55:

STRICTLY CONFIDENTIAL

CERTIFICATE CONCERNING AB BOFORS' TERMINATION COSTS

During the spring of 1987 the question was raised whether AB Bofors, a company incorporated in Sweden, had used any middlemen and/or paid any bribes in order to win the FH 77 contract dated March 24, 1986 for the Indian Armed Forces.

AB Bofors hereby makes the following statements in connection with the abovementioned matters. The statements are followed by an opinion issued by Bohlins Revisionsbyrå AB, Stockholm, a firm of authorized public accountants associated to the international accounting firm Deloitte Haskins & Sells.

1. AB Bofors has had an agreement for representation in India and general consultancy agreements, which under circumstances prevailing earlier would have been applied to sales of AB Bofors products. Some of those agreements originated as long ago as in the late nineteen-seventies.
2. The agreements mentioned under item 1 have been terminated and are no longer applied.
3. Termination costs for the consultancy agreements mentioned under item 1 were paid out during 1986. No payments based on the agreements have been made after December 1986.

4. The termination costs were substantially lower than the amounts which would have been paid if the agreements in force during 1985 had been applied.
5. The final prices in the FH 77 contract to India are lower than comparable prices offered to any other customer, *i.e.* India is treated as the most favoured customer.

Stockholm, September 14, 1986

AB BOFORS

Anders G Carlberg

Opinion

We have been retained by AB Bofors to examine their accounting records for 1986 and January 1-August 31, 1987 as well as consultancy agreements and agreements for representation in India, in connection with the FH 77 contract dated March 24, 1986 for the Indian Armed Forces. Our examination was made in accordance with generally accepted auditing standards.

In our opinion the results of our examination support the statements made above by AB Bofors.

Stockholm, September, 14, 1987

BOHLINS REVISIONSBYRÅ AB

Caj Nackstad

POST SCRIPT

In a letter dated 22nd April, 1988, addressed to the Speaker, Lok Sabha (received in the Speaker's Office at 9.50 AM on 25th April, 1988), Shri Aladi Aruna, a member of the Committee, made a request to the Speaker to give direction to the Chairman of the Joint Parliamentary Committee on Bofors Contract to "record and include the note of dissent by me or by other Members, if any" in the Report of the Committee. The Speaker thereupon directed that the "note by Shri Aruna may be appended to the Report. He may be asked to give his note by noon (1 pm) today at the latest". The note in question was received in the Speaker's Office at 1055 AM on 25th April, 1988.

As per the directions of the Speaker, the note submitted by Shri Aladi Aruna after adoption of the Report of the Committee, is reproduced below :

NOTE BY SHRI ALADI ARUNA *alias* V. ARUNACHALAM

"The Ministers and the legislators have to be watchful to their own person and public conduct. They have to be like Caesar's wife above suspicion in everything. They may not make profits, gains either for themselves or for their relatives or their friends."

—MAHATMA GANDHI

Introduction

I am one of those who were inspired by these words. Still they are in my mind like letters engraved in the stone. Eradication of corruption is not an easy task. Its history started with the Forbidden Fruit. It is almost like hoeing for growing crops. Just as farmers have been hoeing generation after generation for the benefit of the growing crops, so also for the betterment of the society, we have to fight for uprooting corruption. Whether or not we win all the battles, we have to continue the crusade. Otherwise, the foundation of the society based on certain moral principles and discipline will be rocked to the very roots of its existence.

Nature of the Functioning of the Committee

I have served on many Committees of Parliament as well as of the State Legislature. I have done so as a Member as well as a Chairman. I have

never had any occasion thus far to file a note of dissent to a report of any of the Committees of Parliament or State Legislature with which I have been associated.

But I am compelled to do so now with a heavy heart on account of several reasons. My dissent note relates not merely to the content of the report, but also the procedure and modalities adopted by the Committee and the propensity of the Chairman while pursuing its task.

Let me first state my misgivings in respect of the Committee's working modalities.

In spite of the controversies which had dogged the setting up of our Committee and in spite of the fact that the Opposition had stayed away from the Committee, I had thought that once the Committee started functioning, it would proceed with requisite objectivity and seriousness. Partisanship has never had any place in the work of the Committees of Parliament. And every Committee has always endeavoured to do its task thoroughly and objectively.

Even when some documents were secured for the Committee, the members were told that like school children they must study these in a single room. In this room, sometimes, as few as five copies of the documents were put and members did not have full opportunity to study them. Many of the documents, such as proceedings of the Price Negotiating Committee, Trial reports, the report of the CBI on the illicit payments, were bulky. They could not be read cursorily and yet that was precisely what the members were expected to do. My specific request that we should be allowed to peruse these documents at home was to my shock and surprise outrightly rejected by the Chairman on the ground that these were all 'Classified' documents.

The proceedings of the Committee on every occasion were neither placed before the Committee nor circulated to the members. Only selected portions of the proceedings were made available to the members concerned after one week. Thus, those members who were absent from any sitting were not in a position to know what the witnesses at that sitting had deposed.

Some of the documents which were supplied to the members were not in order, in pages and paragraphs. There were omissions and deletions of portions without even an explanation. Our requests for explanation were summarily turned down.

The most important handicap was that the Committee Members were not informed, before the meeting, the names of witnesses who were being summoned for tendering evidence. In the absence of such information about the names of witnesses it is needless to say members were not in a position to prepare themselves for examining the witnesses who were suddenly produced.

The manner in which the Committee has hustled into receiving the President of Bofors, Per Morberg, and their Chief Counsel, Gothlin was nothing short of shocking. We were summoned by telegrams and, without preparation, we had to confront with two key witnesses. Not just that. Before being produced before us, the witnesses for three full days had been closetted with officials of the Defence Ministry and the Prime Minister's Secretariat. When they finally came it seems that the line they were to take could have been settled down before they came before us.

It is unfortunate that the Chairman adopted the same tactics when Mr. Per Ove Morberg and Mr. Lars Gothlin were again requested to appear before the Committee. The Chairman informed the members of the Committee on 6th April, 1988 that Bofors people have responded positively to appear before the Committee but owing to the Easter holidays they were not in a position to come immediately. The Chairman further intimated the members of the Committee that he was 'officially unaware of their date of arrival in Delhi. But all of a sudden the very next day he informed us over the phone that the witnesses had already arrived in Delhi and members of the Committee should cross-examine them that evening itself. Here again the members were forced to cross-examine the witnesses without proper preparation.

What is more painful to state is that even the draft report was not circulated to the Members for perusal. The Chairman as usual asked the Members to study the Report for a few hours in the room itself.

During the discussion of the Draft Report, I reiterated my view by saying that I disagree with the observations of the Committee and mentioned that I could explain my position in my dissent note. At that time, Mr. Kaushal intervened and said that a Member has no right to give dissent note. But I asserted that it is the fundamental right of a Member to give the dissent note and asked the Chairman to give the Ruling regarding this vital issue immediately, but the Chairman refused to give the ruling by saying that he would give his ruling only the next day. Consequently, I staged a walk out.

I am to reiterate that from the very beginning the Chairman adopted this type of tactics with the intention of denying adequate opportunity to the

members to prepare themselves for cross-examination of the witnesses, thereby allowing the truth to remain unearthed.

The Report deals with the number of witnesses examined by the Committee. But it has deliberately omitted to mention as to how many witnesses were requested to appear before the Committee by the members. Moreover, on February 20, 1988, I addressed a letter to the Chairman of the Committee requesting him to call the following witnesses before the Committee :

1. Mr. Bhoopatrai Oza, Indian Ambassador to Sweden.
2. Mr. Naik, Jt. Secy. in the Ministry of Defence.
3. Mr. R. K. Gupta, D.I.G., C.B.I.
4. Mr. Anil Kumar, Director of Enforcement.
5. Mr. Mohan Katre, Director, C.B.I.
6. Mr. P. P. Malhotra and Mr. J. S. Arora, Advocates of Mr. Win Chadha and his son.
7. Mr. Gopi K. Arora, Secy. in the Ministry of Information and Broadcasting.
8. Mr. Martin Ardbo, former President of Bofors.
9. Mr. Ringberg, the Swedish Prosecutor; and
10. Mr. Srichand Hinduja and Mr. Gopichand Hinduja.

After about one month, the Chairman sought the view of the Committee as to whether these witnesses be called before the Committee. Since the majority of members of the Committee belong to the Ruling Party and its allies, my genuine request was not conceded. Then I repeatedly requested the Chairman and the Committee that at least some of the important witnesses might be called before the Committee but my requests were again turned down by the Chairman with the help of the brutal majority of the Ruling Party Members and its allies.

Despite all these drawbacks, I am pleased to say that a few members showed keen interest to achieve the very object of the enquiry. I am one among them.

Though the Government of India had resolutely refuted the allegation by saying that the allegation of the Swedish Radio broadcast was "false, baseless and malicious", the report of the Swedish National Audit Bureau and the mounting pressure of the Opposition parties compelled the Government to constitute this Committee for enquiry.

Terms of Reference

The Committee was constituted to inquire into the following matters :

- (i) whether the procedure laid down for the acquisition and systems were adhered to in the purchase of the Bofors gun;
- (ii) to ascertain the identity of the persons who received and the purpose for which they received payments of the following amounts :
 - (a) SEK 170—250 million
 - (b) SEK 29.5 million
 - (c) SEK 2.5 million
 from Bofors (as referred to in the report of the Swedish National Audit Bureau, received by the Government of India on June 4, 1987);
- (iii) Arising out of the enquiry, if there is prima-facie evidence that M/s. Bofors have in addition to payments mentioned in (ii) above, made any other payments for securing the Indian contracts, the identity of the persons who received such payments shall be ascertained.

Such were the terms of reference to the Joint Parliamentary Committee.

The unfortunate controversies about the terms of reference, about the composition, about the powers of the Committee prevented the Opposition from joining the Committee. Had they not been disabled by these controversies from joining I believe that many of the aforementioned drawbacks would have been overcome and we would have been able to get closer to the truth about the illegal payments.

The Committee has observed as follows :

“The Committee are firmly convinced that the procedure followed for the selection of the Bofors gun system was sound and objective, and the technical evaluation of the various gun systems considered was thorough, flawless and meticulous.”

I totally disagree with these observations for the reasons explained hereunder :

Gun Systems

No doubt, this Committee took a good deal of time to investigate the capability of the Bofors gun system. We had the opportunity to see the operation

of the gun in plains as well as hills. The army personnel asserted the capability of the gun system with great satisfaction. But the pertinent point for consideration of the Committee was as to what the capability, mobility, fire range, fire burst of the Bofors gun was before the contract was concluded on March 24, 1986, and not what it was so many months after the signing of the contract. Any evaluation on the basis of the trial of the Bofors gun in 1987 was not appropriate to the task before the Committee. The Bofors could have later developed, or altered or modified the gun system. Such improvements could have been made in the case of other gun systems as well. The Committee was bound to consider the mobility and capability of the gun system on the basis of an evaluation of trial units and recommendation of Army Headquarters prior to the contract being signed.

In this context it is appropriate to note that the Ministry of Defence has not taken any steps to re-evaluate the gun systems after 1982. It has acted upon the evaluation report of 1981-82. It has adhered to the evaluation report of 1981-82 for concluding the contract in 1986. During one of the inhouse meetings of the Price Negotiating Committee it was emphasised by one of the members that all gun systems must be re-evaluated. But the Ministry of Defence refused to accept this suggestion by saying that there was no time to re-evaluate all the gun systems.

Trials of various Gun Systems

The introduction of 155mm calibre medium towed gun was based on the weapon philosophy of the expert Committee headed by Lt. Gen. K.V. Krishna Rao.

Various medium gun systems were taken for trial evaluation since the year 1980, 1981 and 1982. 155 mm FH 70 gun of UK, 155 mm FH 77 BF of M/s. Bofors, Sweden, 155 mm gun of Voest-Alpine (Austria) and 155mm TR gun of M/s Sofma (France) were evaluated during these years by trial units consisting of experts and acknowledged technicians.

Recommendations of Army Headquarters

In December, 1982, Army Headquarters finalised their general staff evaluation of 155 mm gun system for the first time and recommended to their Ministry of Defence that the guns be considered for purchase and licensed production in the following order of priority :

- (i) TR gun (France)
- (ii) FH 77 B gun (Sweden)
- (iii) FH 70 (UK)

The procurement of the gun system did not start with this recommendation. Instead, a series of meetings were held by the Ministry of Defence with the representatives of Army Headquarters.

DCOAS and Director Artillery had visited United Kingdom, France and Sweden to see the operation of the gun system concerned. Only in January 1984 did the Government decide to procure 400 guns of 155 towed gun system. The Cabinet Committee on Political Affairs approved the proposal for 400 guns and authorised the Defence Ministry to enter into a licence agreement with selected manufacturers for production. It also directed the Ministry to constitute a single Price Negotiating Committee chaired by Defence Secretary. In this connection, I have to state that on three occasions the TR gun (France) was ranked first in the order of priority by Army Headquarters.

As I mentioned earlier, it was in December, 1982 that the Army Headquarters ranked the TR gun in the first place. Again in February 1985, it shortlisted the gun system into two rankings. Again the first place was given to 155 mm TR (France) and the second place was given to 155 mm FH 77B (Sweden). Army Headquarters confirmed the order of priority to the Defence Ministry for a third time in 1985.

Thus, Army Headquarters repeatedly recommended M/s. Sofma gun with first order of priority based on the evaluation by its expert technical committee.

Minutes of P.N.C.

In this context for the benefit of the Parliament and the public I reproduce some extracts hereunder from the minutes of the Price Negotiating Committee:

(i) An extract from the proceedings dt. 17-8-84 as follows:

“Secy. (Expenditure) stated that there is no need for conducting negotiation with any of the parties as Army Headquarters were of specific view that they preferred only French, and Swedish gun and the guns manufactured by IMS and VOEST Alpine were not acceptable to them. DCOAS confirmed the statement made by the Secretary (Expenditure) about priorities indicated by Army Headquarters regarding purchase of 155 mm gun. According to him, guns produced by IMS and VOEST Alpine were not acceptable to the army, the gun produced by Sofma being the first preference. DCOAS further stated that this has been the view of the Army Headquarters all along.”

(ii) An extract from the proceedings dt. 28-8-84:

“DCOAS stated that both the guns had advantages. If an overall view is taken the gun manufactured by Sofma is better than that manufactured by Bofors”.

(iii) An extract from the proceedings dt. 7-8-85:

“DCOAS stated that Chief of Army Staff had given his recommendation that French gun was the best priority-wise and if the price difference was marginal we should go in for that”.

Report of Lt. Gen. Maya Das

In addition to this, the Technical Evaluation Committee under the Chairmanship of Lt. Gen. Maya Das has given priority to GNH 45 TR guns and not to Bofors guns.

Brig. N.P. Singh of the Committee gave first priority to GNH 45 and TR French Gun.

Brig. T.P. Singh gave first rank to FH 77 Swedish gun, and the second place to TR gun.

Col. Khara ranked the TR gun first and GHN 45 second. He gave the FH 77 Swedish gun third place.

M.P. Singh ranked GAN 4 (Austria) first and assigned the second place to the TR gun, and the last place to the Swedish FH 77 gun of Bofors.

Gen. Maya Das ranked GHN 45 of Austria first, TR France second, and the FH Swedish gun third.

Report of Lt. Gen. Mahendra Singh

Based on evaluation of detailed trials of suitable and available systems in the world, Lt. Gen. (DHWE) K. Mahendra Singh ranked the gun systems in the following order of priority:

- (a) 155 mm TR (France)
- (b) 155 mm FH 77B (Sweden)
- (c) 155 mm FG (UK)
- (d) 155 mm GHN (Austria)

The Report of the Lt. Gen. Mahendra Singh was addressed to Defence Secretary on February 28, 1985.

A perusal of the records clearly establishes that neither the Evaluation Committee nor Army Headquarters, nor the Lt. Genl. Incharge was in favour of the Swedish gun on any occasion prior to 1985. The shift towards M/s Bofors took place only in 1986.

FH 77B Bofors Gun system

As far as 155 mm Swedish gun is concerned the most important feature is burst fire capability of the system, automatic handling of the ammunition, automatic loading of all components of rounds, automatic levelling of sight, and the Hydraulic locking of arrangement for elevation. The fire burst capability is said to be an essential feature of shoot tactics.

As per the recommendation of the Price Negotiating Committee held under the Chairmanship of the Secretary the minimum acceptable fire range was 24 kms.

According to the Expert Committee on Artillery Weapon System, "a definite requirement for developing a medium gun of a calibre of say 155 mm is that the gun should have a range of 28 to 30 kms and shell weight of about 50 kgs."

But the fire range that the Bofors gun achieved was only 21.1 kms which was well below the minimum acceptable parametre that had been specified. Of course, the fire burst capability of the Bofors gun is very good. The minimum burst fire capability was specified as three round in 15 to 20 seconds under all battle-field conditions. Bofors record of burst fire is 13.5 seconds whereas Sofma is 15 seconds.

TR (France) Gun system

As far as TR French gun is concerned, it is quite sophisticated. All operations are *hydraulically* operated. The achieved fire range is 29.2 kms (the manufacturers now claim 32.5 kms). The gun is very simple and robust. In the case of failure of APU, the gun has the requisite minimum back up, i.e. hand pumps, hydraulic reservoir and power from the tractor. It has the highest sustained rate of fire and appears to have longer barrel life than any other gun system. It has a powerful APU which enables the gun to move at 30 to 35 kms per hour against 7 to 8 kms of other three gun systems. It has burst capability and has a very slow silhouette when deployed.

In this system the transfer of technology will be extremely quick. No special manufacturing technician will be needed. There are no proprietary items. All ammunition offered with the gun system is of French origin. Thus it is cheaper but, more important, the whole package for complete system is the cheapest of all.

The gun with longer range is the universally preferred one. All evaluations of the Expert Committee and trial units gave priority to range of fire rather than fire burst capability.

Range of fire of Bofors gun was only 21.1 kms, whereas TR gun had a fire range of 29.2 kms. The difference was 8.1 kms. a very significant margin. While as far as fire burst is concerned the difference was 1.5 seconds only which is rather insignificant.

Because of these factors the Army Headquarters repeatedly preferred the TR gun (French) system. But the wind began to blow in a different direction after Mr. Rajiv Gandhi, our Prime Minister, took over the portfolio of Defence.

Germination of favouritism

In December 1985 three working groups were formed—namely, Working Group No. 1 to hold discussions on contractual and commercial credit terms, Group No. 2 for working out the details of all technical aspects including gun system guarantee and other technical matters, and Group No. 3 to hold discussions with representatives of the firms for licensed production.

Here we find the germination of the favouritism towards M/s. Bofors. The key to it was Group 2 which was formed to evaluate the gun system. One can understand the purpose of forming the Groups 1 and 3 which were essential, but what was the need to form the Group 2 again to evaluate the weapon system which had already been evaluated earlier repeatedly by the technical experts?

The Defence Ministry under the Prime Minister was responsible for forming these groups. Consequently, the Army Headquarters submitted their final technical evaluation on four 155 mm towed gun systems. In the technical evaluation on 17-2-1986, suddenly the Army Headquarters recommended that Swedish Bofors FH 77B gun had a clear edge over French Sofma TR 155 mm gun, ignoring their earlier, and consistently repeated recommendation for the TR French gun.

The reasons stated by the Ministry of Defence for the selection of the Swedish gun system for awarding the contract to M/s. Bofors are as follows :

- (a) Technical factors.
- (b) Delivery schedules
- (c) Commercial terms (price and credit), and
- (d) Contractual terms.

As far as technical factors are concerned the claim of the Defence Ministry that Bofors 155 mm towed gun had a clear edge over French gun is

untenable, unaided by reasons and unsupported by facts. I have already dealt with this factor elaborately.

Delivery Schedule

M/s. Bofors had agreed to deliver the first lot of 12 guns within three months of their receiving the down payment whereas M/s. Sofma agreed to deliver the guns after eight months. The last delivery for M/s. Bofors would be in a month 51; against this Sofma was to be in a month 52.

In fact there was no material difference in the schedule between M/s. Bofors and M/s. Sofma. During cross-examination Mr. S. K. Bhatnagar, Secretary for Defence admitted that Army Headquarters had received the first lot of guns from M/s. Bofors only *six* months after the contract was signed. During cross-examination, I asked Mr. Bhatnagar to furnish particulars of the supply of guns so far to find out the fact as to whether the guns were supplied as per schedule. Mr. Bhatnagar assured me that he would furnish the information, but he has not done so.

Moreover, though it is a contract for procurement of 400 medium Bofors guns, the compulsory procurement on the part of India is only 50% of the contract. In that case the Government of India in future may reduce the number of guns for procurement. Further, the stance of the Defence Ministry that it is very serious, that it is meticulous about the schedule is hard for us to take at face value. It may be reminded that the Defence Ministry which claims to be very particular about the schedule of the delivery of the guns, has in fact worked so many years to finalise the choice of guns.

In December 1981 itself the Army Headquarters took the decision on the General Staff evaluation of 155 mm gun system, and recommended the gun system with the order of priority indicated be acquired. Moreover, in its assessment, Army Headquarters, vide their letter No. B/28888/GS/WE-5 dt. 28th February, 1985 state that "As you are aware, the case for procurement of 155 mm towed and SP guns has been under consideration since 1982. In order to ensure a balanced artillery support to our formations, a requirement of 46 regiment i.e. 920×155 mm guns of the towed version was assessed by us for the 6th Army Plan. However, due to the fact that no single manufacturer would be in a position to supply such a large number of guns and also with a view to eventually encourage indigenous production, a provision for imports of only 400 guns (20 Regiment worth) along with associated accessories, spares, vehicles and ammunition was projected by us to the Ministry of Defence in July 1982." And yet the Defence Ministry took nearly four years and three months for awarding the contract. Not a single gun was acquired in the Sixth Plan. Now the same Ministry is working itself up over the difference of a few months in the

delivery of the guns. The pleas about the delivery schedule are clearly just a device to add another point to justify a decision that had already been taken.

Commercial Terms (Price & Credit)

It was claimed by the Defence Ministry in both Houses of Parliament that the price of the Bofors gun was cheaper than all systems especially in comparison to the Sofma gun. If we examine the commercial terms, price of guns and credit facilities, the facts tell a different story. This is evident from the figures of comparative offers that were submitted to the Committee by the Ministry of Defence. By these figures the final offer was Rs. 1427.02 for the Bofors gun and Rs. 1436.75 for Sofma guns. The difference was only Rs. 9.73 crores.

Using the negligible difference the Defence Ministry claimed that it had preferred M/s Bofors guns as they were cheaper. A number of reasons prove that the claim of the Defence Ministry is false, and is, in fact, based on doctoring the figures.

The final and accepted offer of M/s Bofors was Rs. 1427.02 crores (SEK 8410,660,984). Bofors had agreed to give only documentation and training free of cost. The offer that the Ministry used to justify its decision did not include banking charges under the credit agreement. These were as follows :

- (i) Commitment fee @ 0.25 % p.a. of the undisbursed portion of the credit to be paid half yearly;
- (ii) Guarantee premium @ 2 % flat on the total credit amount;
- (iii) Agency fees @ 0.0625 % p.a. on the loan;
- (iv) Management fee @ 0.0625 % flat on the total credit amount.

When we incorporate these charges into the final offer of Bofors, India has to pay much more to Bofors than the figure the Ministry used, and the one it gave to the Committee.

It is false to say that these charges have been included in the final offer. In the document of the summary of quantity and price there is no indication of this additional cost.

But even more serious factor is that the government agreed to pay Bofors in two currencies, namely SEK and DM (German currency). Unfortunately, India was made to accept buyer's credit and to pay in the currency of credit : namely, 86 % in SEK and 14 % in DM for the gun system, and 100 % in DM for the ammunition. During examination, witnesses from the Defence Ministry frankly admitted that this decision had, as they put it,

turned out to be a "negative factor". In the inhouse meeting of the Price Negotiating Committee held on 4th March 1986 it was noted that :

"It was noted that Swedish offer for credit was in two currencies and the German Marks element in the credit was a negative factor subject of course to currency behave in future. We might ultimately have to pay more because of this factor.....
Moreover, the rate of interest on German currency was higher in Swedish offer than that by French. On the whole, the French credit offer was considered to have an edge over the Swedish one."

The data given by the Defence Ministry about the final offer of Bofors were in terms of rupees on the basis of the exchange rate converted from SEK alone to rupees.

This was a patent distortion. In our contract, we have to pay to Bofors only 49% in SEK. The rest, 51% is to be paid in DM. Therefore, in calculating what we have to pay in SEK, 49% of the total contract value must be converted from SEK to rupees and the rest 51% from DM to rupees. This is the accurate way of calculating the total cost of the Bofors contract in terms of rupees. If we convert exchange value of DM in rupees, it is needless to say that the Bofors offer would be much higher than that of M/s Sofma. Therefore, even the Dept. of Defence Production and Supply did not endorse the view of the Defence Ministry. The Price Negotiating Committee minutes reveals that "Dept. of Defence Production and Supply have evaluated the scope of transfer of know-how, price CKDS, escalation, credit terms etc. but felt that it is not possible to give final opinion on which is the cheaper offer."

As far as M/s Sofma was concerned, though its offer appeared to be a little high—that is, by Rs. 9.73 crores—it had agreed to supply spare parts and maintenance equipment free of charge for five years. It had also agreed to give training and technical literature without any charge. The most important factors were that it had agreed to accept all payment in a single currency, that is its own French Franc. It had also accepted not to charge on the basis of escalation. These facts were kept from the Parliament on all occasions. Worse, they were not taken into account while finalising the choice.

In view of this it is incorrect to state in the report that the price of Bofors gun systems in the Indian contract was the lowest compared with prices in contracts with other customers. The report claims credit by putting the argument that "during the period of 40 days from 10th Feb. to 21st March 1986 the price of the Bofors came down from Rs. 1620 crores to Rs. 1427 crores while in the case of Sofma the price came down from Rs. 1590 crores to Rs. 1436 crores.

But, if we go through the offers of Bofors and Sofma on 1-9-1984, 10-4-1985 and 10-1-1986 they were much less than the offer made on 10th February 1986.

Contractual terms

Supply contract for Bofors, credit agreement, licence agreement, and memorandum of understanding, all these documents were signed on March 24, 1986. If we examine the salient features of these documents in the light of the deposition before the Committee by officers from the Defence Ministry and Army Headquarters, it reveals that the Defence Ministry was not serious about the terms of the contract.

Under the supply contract the Defence Ministry agreed to pay 20% of the total value of the contract as advance without any interest till the contract was over. In other words, it agreed to pay Rs. 285.4 crores as advance without interest whereas M/s Sofma demanded only 10% advance for the first six months and another 10% thereafter. The loss of interest is a disadvantage which was not included in the total value of the Bofors offer. Under Clause 16 of the Supply Contract various grounds have been mentioned for termination of the contract. To our surprise, no ground is incorporated for terminating the contract in case of violation of the condition that the Government has mentioned again and again, namely the appointment of middleman and payment of commission. Had they been very serious for the elimination of middlemen and commission, they would have incorporated a clause to that effect. Therefore, the absence of such a clause is more than enough to show that policy of no middlemen, no commission claimed by the Govt. is one that has been invented *ex post*.

Under Clause 18.2 of the Supply Contract any dispute, disagreement or any question arising out of or related to this contract if not settled amicably shall be referred to an ARBITRATION TRIBUNAL. When I asked the Defence Secretary as to why the Defence Ministry had not referred the dispute of improper payment of commission to the Arbitration Tribunal, his reply was as usual evasive.

In the supply contract M/s Bofors skilfully have got the approval of our Government to exclude bought-out and proprietary items from among those that are to be transferred for licensed production. The fact which is still unknown to Parliament and the public is that M/s Bofors have agreed to grant exclusive licence and right to manufacture medium 155 gun in India provided the Government of India undertakes to purchase 50% of the total contract orders of the gun system viz. the Direct Sight, Night Sight, Aiming Collimator, HE Shell etc. from Bofors. Another rasping fact is that the Government of India has agreed to buy more than half of certain items like vehicles from Bofors.

It is argued that M/s Bofors have agreed to give documentation free of charge. But to our disappointment we learnt that it has refused to give documentation regarding the engine and the gear box.

Not just that. Under the contract, unfortunately, India has agreed to give the price increase for the order to be placed after 48 months and also agreed to the escalation to the extent of 5%.

Considering all these facts I am forced to conclude that the contractual terms are disadvantageous and detrimental to the interest of the nation and also to defence production.

Middlemen and Commission

The most controversial and crucial terms of reference for the Committee have been to ascertain the identity of the persons who received and the purpose for which they received the payments of the following amounts from Bofors :

- (a) SEK 170—250 million
- (b) SEK 29.5 million
- (c) SEK 2.5 million

These were the ones that had been listed by Sweden's National Audit Bureau, though it had also stated that in addition to these other substantial amounts had also been paid by Bofors.

From the beginning, the Ministry of Defence had repeatedly averred that it had adhered to the policy of "no middleman"- and "no payment of commission" in order to reduce the cost of the contract. It maintained that it had always conducted direct negotiation with M/s Bofors without middlemen and that no commissions had been paid. But the record and relevant documents blow up their claim.

M/s Bofors have also asserted to the Govt. of India and Swedish National Audit Bureau that no middleman/representative/agent was used to represent the company with the Indian authorities to win the contract. To make their claim appear genuine they have skilfully admitted that payments were made in accordance with the contract for reimbursement and consultant services within the areas of marketing and counter-purchases. Further, it has admitted that it has paid winding up charges amounting to 2-3% of the order sum, i.e. SEK 319 million and that all this money was disbursed during 1986. On the other hand, the Swedish National Audit Bureau has confirmed that 'considerable amounts have been paid subsequently to, among others, A B Bofors previous agent in India'. Mr. Lars Ringberg, the Swedish Public Prosecutor has also stated that "there is a reason to believe bribery crime had been committed."

The truth has been even worse than the allegation of the Swedish Radio regarding payment of commissions. There is no denial about the payment of huge amounts to the tune of Rs. 64 crores towards commission. Why was such a huge amount paid by M/s Bofors as winding up charges? Are the reasons stated by Bofors acceptable? Who were the recipients? What services did they render? No answers were forthcoming. The failure to answer these questions has cast grave suspicions not only against M/s Bofors but also against the Ministry of Defence.

When the Ministry of Defence contracted M/s Bofors to disclose the names of the recipients of the winding up charges it was stated that Bofors refused to divulge the names for reasons of commercial confidentiality.

Moreover, it has been reported by the Govt. of India that the Govt. of Sweden sent the report of the Swedish National Audit Bureau to the Govt of India with the omission of four pages which are classified as secret. Mr. S.K. Bhatnagar has written many letters asking Bofors to give detailed information about the precise payments made about the persons who received the amounts and about the services rendered by such persons. Though Bofors stuck to its old stand in its letters, subsequently, it changed its attitude and agreed to give the names of recipients to the Govt. of India. After receiving the names of the recipients such as :

- (a) Svenska
- (b) M/s Moresco
- (c) A. E. Services Ltd.—abroad
- (d) Anatronc General Corpn. — in India

We thought the goal of reaching the truth was nearing. But after seeing the report of the CBI submitted to the Joint Parliamentary Committee we realise that the truth is still a long way off.

CBI Investigation Report

The CBI investigation confirms that Svenska has received SEK 188.4 million through normal banking channels; that Moresco, a reference of code name for Moineao SA in Switzerland, has received SEK 81 million in three instalments which have been credited in Switzerland under the Code name 'Lotus'; that A E Services Ltd. has received SEK 50 million. According to the CBI investigation, SEK 319.40 million have been paid to the recipients. CBI has also given how much amount has been received by Anatronc General Corpn. in India.

CBI investigation into AE Services Ltd reveals that :

“M/s A E Services Ltd entered into an agreement with A B Bofors some time in 1985 to represent Bofors in India and some other country”.

The investigation further reveals that A & E Services had not made the contract in its own right but as a trustee for another company, CIAO. The agreement was entered in 1985, it was cancelled in early 1986. No substantial service rendered is on record. The payment was to be of the order of US \$ 7.3 million. And it was made on Sept. 11, 1986.

The investigation into Moresco (Moinea SA Geneva) has revealed an alarming factor. The report of the CBI discloses :

“The funding of this Company seems to be mysterious as no trace of this company has been found at the address in Geneva given by M/s A B Bofors. It seems the company registered in Switzerland is only a front organisation being run for persons not residing in Switzerland.”

The information about M/s Svenska Inc, Panama, is even more thrilling. All the office bearers are ladies. Its office is managed by a lady advocate, Miss Mcela Rozas de Perez. The CBI investigation reveals that none of the ladies is a person of means. “During the last two years”, says the investigation, “she has not received her retainer fees and service charge etc. from the principals and therefore she has discontinued the payment to the post office for the post box”. The CBI has summarised its report in the following manner :

“In the light of the facts stated in the preceding paragraphs the following position emerges :

(i) It has not been possible to identify the real owners of the three companies whose names were furnished by M/s A.B. Bofors viz.

- (a) M/s Svenska Inc, Panama
- (b) M/s Molneo SA Lussanne, Switzerland
- (c) M/s A E Services, UK

The companies have been registered in tax havens obviously for the purpose of tax avoidance and secrecy. Svenska Inc, Panama, is not reported to have done any business during the last two years perhaps even earlier.

(ii) The nature of the service provided by foreign companies through M/s A B Bofors in securing Indian contract till the termination of the agreement with them by the payment of winding up costs are not known except to the limited extent in the case of M/s A E Services Ltd.

(iii) Even in the case of M/s A E Services Ltd from available details it seems that this company was brought into the purchase only in Nov. 1985 and at the instance of Indian Govt. that no

middleman should be employed in the contract being executed by Bofors, this agreement was terminated and a lump sum was paid to M/s A E Services Ltd.

- (iv) The information furnished by Shri Win Chadha of Anatronc Corpn. shows that no payments on large scale were received by him prior to 1986, and the payments received in India upto 1985 were for services rendered during the trials of guns and negotiation of the contract. The details of the payment paid to him as given by M/s A B Bofors tally with the details of the account furnished by him in his income tax-returns”.

Regarding the payment of Commission to Win Chadha, CBI has not investigated through any independent source. It has observed on the basis of the information furnished to it by Win Chadha himself.

During the deposition of evidence, Win Chadha took a stance that he was never an agent or middleman of M/s Bofors, but he was only a representative of Bofors. But on the other hand Mr, Lars Gothlin has reiterated “the old contract was a commission contract and in order to follow up the requirement made by your Prime Minister the company terminated the commission contract with Anatronics General Corpn.” Win Chadha further claims that neither he took part in negotiations nor in field trials. But CBI has confirmed that Win Chadha received payment “for the services rendered during the trials of the guns and negotiations of the contract”.

Win Chadha has admitted during my cross-examination that he has no first hand information about the non-involvement of any Indian in the contract. He has just endorsed the view of Bofors. He strongly asserted that he was quite unaware of any payment or commission or winding up cost to foreign agencies. But unfortunately the Committee has accepted the misleading statement of Win Chadha without proper scrutiny.

Now the vital question emerges as to why M/s Bofors have paid the so-called winding up charges to these spurious agencies. What was the pressing need for such disbursement ?

Neither the Defence Ministry, nor the CBI, nor Bofors was able to come up with any plausible explanation. It is clear therefore that the claim of winding up charges or consultancy service is nothing but a screen to hide the facts.

During my cross examination Mr. S.K. Bhatnagar, the Defence Secretary, categorically stated that no service of any foreign agency was used by the Defence Ministry for the Bofors Contract. He denied even the service of Anatronc General Corpn. He further asserted that Bofors contract was the result of direct negotiation between Defence Ministry and the Bofors. In that case why should M/s Bofors say to some outsiders ?

Moreover, Mr Per Ove Morberg and Mr Lars Gothlin, who appeared before the Committee on April 7, 1988 deliberately and delinquently refused to reveal any information about the service of these foreign companies under the pretext of commercial secrecy.

Though I agree with some of the portions of the CBI report, yet I disagree with the under-mentioned portion :

“.....the information available at this stage does not show the involvement of any Indian associates residing in India or outside India or any Indian of Associates”.

This view has been accepted by the Committee in its report. The Committee failed to note that the CBI has not produced any constructive evidence to this observation. But the facts lead us to the opposite conclusion.

While it has been established that the recipients are registered in tax havens obviously for the purpose of tax avoidance and secrecy and that they have not done any service for this contract, and it has been admitted by the Secretary, Ministry of Defence, himself that he had not used any foreign service for reaching the contract, the claim of non-involvement of any Indian or Indian associates is not acceptable.

Further, if these companies are genuine and their dealings are lawful and they have been paid in proper manner, they could have remitted these so-called winding up costs in banks located in their country. Instead, they have deposited the amount in Swiss banks. So, the remittance of payment of SEK 319 million in Swiss Banks through Bank of Sweden has caused grave doubts about the claim of winding up cost by Bofors.

It is also false to say that it is not connected with Bofors contract. Among the three foreign agencies except A.E. Services Ltd., no other foreign agency has done any service to Bofors in arms deal in the past. Bofors themselves too have not given any details about the service rendered either to this Committee or to the Government of India. Even the consultation service of A E Services Ltd. was contracted only in the year 1985 and it has been terminated in 1986.

In view of these facts the claim of winding up costs by M/s Bofors to these companies is untenable.

The Commission amounting to SEK 319 million must have been received by none other than those who are responsible for successful negotiation of this contract.

Suspicion

We are told that when our Prime Minister met Mr. Olof Palme, the then Prime Minister of Sweden in New York in 1985, he asked him to ensure that there was no middle-men and no commission was paid in the Bofors

contract. First, why is it that he did not ask the heads of other nations of the competing companies to do anything of the kind? Mr. Olof Palme had informed our Prime Minister in January 1986 that Bofors had agreed to negotiate without middlemen.

A shocking fact has been disclosed by Mr. Lars Gothlin, the Senior Vice President of Bofors during his deposition of evidence before the Committee on 18th September, 1987 as follows :

“I have described how the Company in the end of 1985 got a message and had to terminate the agreement.”

The word “message” used by Mr. Lars Gothlin should be examined in proper context. M/s Bofors were awarded with the contract only on March 24, 1986. But Mr. Lars Gothlin has stated before the Committee that Bofors had to terminate the agreement because it had got a message in the end of 1985. What does it mean? What was the nature of the message which led them to terminate the other agreements?

The sequences of incidents like meeting of Prime Ministers of the two countries concerned, the said message in the end of 1985 and assurance from the Prime Minister of Sweden in January 1986 give birth to suspicion that the Ministry of Defence could have secretly assured M/s Bofors that they would be awarded the contract for 155 mm gun in their favour.

During the debate in the Parliament on April 20, 1987, our Prime Minister had categorically stated as follows :

“.....I said that (1) the guns must be technically acceptable and superior to all the other weapons, (2) I said that the cost must be less than the competitors, and (3) I said that if you want any involvement at my level, you must guarantee me. That means I must get a firm answer from the Prime Minister of Sweden that no middlemen are involved..... And I got confirmation back from Prime Minister Palme that there will be no middlemen or agents involved. It is on that basis that the exercise was done”.

The documents provided to the Committee and examinations of the witnesses disapprove all these claims beyond reasonable doubts. In fact, he has misled the Parliament and the public suppressing all the facts of the Bofors contract.

No doubt, the direct involvement of our Prime Minister has not been established in the inquiry for the reasons, to the best of my observation, that this Committee itself has not taken serious steps to identify the persons who withdrew the huge amounts through the said spurious agents.

After careful examination of the available documents and the deposition of evidences, my observations are as follows :

- (i) M/s A.B. Bofors have been favoured for the contract of 155 mm gun system by the Ministry of Defence while the Prime Minister, Thiru Rajiv Gandhi was also the Defence Minister;
- (ii) The story of 'no middlemen' and 'no payment of commission' is unbelievable;
- (iii) The recipients disclosed by M/s Bofors have not done any service in arms deal. They were exploited for commission;
- (iv) The claim of winding up cost by M/s Bofors is untenable.
- (v) In the absence of any service from these agencies, the payment of money to the tune of SEK 319 million could have been made only to Indian or Indian associates or both.
- (vi) The claim of business confidentiality by M/s Bofors is nothing but a scape goat to conceal the real culprits.
- (vii) The direct involvement of our Prime Minister, Shri Rajiv Gandhi, has not been established but the relevant records reveal his extra-ordinary interest in favour of Bofors deal. It reminds me what Chaucer has said :

“If the Gold doth rust, what shall the iron do ?”

During my school days our Tamil Pundit used to remind us to follow the teaching from the story of the Great Tamil Poet, Nakkeerar, who, when found fault in the poem of Lord Shiva, fearlessly and resolutely protested to Lord Shiva by saying :

“Even if you threaten me by opening your third eye, O, Shiva, the fault is fault.”

No wonder, as a Tamil, I am inspired by this 2000-year old story and thus submit this note of dissent.

The conclusions of the report no doubt conceal the facts of the deal and cover up the connivance of our Govt. with Bofors and refuse to identify the recipients who could be none other than Indians or Indian associates or both. My disagreement with the conclusions of the Committee, I honestly assure, are based on incontrovertible facts, irrefutable reasons and constructive evidence. Let the nation know the truth. Let our people stand by the truth.

New Delhi,
April 22, 1988.

ALADI ARUNA

An emergent meeting of the Committee was held at 1530 hours on the same day, i.e. 25th April, 1988, to consider the aforesaid note. The members present, including Shri Aladi Aruna, expressed their views in the matter.

The Committee feel that in order to set the record straight, the following points need reiteration.

A. Committee Procedure

(i) Decisions with regard to the witnesses to be called for evidence and the procedure for recording the evidence were taken by the Committee by consensus from time to time. In certain cases even though majority of the members felt that the evidence of certain witnesses was not required, the Chairman accommodated the point of view of Shri Aruna and decided to summon them for evidence.

(ii) Full opportunity was given to the members, including Shri Aruna, to put questions to the witnesses. He never represented to the Committee that he had not had full opportunity to examine the witnesses.

(iii) All documents of a classified nature were made available to members for study/reference. As many as seven sittings of the Committee were devoted by the Committee to a study of the classified documents. This was in accordance with the decision taken by the Committee themselves. Members took copious notes from the documents to enable them to put searching questions.

(iv) In accordance with the agreed procedure, the draft report also was made available to Members for study in the Committee Room. The Committee devoted as many as three sittings lasting over 11 hours for study and consideration/adoption of the Report.

(v) Relevant portions of the verbatim proceedings of the Committee were forwarded to the witnesses and members concerned for confirmation and return. In terms of Direction 65 of the Directions by the Speaker, these are to be treated as confidential and cannot be made available to anyone without the orders of the Speaker.

(vi) Minutes of each sitting of the Committee were circulated to the members in terms of Direction 66 of the Directions by the Speaker. No objections were ever taken that the minutes had not been recorded in conformity with the decisions arrived at by the Committee.

(vii) Further suggestions given by the member (Shri Aladi Aruna) for summoning certain witnesses for evidence were discussed by the Committee in a sitting exclusively held for this purpose on 30th March, 1988. The decisions of the Committee were immediately followed up and witnesses summoned to appear before the Committee at a very short notice. Since the

Committee's term was drawing to a close. It will be appreciated that the Committee had no jurisdiction over alien citizens and, therefore, could not compel the former President of Bofors to tender evidence. All other witnesses who were summoned from abroad did tender evidence before the Committee on 7th and 15th April, 1988. As the Rajya Sabha was not in session from 31st March, 1988 to 24th April, 1988 and the witnesses had been summoned at short notice, messages to members of that House including Shri Aruna were sent through express telegrams requesting them to attend the sittings. Members were also contacted on telephone at their permanent addresses. The Chairman personally rang up some members.

B. Conclusions of the Committee

So far as the conclusions of the Committee are concerned, these are based on the evidence—oral and written—tendered before the Committee. While Shri Aladi Aruna is entitled to his views on the various aspects of the gun contract, the Committee would like to state with all emphasis at their command that they are not prepared to place any reliance on unsubstantiated inferences. It needs hardly to be reiterated that conjectures, surmises or suspicions have no place in any report much less the report of a high-powered Committee like the present one appointed by the Parliament of India. Shri Aruna's note above does not contain any solid facts to controvert the observations/conclusions of the Committee. If suspicion is allowed to take the place of proof as Shri Aruna would like the Committee to do, it would be a travesty of justice. This is against all canons of justice and fair-play. The Committee, after a thorough consideration of the entire note, have reached the conclusion that Shri Aruna's observations are most unfortunate, unfair, baseless and biased. There is not even a shred of evidence to support them. The Committee totally disapprove of his note.

It is indeed very alluring and attractive to reach at conclusions based on suspicions and surmises. The Royal Commission on Commissions of Inquiry in U.K. and our own Law Commission have warned against resorting to such dangerous practice. The Committee are firmly of the view that this would be most injurious to the democratic process. The question here is not one of the rights of a member but of the very approach expected of a Parliamentary Committee charged with the responsibility of finding facts after thorough investigations. This is what the Committee have endeavoured to do and an unbiased reader can easily find out for himself how painstakingly the Committee have dealt with all the relevant evidence recorded by the Committee and the conclusions that flow from it can hardly be questioned. The Committee have, therefore, come to the only conclusion that is possible in the circumstances, viz. the inferences drawn by Shri Aladi Aruna are totally unacceptable to them. The Committee reiterate that they have not found any evidence whatsoever of the involvement of any Indian

or Indian Company—whether resident in India or not—having received any payments as commissions or bribes from M/s A.B. Bofors.

The observations of the member to the effect that “the relevant records reveal his (Prime Minister’s) extraordinary interest in favour of Bofors deal”, are prejudiced and baseless and are not borne out by any evidence. The member has made a serious allegation but has not cared to substantiate it. This is indeed amazing and can lead to only one conclusion, namely that he wants to derive political advantage from such an insinuation. His note shows clearly that he is distorting facts.

As has been clearly brought out in the report, it was only at the instance of the present Prime Minister that total prohibition was put on employment of middlemen in defence contracts and it was in pursuance of this objective that the representatives of all the four contending firms were summoned by the Defence Secretary on 3rd May, 1985, and told in clear terms that the Government of India did not favour the employment of middlemen.

There is no evidence to show that any undue favour was shown by the Ministry of Defence to A.B. Bofors. The report amply brings out the considerations, technical, financial as well as commercial, that weighed with the Negotiating Committee while recommending that the contract should be awarded to Bofors. The Prime Minister approved the recommendation of the Negotiating Committee in his capacity as Defence Minister after the then Finance Minister and the Ministers of State in the Ministry of Defence had cleared the proposal without raising any objection at any stage. It is, therefore, amazing to find the member drawing the inference that the Prime Minister exercised any influence or pressure in the decision making process.

The inference drawn by the member that the use of the word “message” by the Chief Jurist of the Company with reference to the talks held by the Prime Minister of India with the Swedish Prime Minister “gives birth to suspicion that the Ministry of Defence could have secretly assured M/s. A.B. Bofors that they would be awarded the contract for 155 mm gun in their favour”, is, indeed, totally unwarranted. The member has no cogent argument to support the theory that he has in mind. Surely, he cannot expect the Committee to share his unfounded suspicions in the absence of any evidence in that regard. The Committee would have thought that it was for the member to show any evidence, if any, in support of this serious charge. Shri Aladi Aruna has nothing to say in the matter.

In view of the above, the Committee have come to the conclusion that Shri Aladi Aruna’s note is replete with innuendoes and unsubstantiated charges which have no merit whatever. The Committee cannot be a party to conjectures, surmises and suspicions on which Shri Aruna has based his observations in his note.