Papers Of The Third. Annual Conference Of The Nigeria Society Of International Law

T. O. Elias
1971

N. L. N.

PAPERS OF THE THIRD ANNUAL CONFERENCE OF THE NIGERIAN SOCIETY OF INTERNATIONAL LAW

Held at the Nigerian Institute of International Affairs, Victoria Island, Lagos, on 19 and 20 March, 1971

Edited by T. O. ELIAS
Dean of Law, University of Lagos

ETHIOPE PUBLISHING CORPORATION

First published 1972 by Ethiope Publishing Corporation
P. M. B. 1192, Benin City, Nigeria

PRINTED IN 12 PT. BEMBO
AT THE IBADAN UNIVERSITY PRESS
NIGERIA, JULY 1972

CONTENTS

PREFACE

These are papers from the Proceedings of our third Annual Conference and Dinner held in March, 1971. Members of the diplomatic corps and other scholars who were invited to address the conference were, as on the previous occasions, given a free hand to choose the subjects for their respective papers. Because of the difficulty of securing paper-readers for imposed topics, we have had to welcome this somewhat heterogeneous assemblage of essays which make up in their abiding interest as personal view points for what they lack in unity of theme.

Also, in conformity with the Society's declared objective, the contributors are not necessarily lawyers; political scientists, students of international affairs and related subjects will be found among them, thus reflecting the membership pattern of the Society.

T. O. ELIAS
Dean of Law

The Nigerian Society of International Law,
c/o Faculty of Law,
University of Lagos,
Lagos, Nigeria

1

MICRO-STATES

First I must make it clear that I speak unofficially in a personal capacity rather than as the Representative of my Government. And secondly, that I am not an international lawyer; I am an amateur and not a professional.

But no diplomat can be without the very closest interest in the workings of International Law, even if he has not mastered all the principles and details. I have, in thirty-two years service overseas, served in or visited a great variety of countries and encountered on the ground many of the things with which International Law is concerned. I have served in South-East Asia, the Middle East, Central Europe, the United States of America, and have made extensive tours in Latin-America. Now I serve, at the end of my career, in Africa.

When Dr Elias first asked me to talk at this Conference, I thought I might talk on 'Some Aspects of National Sovereignty'. I said this because, in one way or another, national sovereignty impinges on all aspects of relations between different countries.

When I was an undergraduate at Oxford in the 1930s there was great talk of 'Internationalism' and of 'the Parliament of Man'. We spoke of Nationalism as an out-of-date, obsolescent force. But all through my career I have found that the powerful influence of Nationalism is not only still immensely strong but it has indeed been strengthened by the emergence, since World War II, of so many new independent nations, who have been impelled towards a separate and independent existence by an innate sense of separate nationhood, and who are still battling to establish their national identity.

Since the end of World War I, the most dynamic and influential principle at this stage of history has been the principle of 'self-determination'; and the object of self-determination, and the test of independence, has been 'National Sovereignty'.

One great question, to which I shall refer when I come to the main subject of my talk, which is Micro-States, is the question of where the line of self-determination should be drawn. When does this principle become counter-productive and injurious? Another big question is: How small a unit can be accepted by the world as entitled to have the full panoply of, and able to carry out the full responsibilities of, National Sovereignty? And entitled to claim a full international personality on a basis of sovereign equality with existing independent States?

Throughout my career I have come across many variations of these problems. Before deciding which particular aspect to talk about today, I sat down and reviewed my past career and recollected some of the problems I had met. I served initially in Burma which, in 1934, was part of the Indian Empire. But although part of that Empire, Burma was intensely conscious of her own special nationhood, and in 1937, while still under British rule, Burma was separated from India. In 1947, Burma, by an act of self-determination, became completely independent. Since then, Burma has suffered a series of continuing rebellions by the Karens and the Kachins, tribes of Burma who claimed their own self-determination: in the case of the Kachins they claimed that while they were conquered by the British they were never conquered by the Burmese.

Meanwhile, the Indian sub-continent achieved independence at the cost of partition into two nations, of which Pakistan is founded on the Moslem faith. Here nationhood has religious rather than ethnic foundation, since both countries encompass many ethnic groups and languages. India, in her turn, has had to tackle a secessionist movement by the hill tribes of the Naga Hills.

My next post abroad was in Hungary, once part of the ethnically divergent Austro-Hungarian Empire, then a fiercely nationalist separate State, still conscious of the fact that many ethnic Hungarians were part of the State of Rumania. Many years later I was to serve in Rumania myself and to see the efforts

made by the Rumanian Government to assimilate not only the Hungarians, but a sizeable German minority. This minority, even after having been separated from their original German mainland for 800 years, still aspired to a degree of separate cultural and ethnic identity.

In the Middle East I came upon the phenomenon of Israel, of a people without a territory, who felt themselves a nation and seized a territory they claimed from centuries back.

Later I narrowly escaped being blown up by a bomb in the middle of the troubles in Cyprus, where Greece claimed an island—not because she had ever owned it in the past, but because it was inhabited largely by people of Greek origin and culture. This claim was not acceptable to Turkey, who had an important minority on the island, the coast of which—far from the mainland of Greece—could be seen with the naked eye from the mainland of Turkey. Cyprus is now grappling with the problem of trying to make a nation of herself, not subservient to either of the mainland powers, from two communities of differing religion and culture.

In the United States I found a great nation, assimilated by geographical contiguity and common laws and institutions from immigrants of many different ethnic groups who had once borne allegiance to different nations. This successful blending of people of very many different national origins into one nation is one of the historical phenomena of nation-building. The United States is still faced with the problem of vital current interest, namely, the full integration into the nation of coloured Americans, while retaining their proper pride in their own cultural heritage. On the basis of their past history, I believe that this can be done.

In Nigeria, I had the privilege to serve at an historical moment, when the Federation of Nigeria consolidated, through blood, sweat and tears, its national unity, and set its face against tribal separatism and fragmentation.

There is, in fact, an infinite variety in the history, the size and the composition of nation states, and when I came in 1966 as British Ambassador in the United Nations, I found them all there. And I found, no longer to my surprise, that the spirit of genuine internationalism was still weak, and that the prospect

of a World Government seemed very far away. The idea of any *supra-national* institutions, as opposed to international ones, was anathema to many countries. including countries of great power and influence—like the Soviet Union and France. I found the world was still dominated by the concepts of national independence and national sovereignty. And in many ways, recent developments in the United Nations must have seemed to some people to be *reductio ad absurdum* of independent national sovereignty. In the General Assembly of the United Nations, for example, the two super powers—the United States and the Soviet Union—each have just one vote, equal to the one vote of the Maldive Islands, which has a population of about 100,000; that is to say, about the size of Abeokuta. Iceland, with a population of under 200,000, has the same voting rights as India, with a population of over 500 million. As new members come into the United Nations their tendency is to become smaller and smaller. The Committee of 24 has even at one stage demanded separate independence for Pitcairn Island, which had a population at the last count of 88. This problem of very small States—'Mini-States' or 'Micro-States', as they are popularly called—is so topical and so intriguing that I decided to make it the main subject of my talk today. The subject has for me that additional advantage that I have some personal knowledge of the problem from my time at the United Nations.

There are two main problems to be tackled in studying the evolution of *Micro-States*. The first one is that of considering how, in the interests of their inhabitants, they can be provided with help and economic co-operation of a nature which will enable them to increase their prosperity and standard of living and to live happily as human beings. This is a problem largely of economic viability. The other problem is the more theoretical and dogmatic one of the international status of tiny units. This has a special importance in the context of the United Nations and International Agencies. It is already possible for a resolution to be passed in the General Assembly of the United Nations by a majority of nations whose total contribution to the funds, from which the cost of meeting action from the resolutions passed is met, will be a very small fraction of the contributions paid by the

countries opposing the resolution. And there will be an increasing tendency, if votes in the United Nations do not reflect either the real distribution of population and power in the world, to disregard them as unreal.

Before reverting to some discussion on the historical and ideological development of Micro-States, I would like to do two things: firstly, give you some examples of the States and territories about which I am talking; and secondly, to quote at some length the anxieties of the Secretary-General of the United Nations on this subject.

When one sees national flags flying and hears twenty-one-gun salutes for Heads of State, it is sometimes difficult to remember the relative importance of the countries concerned. Let us first of all get some background figures in our minds. The estimated present population of our World is some 3,500 million. Nigeria's population is estimated to be in the region of 65 million.

(*a*) Here, for example, are some instances of some countries, the populations of which are between half-a-million and one million—that is to say, with total populations considerably less than that of Ibadan: Trinidad and Tobago, Lesotho, Cyprus, Congo Brazzaville, Mauritius, Botswana, Sarawak and Bhutan.

(*b*) Here are some countries with populations of less than half-a-million—that is, less than half the size of Ibadan: Luxembourg, Kuwait, Gabon, Malta, The Gambia and Fiji.

(*c*) Here are some States or territories with less than a quarter-million population: Iceland, Bahrain, the Bahamas, Sikkim, the Maldive Islands and British Honduras.

(*d*) And finally, we get down to the sort of minuscule territories about which the United Nations nevertheless has spent much time: Gibraltar has a population of 25,000; Anguilla, which hit world headlines, has a population of 6,000; Nauru also has a population of 6,000; and the Falkland Islands (the Malvinas) has a population of 2,000.

U Thant, the Secretary-General of the United Nations, has twice raised the question of Micro-States in his annual reports. I quote these two statements in full because they set out the

problem well, and because they also refer to the historical processes by which a lot of Mini-States are now evolving, and to which I shall be referring again, namely, the very last stages of decolonisation.

In his annual report of 1965, the Secretary-General said:

> A different aspect of the question of the extent of participation by countries in organised international activities is raised by the recent phenomenon of the emergence of exceptionally small new States. Their limited size and resources can pose a difficult problem as to the role they should try to play in international life. In one or two cases, such States have decided to restrict their membership to one or more of the specialised agencies, so that they may at any rate receive the fullest possible assistance from the United Nations system in advancing their economic and social development. I believe that the time has come when Member States may wish to examine more closely the criteria for the admission of new Members in the light of the long-term implications of the present trends.

In 1967, he made a fuller statement on the same subject:

> I believe it is necessary to note [he said] that, while universality of membership is most desirable, like all concepts it has its limitations and the line has to be drawn somewhere. Universality, as such, is not mentioned in the Charter, although suggestions to this effect were made, but not adopted, at San Francisco, and the Charter itself foresees limitations on United Nations membership. Under Article 4 of the Charter, not only must a State be peace-loving, but it must also, in the judgment of the Organisation, be *able and willing* to carry out the obligations contained in the Charter.
>
> In making this observation, I have in mind those States which have been referred to as 'Micro-States', entities which are exceptionally small in area, population and human and economic resources, and which are now emerging as independent States. For example, the Trust territory of Nauru, which is expected to attain independence in the immediate future [in fact it since has done so], has an area of 8.25 square miles and an indigenous population of about 3,000, while Pitcairn Island is only 1.75 square miles in extent and has a population of 88.
>
> It is, of course, perfectly legitimate that even the smallest territories, through the exercise of their right to self-determination, should attain independence as a result of the effective application of General Assembly resolution 1514 (XV) on the granting of independence to colonial countries and peoples. However, it appears desirable that a distinction be made between the right to independence and the question of full membership in the United Nations. Such membership may, on the one hand, impose obligations which are too onerous for the 'Micro-States' and, on the other hand, may lead to a weakening of the United Nations itself.

I would suggest that it may be opportune for the competent organs to undertake a thorough and comprehensive study of the criteria for membership in the United Nations, with a view to laying down the necessary limitations on full membership while also defining other forms of association which would benefit both the 'Micro-States' and the United Nations. I fully realise that a suggestion of this nature involves considerable political difficulties, but if it can be successfully undertaken it will be very much in the interests both of the United Nations and of the 'Micro-States' themselves. There are already one or two cases where the States concerned have realised that their best interests, for the time being, at least, rest in restricting themselves to membership in certain specialised agencies, so that they can benefit fully from the United Nations system in advancing their economic and social development without having to assume the heavy financial and other responsibilities involved in United Nations membership. The League of Nations had to face the same issue over the question of the admission of certain European States which were then referred to as 'Lilliputian' States. Although the League of Nations was unable to define exact criteria, it prevented in due course the entry of the 'Lilliputian' States.

As already mentioned, a necessary corollary to the establishment of criteria on admission to full membership is the definition of other forms of association for 'Micro-States' which would not qualify for full membership. As members of the international community, such States are entitled to expect that their security and territorial integrity should be guaranteed and to participate to the full in international assistance for economic and social development. Even without Charter amendment, there are various forms of association, other than full membership, which are available, such as access to the International Court of Justice and membership in the relevant United Nations regional economic commissions. Membership in the specialised agencies also provides an opportunity for access to the benefits provided by the United Nations Development Programme and for invitations to United Nations conferences. In addition to participation along the foregoing lines, 'Micro-States' should also be permitted to establish permanent observer missions at United Nations Headquarters and at the United Nations Office at Geneva, if they so wish, as is already the case in one or two instances. Measures of this nature would permit the 'Micro-States' to benefit fully from the United Nations system without straining their resources and potential through assuming the full burdens of United Nations membership which they are not, through lack of human and economic resources, in a position to assume.

In these statements the Secretary-General identified three main aspects in the problem of the emergence of Micro-States. The first was their right to independence; the second was the limitations

of their right to full membership of the United Nations; and the third was their right to United Nations help in their economic and social development and in ensuring security of their frontiers.

As I have said, the emergence of independent, new Micro-States is the end of the great progress of decolonization—which has been going on since the end of World War II, and the position of these tiny ex-colonial territories has been debated in the United Nations Colonial Committee with an intensity which is surely out of all proportion to the relevance of the problem to the huge problems which face mankind as a whole today. Theologians in the Middle Ages debated passionately on such subjects as 'How many angels can sit on the point of a needle'. A number of tiny islands have now become subjects of fierce controversy in what might be called the Theology of Decolonization.

There is, of course, nothing particularly wrong in small States as such, and many have contributed greatly to world civilization: for example, the Greek city states of the fifth and sixth centuries B.C.; and the Italian city states of the Renaissance period. Little States still lurk prosperously in odd corners of Europe—Liechtenstein, Monaco and Andorra. Cut off in the great mountains of the Himalayas are the little States of Sikkim and Bhutan. But most of the very small States in the world are recent creations—the unavoidable end-result of an evolution in decolonization.

Expressed in terms of the history of the United Nations, the first stage was the scrutiny since 1946 by Committees of the General Assembly of information provided on non-self-governing territories under Article 73 (e) of Chapter II of the Charter. Under Article 12 of the Charter, the Trusteeship Council and General Assembly played a direct role in the attainment of independence by eight of the eleven Trust territories.

But the great Bible of decolonization is to be found in Resolution 1514 (XV) of 14 December 1960. The most important operative passages are:

> All peoples have the right to self-determination; (Paragraph 2)
>
> All powers [must be transferred] to the peoples of [Trust and non-self-governing territories] without conditions or reservations in accordance with their freely expressed will and desire . . . to enable them to enjoy complete independence and freedom. (Paragraph 5)
>
> Any attempt aimed at the partial or total disruption of the . . . territorial

integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations. (Paragraph 6)

Decolonization has, for most of the period under review, been naturally concerned with relatively large territories with reasonably large populations. In terms of the populations and territories which have come to independence since World War II, the problems remaining are comparatively so small that a few years ago an informed critic could write: 'Colonialism, at least as it is generally defined in the United Nations as Western rule of non-metropolitan areas, is rapidly being brought to a close'. 'Colonialism', incidentally, is a word which has never been defined, either by the United Nations or, I believe, by international law. There are obvious instances in the world where strong powers have conquered and still hold peoples of different ethnic origins, who once inherited territories of their own. But where these territories were on the borders of the conquering State, this somehow seems to excite much less moral condemnation than when the occupied territory is separated from the metropolitan power by sea. This is a concept I should have thought based more on political emotions than on international law. Since, in terms of the definition of Colonialism given above, the few remaining larger colonial areas are almost all in Southern Africa, the task that remains to be done is still, particularly in African eyes, a most important one. But anyone looking objectively and relatively at what has been achieved in the last twenty-five years must concede the general truth of the statement that Colonialism is rapidly being brought to a close. Take, for example, the British Empire itself. The plain fact is that, since World War II, Great Britain has assisted to full independence well over 750 millions of people of former British territories. Thirty-one independent States, i.e., about a quarter of the members of the United Nations, were once parts of the British Empire. Almost all have voluntarily chosen to remain members of the Commonwealth of Nations. Over the last decade not one year has passed (except 1969) in which one or more former U.K. dependent territories have not been received into the expanding membership of the United Nations. If we leave aside the special cases of Hong Kong (which is occupied as a result of a treaty with China)

and Rhodesia (which has not been a normal colony for the last forty years), the total number of people left in non-self-governing territories under British rule in all parts of the world is *well under one million*—probably under the present population of Lagos City.

As you know, Great Britain recently withdrew from the Committee of 24 at the United Nations. This, of course, did not mean that Great Britain would stop discussing and debating the remaining problems of Colonialism, which is carried on in the 4th Committee, the Trusteeship Council and the General Assembly itself. But it did signify that, as far as Great Britain was concerned, the work of the Special Committee had largely been accomplished and that, in the opinion of Great Britain, the problems of the very small territories now left deserved much more sympathetic treatment than accorded to them by the passionate anti-colonial theologians of the Special Committee. I remember once discussing in the corridors of the United Nations with a Tanzanian delegate the problem of a very small territory still governed and assisted by the British. When I argued that to toss this island out immediately into full independence against its wishes might mean that the islanders starved, my colleague was not in the least impressed. He declared that the principle of decolonisation was sacrosanct, even at the cost of and against the will of the people decolonised.

There is, of course, in the Theology of Decolonisation another United Nations resolution of equal legal validity, adopted on the very next day to the famous Resolution 1514. This is Resolution 1541 (XV) of 15 December 1960. This laid down the principles determining whether a territory was still under colonial rule or not. This Resolution did not lay down absolute independence as Holy Writ. What it did stipulate was that the choice of their future must be 'the result of a free and voluntary choice by the peoples of the territory concerned, expressed through informed and democratic processes' (Principle VII). And Principle VI read:

'A non-self-governing territory can be said to have reached a full measure of self-government by—

(*a*) emergence as a sovereign independent State;

(*b*) free association with an independent State;

or (*c*) integration with an independent State.'

Before I get on to the difficulties of the degree of dependence still allowed to little territories, I will diverge for a moment to call attention to another set of difficulties. This covers areas where there are territorial claims by other nations, and this is the area in which the sacred principle of 'self-determination' comes up against the other United Nations principle of 'territorial integrity'. From the British point of view, the three best known cases are those of Gibraltar, the Falkland Islands (or the Malvinas Islands, as they are called by Argentina which also claims them) and British Honduras.

Gilbraltar is geographically a huge rock in the Mediterranean connected by a strip of land to the mainland of Spain. It has been a British possession since 1704. It has a population, ethnically somewhat different from Spaniards, of some 25,000. It is claimed by Spain on the grounds of 'territorial integrity' because it was part of Spain before 1704. As I described above, Resolution 1541 (XV) of the United Nations, passed the day after Resolution 1514, includes in its permissive alternatives to independence free association with an independent State. In 1967, a referendum was held in Gibraltar as to whether the people wished to pass under the rule of the Government of General Franco or remain under British rule. Over ninety-nine per cent of the electorate exercised their sacred right of self-determination and voted for remaining separate from Spain and under British rule. To many people this may have seemed a simple issue, but some of the fundamentalist anti-colonialists deny that a people can legitimately elect to remain under a colonial power. Consequently, in December 1967, to the great distress and disgust of my then chief, Lord Caradon (whom many of you know in Nigeria as Sir Hugh Foot), the General Assembly passed a Resolution which actually condemned the holding of the referendum at all and asserted that any colonial situation which partially '... destroys ... the territorial integrity of the country' was incompatible with Paragraph 6 of Resolution 1514. Another Resolution calling on Britain to remove herself from Gibraltar by October 1969, was passed in December 1968. It is true that out of the 119 countries voting on this occasion the number voting for was only 67, but the Resolution remains on the books. It is, of course, like virtually all

Resolutions of the General Assembly, merely a recommendation. It is also necessary to face the fact that many votes in the General Assembly are based more on politics than on international law. At present Great Britain, in spite of her great and honourable record of decolonisation, is still an Aunt Sally of Colonialism. Spain had been a firm supporter of the Arab States in their war with Israel, had naturally many friends in Latin-America and was thought to be potentially detachable from her strategic involvement with the United States. The Communist countries swallowed their ideological distaste for a Fascist regime in order to support what seemed to be a popular cause. Such is the nature of in-fighting in the United Nations, which is, after all, in one of its aspects, a collection of sovereign nations pursuing their national policies by multilateral diplomacy and the manipulation of international agencies. I am glad to say that, by mutual consent, Spain and the United Kingdom have not raised the subject of Gibraltar at the last two Sessions of the Assembly and are now dealing with the matter by traditional bilateral diplomacy.

The Committee of 24, which interprets Resolutions on Colonialism for the General Assembly, adopted from the start a more diplomatic attitude about two other small territories—the *Falkland Islands* (Islas Malvinas) and *British Honduras* (Belize). The Falkland Islands are a small, barren reef in the Atlantic, off the Coast of South America, inhabited by perhaps 2,000 sheep-herders mostly of Scottish descent. The inhabitants want to stay with Britain. The Argentine claims the Islands as part of her territories. The United Nations has urged the Argentine and Britain to negotiate on this subject, and negotiations are now going on. Rather more important than this tiny territory is the problem of British Honduras (population 109,000). This British possession is on the verge of independence, and independence is what her population desires. But her territory and ports are claimed by the neighbouring State of Guatemala, which therefore blocks her claim for complete independence, which Great Britain is ready to grant. In this case, again, negotiations are going on between the Governments of Great Britain, British Honduras and Guatemala.

Yet another category of complications arises in connection with what is called 'associated statehood'. As I have already said, Resolution 1514 (which some extreme anti-colonialists try and sweep under the carpet) in fact gives non-self-governing territories a variety of choices, one of which is associated statehood, of which the text-book example is the Cook Islands. This small territory, comprising two groups of islands scattered over two million square kilometres in the South Pacific and with a total population of some 21,000, was recently a colonial part of New Zealand. In 1963, the representative bodies of the Cook Islands opted for a regime of full self-government, continued association with New Zealand and retention of New Zealand citizenship. New Zealand invoked the United Nations to supervise the general legislative elections in 1965 and observe the debates and decisions on the future constitution in the newly-elected Legislative Assembly. On the report of the United Nations Commissioner for the Cook Islands, the General Assembly, on 16 December 1965, adopted Resolution 2064 (XX), which declared that the Cook Islands had attained full internal self-government and were no longer a non-self-governing territory. In other words, the United Nations General Assembly accepted as genuine decolonisation 'associated statehood', when chosen freely by the people concerned and with retention by them of the option for full independence if they ever wanted it. This might seem to be a perfectly sensible pattern for small islands which still need help and protection from a larger power.

But, partly through the general instinct of the Committee of 24 to make things difficult for Great Britain in another part of the colonial field, that Committee would not accept as properly decolonised the associated States of the East Caribbean, which, in 1967, also by their express wish, attained a status of self-government, including the open option of independence exactly parallel with the status of the Cook Islands. The Committee claimed that, since there had been no referendum or special general election and no United Nations presence, they could not accept the situation. Great Britain considers that her obligations under United Nations Resolutions have been fulfilled and no longer transmits information to the United Nations on the Caribbean Associated States.

Out of these associated States has come another little problem so minuscule in the size of the area involved that it is almost fantastic that it should have commanded such attention amongst world mass media and occupied the time of the Special Committee. This is the problem of the little island of *Anguilla*, which has a population of 6,000; that is, not much more than the population of one large Nigerian village. When a couple of months ago I received a delegation of students from Ibadan and Lagos Universities, the leader of the delegation, in the course of remarks about British colonial wickednesses, instanced the violent British oppression of rebellion in the colony at Anguilla as a special example of colonial brutality. The real facts are as follows. In 1967, under the procedure of associated statehood, four little Windward Islands—Dominica, St Lucia, St Vincent and Grenada —and two little groups of the Leeward Islands—Antigua and St Kitts-Nevis-Anguilla—attained full self-government, with the unreserved right to declare themselves entirely independent if they wished. The State of St Kitts-Nevis-Anguilla had as its Prime Minister Mr Robert Bradshaw, a former trade union leader and leader of the majority proletarian party. As often happens with Prime Ministers, part of his electorate did not care for him very much; and the 6,000 inhabitants of Anguilla resented being ruled by Bradshaw, who lived on St Kitts. In July 1967, the Anguillans organised their own little referendum, in which a large majority of the electorate voted for secession. They did not, incidentally, vote for sovereign independence but for separate colonial status or association with Britain. The organisation by a population equivalent to that of a large village of its own referendum about its own future international status might be regarded as the *reductio ad absurdum* of self-determination. It was a rebellion which has been described by Professor Stanley A. de Smith, in his recent excellent book on *Microstates and Micronesia*, as a rebellion which was 'preposterous and pathetic, comical and courageous'.

The United Nations Committee of 24 listened to petitioners from the island. A British Parliamentary delegation visited Anguilla. But no one was able to resolve the political deadlock, and in February 1969, the Anguillans purported to adopt a republican constitution. The Commonwealth Governments in the

Caribbean met and agreed that the British Government should take such action as was necessary to restore the unity of St Kitts-Nevis-Anguilla. In the end, some British troops were flown in. There was no armed resistance; not a shot was fired in anger, and the combat troops were soon replaced by engineers, who began to conduct public works, and by unarmed police. But the political problem remained, and the British Government was now ridiculed at home and abroad for the action it had taken. Many people said that the matter was so small that the British Government, in spite of an appeal by the Prime Minister of the Associated State, should have just done nothing. But I have sometimes wondered whether the British action did not spring out of their thoughts on the current situation at that time in Nigeria. In March 1969, a serious civil war was raging in Nigeria to prevent the secession of part of the Federation. The British Government stubbornly and publicly supported the Federal Government in their right to defeat secession. In the little territory of St Kitts-Nevis-Anguilla there was the microcosm of the far larger problem of secession, and if the British Government had condoned the breach of the principle, her enemies and critics might have applied the lessons to the Nigerian situation. The problem remains, and would not be worthy of our attention if it had not received such publicity.

There are several other examples of insular separatism. The island of Barbuda would like to be separate from the island of Antigua; the island of Rodrigues would like to be separate from Mauritius, and so on.

The problem of patternless islands—far-flung groups of tiny islands with very small populations and poor economies—will really tax the ingenuity of decolonisers. Take, for example, the Trust Territory of the Pacific Islands and the other islands of Pacific 'Micronesia'. Micronesia, this region of tiny islands, stretches for some five million square miles of the ocean. These islands need some cohesion and some protector.

Leaving aside islands which have achieved independence, such as the Philippines, Western Samoa, Nauru and Fiji—and Hawaii, which is an integral part of the United States—there are all sorts of islands in the Pacific falling into different categories. For

example—French Polynesia, and the other French islands of New Caledonia, and the Wallis and Futuna Islands; New Hebrides, a British-French condominium; Papua-New Guinea, administered by Australia; Gilbert and Ellis Islands, and Solomon Islands, which are British dependencies—and so on. There are plenty of headaches here for administering powers and doctrinaire anti-colonialists alike.

Having scampered rather superficially over a wide variety of Micro-States or budding Micro-States, I return briefly to the problems set out by the Secretary-General—the right of very small territories to independence; their right to United Nations help; and possible limitations of their right to full membership of the United Nations.

There is, of course, a sentimental attraction in small units. Many of you will remember two British film comedies: 'Passport to Pimlico' and 'The Mouse that Roared', in which tiny areas defied the large States of the world. These films were immensely popular with cinema audiences, who liked to see the little ones getting away with it. But my private and personal view is that these very little States may well prove more trouble than they are worth. Now we are, with few exceptions, down to the bottom of the barrel on decolonisation, I would hope that the United Nations—in the case of very small dependent territories like little islands—would pay less attention to the top priority of ousting the colonial power immediately and at all costs, and pay more attention to the stability and economic prosperity of the people concerned. I would therefore hope that sometimes, for the time being, they should be allowed to work out arrangements whereby they remained associated with the powers that have before been ruling them. As far as U.K. policy on these little remaining dependent territories is concerned, Sir Colin Crowe spoke to the General Assembly in October 1968, in the following terms: 'It is not the intention of the United Kingdom Government to delay independence for those that want it; nor to impose it on those who do not want it. Our guiding principle must be the wishes of the peoples concerned. The choice is theirs. ... If at any time in the future (those who prefer to retain their links with the U.K.) decide to change their views, they are fully entitled to do so.'

Certainly for any little territories which the United Nations push towards 'independence', the United Nations retain an important responsibility affording all help possible through international agencies. In the report on 'The Status and Problems of Very Small States and Territories', published by the United Nations Institution of Training and Research in 1969, the suggestion was made that it would be difficult to help mini-States and mini-territories adequately out of the present development funds, and that 'it would be more realistic to think in terms of a special programme or special fund for them ...' The smaller the economic unit the greater *per capita* outside aid is required. Virtually, full dependence of a territory on the United Nations would amount to the U.N. assuming a form of international trusteeship. The United Nations, as at present constituted, is simply not equipped to carry out such a task, and many powerful members would not happily see the U.N. assuming such an executive and administrative role.

It is when one goes back to the problem of how small a unit is entitled to full national sovereignty, and what the votes of Micro-States will do to the balance of voting in international agencies such as the United Nations, that a real problem arises. Nearly all the larger nations represented in the United Nations are well aware of the problem. But when any new country comes up for membership the main test is not usually the test of the Charter—that is, is this country 'able and willing to carry out its obligations under the Charter?'—but rather, 'Is this country going to vote on our side or not?' Any limit on size for membership, and any combination of countries, are bound to be arbitrary, but my private and personal view is that a straight arbitrary population minimum of, say, 150,000 for full membership of the U.N. would at least prevent further deterioration into an even more unreal situation.

I have already declared that my sympathies are not entirely with Micro-States. When I consider the vast problems with which mankind is faced, such as over-population, pollution of the environment, the gap between the rich North of the world and the poor South, the dangers of nuclear catastrophe, it seems out of all proportion that international agencies should be wasting

time debating about areas the size of large villages. I cannot see that in present times economic prosperity can normally come to people without co-operation within large units. I am for federations, for regionalism, for internationalism. I hope the day will come when there will be less and less insistence on the complete sanctity of national sovereignty. I hope, one day, we will all see the world as the American astronauts said they saw it—a small globe spinning in the vast universe with all inhabitants on it necessarily interdependent on each other.

But the problems of Micro-States will certainly tax the ingenuity of international lawyers in the years ahead, and in the last stages of decolonisation the problems of very small territories will come more and more to the fore; so I hope that my brief survey of the nature and dimensions of the problem will have proved interesting to the Conference this morning.

I repeat—my remarks have all been made in a personal and not an official capacity. This statement is perhaps made more convincing by the fact that in a few weeks time I retire from Her Majesty's Diplomatic Service. I would like to take this opportunity to bid good-bye to many of my very good friends amongst that distinguished body, the lawyers of Nigeria.

LESLIE GLASS
March 1971

2

FUNDAMENTAL HUMAN RIGHTS AND FREEDOMS: MY EAST AFRICAN EXPERIENCE

I suppose I should begin this paper by presenting to you, in the language of diplomacy, my letters of credence, that is to say, my qualification for having the temerity, particularly at this time when the rule of law is being assailed everywhere, to embark upon this difficult assignment of addressing members of such a distinguished and learned society as yours on the subject of 'Fundamental Human Rights and Freedoms—my East-African Experience'. As you are well aware, I played an active and effective part at, and participated fully in, the various Nigerian Constitutional Conferences beginning from 1953, which culminated finally in the promulgation of the Nigerian Independence Constitution of 1960.

I was Chief Justice of Uganda from 1963 to 1969—a period of six years. During my tenure of office, I also had the rare honour of acting as Governor-General of Uganda when the incumbent of that high office was away to the United Kingdom on home leave. I was by law, as Chief Justice, a member of the Court of Appeal for Eastern Africa and President of the Constitutional Court of Uganda.

In connection with my work in Uganda and, indeed, in East Africa, it is pertinent to quote from an address which was delivered by Mr Akena Adoko, Barrister-at-Law, the then President of the Uganda Law Society on the occasion of a farewell party

arranged in my honour by members of the Bar as reported in the *Uganda Argus*—an English Language Newspaper. In reporting the proceedings of the party, the *Uganda Argus* of 14 June 1969, said:

> Earlier, the President of the Law Society, Mr Akena Adoko, had commended the work accomplished by Sir Udo.
>
> He said that his appointment to Uganda had coincided with a lot of problems, when the country was experiencing a growing disaffection with the 1962 Constitution. Sir Udo had had to preside over a number of constitutional cases such as the Lost Countries' case, the case of the financial relationship between the Uganda Government and the former Buganda Government, and the Matovu case.
>
> This last case, said Mr Akena Adoko, made history by declaring as legally valid the abrogation of the 1962 Constitution and by giving legal recognition to the 1967 Constitution.
>
> Sir Udo, he said, was leaving behind him a record of judicial involvement in the constitutional progress of Uganda, which, for as long as people continue to live in this country, would never be forgotten.
>
> Mr Akena Adoko said that in the administrative field, Sir Udo worked very closely with the Uganda Government to effect the abolition of what used to be called 'the African Courts system'.
>
> He implemented the country's desire for a unified system of justice by the institution of the present magistrate's Courts system, and his achievement in the smooth integration of the courts for the purpose of abolishing discrimination in the administration of justice would continue to be remembered by many.
>
> Mr Adoko said Sir Udo played a no less distinguished role in social activities and had injected considerable humanity to the distant and forbiding aspect of the Judiciary.'

I may add that I am also a member of the World Habeas Corpus Commission for International Due Process of Law whose special interest is the protection of human rights and individual freedoms throughout the world. Whatever may be my experience in constitutional construction and application, I suppose from your point of view my best claim to address your Organisation at all is the fact that I am one of your patrons. So much for my credentials.

Uganda has recently been in the news again by reason of a *coup d'état*, but this time by the Army; and this has necessitated the suspension of certain aspects of the country's constitution.

There is also a new President in the person of the former Major-General Idi Amin, Head of the Armed Forces of Uganda, who has since the *coup d'état* been promoted, we are told, to the rank of full General. Nevertheless, I propose for the purpose of this discourse to disregard the present situation and to treat it as a temporary state of emergency since, in my view, such an event is now becoming an inevitable pattern of constitutional and evolutional growth in newly developing countries on the continent of Africa—a teething problem—to which we are now becoming accustomed.

East Africa, for the purpose of this address, comprises three independent, sovereign States namely: Tanzania, Uganda and Kenya, that being the order in which they were granted independence by the British Government. Soon after the grant of independence, all the three States proclaimed themselves republics, the last to do so being Uganda in 1966 as a result of a *coup d'état*.

The United Republic of Tanzania is the result of a union or amalgamation of two States formerly known as Tanganyika and Zanzibar. Tanganyika was, up to the great war of 1914–18, a German colony. Thereafter, it came under British administration under the League of Nations Mandate. It was granted independence by Great Britain in 1961. It formed a union with Zanzibar in or about 1964 after the latter had also achieved independence from Great Britain; hence the new name: the United Republic of Tanzania. As a result of the union, a new constitution which is styled the 'Interim Constitution of Tanzania' was adopted on 12 December 1966; and Chapter I of it deals with the United Republic, the Party and the People.

Uganda achieved independence on 9 October 1962; and Kenya in 1963; and in 1964 the latter declared itself the Republic of Kenya by an Act of Parliament No. 28 of 1964. It should be noted that in the pre-independence days, Uganda was a Protectorate and Kenya a British Colony. All the three States namely: Tanzania, Uganda and Kenya have written constitutions. They are governed and administered in accordance with their respective constitutions in which the Heads of State and Government are declared to be Executive Presidents insulated from criminal responsibility and prosecution as well as from civil liability in

any court of the land when acting in their capacities as such Heads of State and Government. This immunity is specifically declared and entrenched in the constitution of each State.

The new constitution adopted by each of the new States, as might be expected, naturally, considerably departed from the constitutions under which they had attained independence. The new constitutions were promulgated by constituent assemblies of duly elected representatives of the people of the State concerned in each case in parliament assembled, either by a series of amendments to or by a complete abrogation of the original or independence constitutions as well as the orders-in-council from which the constitutions had derived their authority and existence; and the substitution therefor of completely new constitutions deriving their legal existence and authority from the will of the people. The latter was the method adopted by both the United Republic of Tanzania and the Republic of Uganda, both of which have declared themselves as not forming parts of the Queen's Dominions. By the adoption of the constitutions of their own choice in contrast to the ones handed down to them at independence, the three countries justly and proudly believed at the time of the changes that they had achieved progress, which in the language of Oscar Wilde 'is the realisation of Utopias'. Thus 'the old order changeth', according to Tennyson, 'yielding place to new and God fulfils Himself in many ways lest one good custom corrupts the world'.

In his 'Esprit des Lois, 1784', Montesquieu postulated the thesis that law must be influenced by environment and conditions such as climate, soil, religion, custom, etc.; and with that idea in mind, he embarked upon the comparative study of law and government. On Montesquieu's postulate the constitution adopted by any people must act as the mirror of its history and character, its religious beliefs and indigenous customs. Geographically, the region under consideration is by no means homogeneous. The prevailing climatic condition ranges from the wintry cold cities of Nairobi and Arusha with the glorious Mount Kilimanjaro and its snow-white icy peak to Mombasa and Dar-es-Salaam and their debilitating heat on the coast of the Indian Ocean and sandwiched in between which is the uniformly temperate Uganda

known the world over as the pearl of Africa. It is not therefore surprising that there should be divergencies not only as to the form but also as to many of the provisions of the constitution adopted by each of the three States.

The United Republic of Tanzania being *de jure* and *de facto* a one-party State—a monolith—the only political party in the State is incorporated and given legal existence in the constitution. In consequence, the existence of any other political party in the State is prohibited by law.

The relevant provisions relating to the creation of a one-party State are to be found in Article 3 of the 'Interim Constitution' and consist of three clauses, the first of which declares: 'There shall be one political party in Tanzania'. Clause (2) provides:

> Until the union of Tanganyika African National Union with the Afro-Shirazi Party (which united party shall constitute the one political party), the party shall, in and for Tanganyika be the Tanganyika African National Union and in and for Zanzibar, be the Afro-Shirazi Party.
> All political activity in Tanzania, other than that of the organs of state of the United Republic, the organs of the executive and legislature in Zanzibar, or such local government authorities as may be established by or under a law of the appropriate legislative authority, shall be conducted by or under the auspices of the party.

In some of the constitutions of the three States, political ideologies also find expression. It is of some interest that in contrast to Tanzania, Kenya is only a *de facto* one-party State. In theory therefore, it is lawful in Kenya to form a political party or parties other than the Kenya African National Union (KANU) which is the ruling party but the prospects of such a party or parties achieving success and surviving can only be a matter for conjecture.

In the constitutions of both the Republic of Kenya and the Republic of Uganda, a whole chapter in either case is devoted to the entrenchment of provisions guaranteeing the protection of fundamental rights and freedoms of individuals in the State. In either case, the chapter is headed: 'Protection of Fundamental Rights and Freedoms of the Individual'. These provisions, based as they are, on the United Nations Universal Declaration of

Human Rights adopted by the General Assembly on 10 December 1948, were inspired by similar provisions in the constitution of Nigeria 1960, for, be it noted, it was the same Secretary of State for the Colonies, now Lord Boyd, who negotiated all the three constitutions with African political leaders.

In the case of the Republic of Uganda, these provisions are to be found in Chapter 3 of the constitution which came into force on 8 September 1967, of which more will be said later.

The resolution which was passed by the Constituent Assembly of Uganda by virtue of which the constitution was unanimously adopted by Parliament reads as follows:

> WHEREAS under the provisions of article 145 of the constitution of 15th April, 1966, Parliament has made provision for the establishment of a Constituent Assembly to enact a Constitution in place of the said constitution:
>
> NOW THEREFORE we the members of the National Assembly having resolved ourselves into a Constituent Assembly here assembled in the name of all the people of Uganda: HAVING FIRMLY RESOLVED in harmony with our inalienable right to choose the means whereby we shall be governed: IN SYMPATHY with our aspirations for national unity, peace, prosperity and progress:
>
> DO HEREBY RESOLVE on this 8th day of September, 1967, in the name of all the people of Uganda, for ourselves and our generations yet unborn, that the GOVERNMENT PROPOSALS be adopted, and do constitute and form the Constitution of Uganda which shall come into force the day and year aforesaid.
>
> LONG LIVE UGANDA

On the other hand, in the 'Interim Constitution' of the United Republic of Tanzania there are no positive provisions spelling out and guaranteeing the protection of fundamental rights and freedoms of individuals in the State. Such rights are, however, recognised and are proclaimed in the preamble to the constitution in the following terms:

> WHEREAS freedom, justice, fraternity and concord are founded upon the recognition of the equality of all men and of their inherent dignity, and upon the recognition of the rights of all men, to protection of life, liberty and property, to freedom of conscience, freedom of expression and freedom of association, to participate in their own government, and to receive a just return for their labours:

AND when men are united together in a community it is their duty to respect the rights and dignity of their fellow men, to uphold the laws of the State, and to conduct the affairs of the State so that its resources are preserved, developed and enjoyed for the benefit of its citizens as a whole and so as to prevent the exploitation of one man by another:

AND WHEREAS such rights are best maintained and protected and such duties are most equitably disposed in a democratic society where the government is responsible to a freely elected Parliament representative of the People and where the Courts of Law are free and impartial:

NOW THEREFORE THIS CONSTITUTION, which makes provision for the Government of Tanzania as such a democratic society is HEREBY ENACTED BY THE PARLIAMENT OF THE UNITED REPUBLIC OF TANZANIA.

In general terms, although this preamble is heavily weighted on the side of the government, and individual rights do not appear to figure prominently therein, I think the preamble can be regarded as a guide for the ascertainment of the intention and purpose of the legislators in promulgating the constitution. It is certainly the key to the understanding of the provisions of the constitution because it purports to state the general objectives and intentions of the legislature, and may legitimately be consulted to resolve any ambiguity or to fix the meaning of words which may have more than one meaning, or to keep the effect of the constitution within the ambit of its real scope whenever the enacting part is in any of these respects open to doubt.

As to the importance of preambles in construction generally, and having regard to the fact that under the English system of interpretation a constitution is subject to the same rules of interpretation as are applicable to a statute, it is relevant to recall a remark which was made by Lord Alverstone, C. J., in his judgement in *London County Council* v. *Bermondsey Bioscope Co. Ltd.* (1911) 1 K.B. 445, when at p.451 he said:

> I quite recognize that the title of an Act is part of the Act, and that it is of importance as shewing the purview of the Act; and I may express in this connection my regret that the practice of inserting preambles in Acts of Parliament has been discontinued, as they were often of great assistance to the Courts in construing the Acts.

And in his judgement in the House of Lords in the *Attorney-General* v. *Prince Ernest Augustus of Hanover* (1957) A.C. 436, in referring to the part which preambles in a Statute may play, Viscount Simonds had said at p.436:

> Assistance may be obtained from the preamble to a statute in ascertaining the meaning of the relevant enacting part, since words derive their colour and content from their context. But the preamble is not to effect the meaning otherwise ascribable to the enacting part unless there be a compelling reason and it is not a compelling reason that the enacting words go further than the preamble indicated.

I have set out *in extenso* the preamble to the constitution of the United Republic of Tanzania, and I propose to comment briefly thereon for the purpose of showing the methods adopted by the three States of East Africa in dealing with the protection of individual rights and freedoms. To start with, the methods are not homogeneous. In the United Republic of Tanzania more emphasis would appear to be placed not on the place of the individual in the State, but on government machinery towards the establishment and stability of which individuals must contribute. It is, however, reassuring that in the preamble emphasis is laid on the freedom and impartiality of the Courts of Law.

There are, on the other hand, no provisions in the constitution itself safeguarding or guaranteeing individual rights and freedoms. The preamble consists of statements of objectives or ideals to be pursued by the State. These statements represent no doubt the general aspirations of the people, and form the superstructure upon which government policies and the principle of law-making should be directed and erected. The statements are not justiciable in any Court of Law, but they do impose however imperfectly a duty on the government or the State or any law-giver to act within the ambit and spirit of the declaration and in accord with the wishes of the people.

The absence of any specific provision in the constitution protecting and guaranteeing individual rights and freedoms has been the subject of criticism in some quarters. It has been stated, for instance, that the rights of individuals in the State would appear to have been sacrificed on the altar of the State, and that the

result of this has been a tendency towards the monolithic State in view of the fact that the Republic is legally and constitutionally a one-party State. Indeed a recent critic has drawn attention to the republican constitution adopted by Ghana in 1960, which did not contain any positive guarantees of individual rights and freedoms but carried certain declarations as to the rights of individuals in the State.

The critic compared the preamble contained in the United Republic of Tanzania's constitution with the solemn declaration of fundamental principles to which President Nkrumah had subscribed on entering upon his high office as President in 1960.

The solemn declaration to which Dr Nkrumah subscribed on entering office reads thus:

> That the powers of Government spring from the will of the people and should be exercised in accordance therewith;
> That freedom and justice should be honoured and maintained;
> That no person should suffer discrimination on the grounds of sex, race, tribe, religion or political beliefs;
> And that chieftaincy in Ghana should be guaranteed and honoured.

The critic was quick to point out that immediately on assuming office, the fundamental principles contained in this declaration were trampled underfoot by President Nkrumah. Whether the comparison is fair and just, it is not within the scope of this paper to say. There is, however, one significant point in this declaration which should not pass unnoticed, namely, the use of the auxiliary verb 'should' instead of 'shall' to qualify the verb 'be' with the result, for example, that instead of the declaration: 'That freedom and justice shall be honoured and maintained', we have: 'That freedom and justice should be honoured and maintained', the word 'should' there being used in the sense of 'ought' instead of in the sense of a futuristic promise or undertaking on the part of the President. It seems that the use of the word 'should' instead of 'shall' was deliberate. Be that as it may, I think in this respect, the United Republic of Tanzania can derive some consolation from the words of Dr K. C. Wheare to be found in his *Modern Constitution 1951* when he said at page 71:

> The ideal constitution . . . would contain few or no declarations of rights, though the ideal system of law would define and guarantee many rights. Rights cannot be declared in a constitution except in absolute and unequivocal terms, unless indeed they are so qualified as to be meaningless.

This observation by Dr Wheare is not altogether without justification because some of the provisions meant to secure the rights of individuals and which are to be found in the constitutions of some of the newly independent African countries of the Commonwealth usually have tacked onto them many escape clauses which tend to weaken such provisions.

The method adopted by the United Republic of Tanzania in not including in the constitution itself any provisions for the protection of individual human rights and freedoms is to some extent in accord with the traditional attitude of English lawyers, who by habit and instinct usually look askance at such provisions in a written constitution. This attitude has been very clearly expressed by Professor S. A. de Smith in his *The New Commonwealth and Its Constitution*. He says at page 166:

> The predominant Anglo-Saxon attitude towards them all has been of disapprobation with the temperature ranging from the frigid to the lukewarm because the English lawyer finds political manifestoes out of place in a legal document, particularly when their philosophical foundations are insecure.

One of the illustrations quoted and relied upon by Professor de Smith to justify this assertion is Jeremy Bentham's comments on the French Declaration of the Rights of Man, in which the latter had said:

> Look to the letter, you find nonsense—look beyond the letter, you find nothing, nothing. . . . Natural right is simple nonsense. Natural and imprescriptible rights, rhetorical nonsense—nonsense upon stilts. But this rhetorical nonsense ends on the strain of mischievous nonsense: for immediately a list of the pretended natural rights is given—and these are so expressed as to present to view legal rights.

In dealing with these strictures by Bentham on the French Declaration of the Rights of Man, Professor de Smith rightly pointed out that they were directed against a document impregnated with a vulnerable theory of natural law and stained by its association with the worst excesses of the Jacobean Reign of Terror.

English lawyers since Dicey have always prided themselves that England has no written constitution and that the country is governed by conventions observed by Cabinet Ministers responsible to Parliament, which is supreme in the land. It is doubtful whether this claim is strictly correct. In this connection reference may usefully be made to an editorial which appeared in *The Times* (London) of 27 March 1968 at page 11 which said:

> The British constitution has great virtue. Its central myth, which is the right to unfettered power or quinquennial parliamentary democracy is still almost universally accepted. It is indeed a very useful political myth though it is not at all an ancient one. Parliament has been in its time feudal, monarchic, republican, oligarchic or bourgeois before it came to be based on the universal franchise and the significance of Parliament is not the immutability of the system but its adaptability.

Or to put it in another way, constitutional power in England may be likened to a pendulum which had been oscillating between monarchy and republicanism until it finally found its place of rest in Parliament under the universal franchise. While the supremacy of Parliament cannot be doubted yet it cannot also be denied that the basic constitutional rights of the English are not to be found in Parliament but are entrenched in a number of documents declaratory of such rights. These documents include the Magna Carta, 1215, the Petition of Rights, 1628, the Bill of Rights, 1689, and the various Habeas Corpus Acts, to name only a few; and as Professor de Smith himself admits, these documents form the basis of the constitution of newly independent countries of the Commonwealth as well as the constitution of the United States of America. Fundamental human rights and freedoms which are today entrenched in the constitutions of newly independent African countries of the Commonwealth are therefore ascribable in origin to Magna Carta—that feudal, reactionary document, the most important instrument of English constitutional history, reluctantly signed by a tyrant king on the meadow of Runnymede, has thus become the most practical instrument which has exercised enormous influence on the history of mankind. Indeed this fact was as far back as 1921 acknowledged in the United States by Chief Justice Taff in his judgement in *Truax* v. *Corrigan* 257 United States 312, 332 (1921) when he said:

> Due process, having its origins in Magna Carta, overlaps to an extent that protection in the sense that due process gives a required minimum of protection for everyone's right to life, liberty and property.

In Uganda the provisions for the protection of fundamental human rights and freedoms first appeared in sections 17 to 29 of the Constitution of 1962. In 1966 the provisions of sections 19(1) and 28(1) came before the Court for the first time for interpretation in *Grace Stuart Ibingira & Others* v. *Uganda* (1966) E.A.C.A. 306. There the applicants had been held in custody pending a decision by the Minister concerned as to whether or not an order for their deportation should be made under the Deportation Ordinance. On application for a writ of habeas corpus the detention was challenged on the ground that the Deportation Ordinance was void for inconsistency with the provisions of section 1 of the constitution.

Section 1 of the then constitution had provided, with certain exceptions, that if any other law be inconsistent with the constitution the constitution shall prevail and the other law shall to the extent of the inconsistency be void; and section 19(1) (j) of the constitution provided that no person shall be deprived of his personal liberty save as may be authorised by law in any of the following cases, that is to say:

> (j) To such extent as may be necessary in the execution of a lawful order requiring that person to remain within a specified area within Uganda or prohibiting him from being within such area, or to such extent as may be reasonably justifiable for the taking of proceedings against that person relating to the making of any such order, or to such extent as may be reasonably justifiable for restraining that person during any visit that he is permitted to make to any part of Uganda in which, in consequence of any such order, his presence would otherwise be unlawful.

And section 28(1) provides:

> No person shall be deprived of his freedom of movement and for the purposes of this section the said freedom means the right to move freely throughout Uganda, the right to reside in any part of Uganda, the right to enter Uganda and immunity from expulsion from Uganda.

The High Court in dismissing the application held that the Deportation Ordinance fell squarely within the ambit of section 19(1) (j) of the constitution and *a fortiori* it did not infringe any other relevant provision of the constitution.

On appeal it was submitted by Counsel for the appellants that the High Court had erred in looking at s. 19 to the exclusion of s. 28. It was further contended that s. 19 of the constitution presupposed a lawful order which was not the case unless s. 28 had been complied with. On the other hand, Counsel for the State contended, *inter alia*, that an order of deportation was 'authorised by law' within the meaning of s. 19(1) because it was made under statutory power and that the statute was authorised by s.19(1) itself; that 'lawful' in paragraph (j) merely meant in compliance with the procedure prescribed by the statute; and that while paragraphs (a) to (d) of the section related to judicial proceedings, paragraphs (e) to (j) related to executive or administrative action and did not specify the manner in which the liberty of the individual might be restricted or taken away.

It was held by the Court of Apeal for Eastern Africa:

1. That the argument on behalf of the State ultimately rested on the proposition that s.19 of the constitution authorised legislation for the restriction of the movement and residence of individuals, which in the view of the Court was not so. All that paragraph (j) of s.19(1) did was to provide that lawful orders made under a statute restricting freedom of movement shall not constitute a violation of the right to personal liberty.
2. That the appropriate section of the constitution was clearly s.28 and as the Deportation Ordinance as it stood did not fall within any paragraph of subsection 3, at least so far as it purported to affect citizens of Uganda, it contravened the section and was in violation of the rights of freedom of movement; therefore,
3. No lawful order could be made against a citizen of Uganda under the Ordinance and since any order that might be made would be unlawful, paragraph (j) of s.19 (1) would have no application.

The appeal was accordingly allowed. The order of the High Court was set aside. Proceedings were remitted to the High Court with a direction that a writ of habeas corpus be issued as prayed.

It should be observed that sections 17 to 29 of the old Constitution of 1962 were superseded by articles 17 to 29 of the Interim Constitution of 1966, which was introduced as a result of a *coup d'état*. These articles have now also been replaced by articles 8 to 20 of the Constitution of 1967, which came into force on 8 September 1967, and is the prevailing constitution. The new provisions are to be found in Chapter 3 which as already mentioned is headed 'Protection of Fundamental Rights and Freedoms of the Individual'. The prerogative writ of habeas corpus is provided for in s.33 of the Judicature Act, 1967, and the High Court is empowered to issue it in appropriate cases.

In Chapter 3 of the Constitution of 1967 elaborate and detailed provisions are made for the protection of the rights of individuals in the State. These rights include the right to life; to personal liberty; freedom from slavery and forced labour; inhuman treatment; freedom from deprivation of property; freedom of expression, of assembly and of association; freedom from discrimination on the ground of race, etc. Of these the most important with which I propose to deal is contained in article 15, which has altogether 13 clauses and sub-clauses. I would only refer to article 15 clauses 1, 2 and 8, which are as follows:

15. (1) If any person is charged with a criminal offence, then, until the charge is withdrawn, the case shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law.

(2) Every person who is charged with a criminal offence,

(*a*) shall be presumed to be innocent until he is proved or has pleaded guilty;

(*b*) shall be informed as soon as reasonably practicable, in a language that he understands, of the nature of the offence charged;

(*c*) shall be given adequate time and facilities for the preparation of his defence;

(*d*) shall be permitted to defend himself before the court in person or, at his own expense, by a legal representative of his own choice;

(*e*) shall be afforded facilities to examine in person or by his legal representative the witnesses called by the prosecution before the court, and to obtain the attendance and carry

out the examination of witnesses to testify on his behalf before the court on the same conditions as those applying to witnesses called by the prosecution; and

(*f*) shall be permitted to have without payment the assistance of an interpreter if he cannot understand the language used at the trial of the charge, and except with his own consent the trial shall not take place in his absence unless he so conducts himself as to render the continuance of the proceedings in his presence impracticable and the court has ordered him to be removed and the trial to proceed in his absence.

* * *

(8) No person shall be convicted of a criminal offence unless that offence is defined and the penalty therefore is prescribed in a written law:

Provided that nothing in this clause shall prevent a court of record from punishing any person for contempt of itself notwithstanding that the act or omission constituting the contempt is not defined in a written law and the penalty therefore is not prescribed.

It is thus evident that there are elaborate provisions for the protection of individuals in the State. The question is: What is the machinery provided for the effective enforcement of these rights? For unless there is such machinery, these provisions are not worth the paper on which they are written.

In his article entitled: 'The Bond between Prescriptive Content and Procedure', Harold D. Laswell, Professor of Law and Political Sciences, Yale Law School and University, after stating that the three components of a legal prescription are norms, contingency and sanctions proceeded as follows:

> The norm is the standard of conduct to be adhered to by participants in the social process. . . . The norms are divisible in two broad categories; goal, instrumentation. The goal norms are the most general expectation concerning the state of affairs to be realized or maintained by public authority and control. Instrumental norms are less generalized than the former category, partly because they refer to strategies by which the goals can be brought into social reality and are therefore more vulnerable to reconsideration... Instrumentally, the norm calls upon authority to provide a means whereby one individual who suffers detention (for example in the case of a writ of Habeas Corpus) can permissibly challenge and obtain an immediate decision about the permissibility of the detention.

> The contingency component of a prescription relates to the factual circumstances to which the norm is applicable. In deciding any controversy that comes before him, the authorised decision maker must settle to his satisfaction whether the factual circumstances alleged by the parties were those referred to in the contingency components of the prescription. . . . If the decision maker is to act as a curb on arbitrariness it is evident that the facilities arranged for the claimant must meet the following minimum specifications:
>
> 1. Enjoy a sufficient measure of independence from the detaining authority to arrive at a decision without fear of severe retaliation;
> 2. enjoy a sufficient degree of motivation to exercise the authority to curb arbitrariness;
> 3. enjoy a sufficient measure of skill and knowledge to perceive and resolve the legal problem involved.

On the basis of the principles expounded by Professor Laswell as contained in the above quoted passage, it is necessary to examine the constitution of Uganda and indeed of the East African States in order to ascertain the extent to which the provisions therein contained for the protection of individual rights, meet the specifications enumerated by Professor Laswell. In my view these specifications are well taken care of in the provisions of the constitution of Uganda, for instance, because for the purposes of enforcing the fundamental human rights and freedoms enshrined in the constitution, an elaborate and effective procedure is prescribed in article 22 of the Constitution. An aggrieved person who alleges that any of the provisions of articles 8 to 20 inclusive has been or is being or is likely to be contravened in relation to him, may, without prejudice to any other action with respect to the same matter that is lawfully available, apply to the High Court for redress. For the enforcement of this right, original jurisdiction is conferred on the High Court to hear and determine any application brought before it by any aggrieved person. On the hearing of such an application the Court may make such orders or issue such writs and give such direction as it may consider appropriate for the purpose of enforcing or securing the enforcement of any of the provisions of the said articles 8 to 20 inclusive for the protection of such aggrieved person.

Another point which ought to be emphasised is that the doctrine of separation of powers has been entrenched in these constitutions. There is a clear separation between the powers exercisable by the three organs of the State, namely the legislature, the executive and the judiciary. Thus Montesquieu's doctrine of separation of powers has been realised both in principle and in practice. In this connection it is worthwhile to recall the famous words in which Montesquieu had expressed that doctrine. He had said:

> When in the same person or in the same body of magistrates the legislative and executive powers are combined, no liberty is possible, because there is reason to dread that the same king and the same senate may make tyrannical laws with the view of executing them tyrannically. Neither is there liberty if the judicial powers be not separated from the legislative and the executive. If it were joined to the legislative power, the power of life and liberty of the citizen would be arbitrary; for the judge would be the law maker. If it were joined to the executive power, the judge would have the force of an oppressor.

The present development whereby the doctrine of separation of powers finds expression in the constitution of newly independent African countries of the Commonwealth is an innovation, and the ordinary citizen in East Africa to my knowledge is anxious that it be retained in the interest of stability in the community and the maintenance of law and order; and, indeed if confidence in the courts of justice is to be maintained. It is the wish of the people in my experience that the courts should be in reality independent of the executive authority. This is one of the important ways in which these countries have been able to express the break from their colonial past when legislative and executive powers were invariably concentrated in the hands of administrative officers. Instances were not lacking when the District Commissioners were invested not only with administrative and executive power but also with the powers of magistrates and judges.

In Uganda such practice is now a thing of the past. All native courts have been abolished and have been replaced by magistrates' courts of various grades throughout the length and breadth of the land, and appointments to such courts are made by the Judicial Service Commission.

The adoption and incorporation of the doctrine of separation of powers into the constitutions of newly independent Commonwealth African countries is therefore a great landmark in their judicial systems. This doctrine of course, as a legal principle, must be distinguished from the doctrine as a political postulate. As was said by George Whitecross Paton in his text-book of Jurisprudence (third edition) at p. 292:

> Constitutional law deals with the ultimate question of the distribution of legal power and of the function of the organs of the State ...

for disputes as to the limits of constitutional powers even by the legislature have to be resolved by the courts. Therefore, the distinction between judicial and other powers is vital to the maintenance of the constitution itself. The court therefore possesses and exercises the power to decide whether an Act of Parliament is constitutional or not. This power is of the greatest importance, although in a sense it is purely negative. The law as interpreted by the court must bind the State.

The present position occupied by the courts in relation to the Government whereby the Government as such has willingly submitted to the decision of the courts in all cases involving the interpretation of the constitution may be likened to the position of the kings in England in the Middle Ages. For we read that Bracton, even though then a Royal Justice was fearless and bold enough to proclaim to the then King that he was bound by the law.

In East Africa the power and duty of interpreting the constitution is vested in the courts. The relevant provisions in this connection in Uganda, for example, are contained in articles 87 and 88 of the Constitution and read as follows:

> 87. (1) Where any question as to the interpretation of this Constitution arises in any court of law, other than a court-martial, and the court is of opinion that the question involves a substantial question of law the court may, and shall if any party to the proceedings so requests, refer the question to the High Court consisting of a bench of not less than 3 Judges of the High Court:
>
> Provided that no such question need be so referred if the Court is of the opinion that it is not sufficiently important to the proceedings to require a reference to the High Court.

(2) Where any question is referred to the High Court in pursuance of this article, the High Court shall give its decision upon the question and the court in which the question arose shall dispose of the case in accordance with that decision.

88. Where pursuant to the provisions of this Constitution any question is referred to the High Court,

(*a*) as to the interpretation of this Constitution; or

(*b*) as to whether any person was validly elected to the office of President or as a member of the National Assembly, the High Court shall proceed to hear and determine the question as soon as may be and may for that purpose suspend any other matter pending before it until the conclusion of that question.

The next question which naturally arises in relation to the first and third specifications mentioned by Professor Laswell is: How are the judges who are saddled with this heavy responsibility of interpreting and giving effect to the constitution as a living instrument for stability, which is the paramount object of law, and, indeed a vital incentive to its development, appointed and removed from their offices? The independence of the judiciary is a matter of paramount importance and therefore the position of judges in the State must be safeguarded if they are to be, and to be seen to be impartial so as to win the confidence of the people in the State. Happily in the Constitution of Uganda the independence of the judiciary is given a pride of place. Judges enjoy security of tenure; and their emoluments are a charge on the Consolidated Fund.

For the purpose of securing the independence of the judiciary a machinery is set up which deals with the appointment to and removal of judges from their offices. The machinery for the appointment of the Chief Justice and Puisne Judges of the High Court is provided for in articles 84 and 90 (1) of the Constitution. Article 84 provides:

1. The Chief Justice shall be appointed by the President:

2. The Puisne Judges shall be appointed by the President acting in accordance with the advice of the Judicial Service Commission.

Article 90 provides:

1. There shall be a Judicial Service Commission for Uganda which shall consist of,

(*a*) The Chief Justice, who shall be Chairman;

(*b*) The Attorney-General; and
(*c*) Such other members not exceeding three who shall be appointed by the President.

The machinery for the removal of judges from their office is an elaborate one. It guarantees to a judge that his removal from office would not be lightly embarked upon by any government and this enables him to do his duty without fear or favour but with confidence, and according to his knowledge, skill and conscience.

To ensure that the judiciary is independent and insulated from political or any other pressure in the performance of its duty, the machinery which deals with the removal of a judge from his office is contained in article 85 (3) (4) (5) and (6) of the Constitution, the provisions of which are as follows:

85....

(3) A Judge of the High Court may be removed from office only for inability to perform the functions of his office, whether arising from infirmity of body or mind or from any other cause, or for misbehaviour, and shall not be so removed except in accordance with the provisions of this article.

(4) A Judge of the High Court shall be removed from office by the President if the question of his removal from office has been referred to a tribunal appointed under clause (5) of this article and the tribunal has recommended to the President that he ought to be removed from office for inability as aforesaid or for misbehaviour.

(5) If the Cabinet represents to the President that the question of removing a Judge under this article ought to be investigated, then,
(*a*) the President shall appoint a tribunal which shall consist of a chairman and not less than two other members; being persons who hold or have held office as a Judge of a court having unlimited jurisdiction in civil or criminal matters or a court having jurisdiction in appeals from such a court; and
(*b*) that tribunal shall inquire into the matter and report on the facts thereof to the President and recommend to the President whether the Judge ought to be removed under this article.

(6) If the question of removing a Judge under this article has been referred to a tribunal under this article, the President may suspend the Judge from performing the functions of his office and any such suspension may at any time be revoked by the President and shall in any case cease to have effect if the tribunal recommends to the President that the Judge should not be removed.

In the Constitution of the Republic of Kenya the machinery for the appointment of the Chief Justice and Puisne Judges and for their removal is similar to what obtains in Uganda. In the Republic of Tanzania the position is for all practical purposes the same except that under s.75 (2) of the Interim Constitution Puisne Judges are appointed directly by the President after consultation with the Chief Justice.

At an earlier part of this paper I had mentioned that sections 17 to 29 of the 1962 Constitution were superseded by the provisions contained in sections 17 to 29 of what may be described as an 'Interim Constitution' which was introduced and came into force on 15 April 1966, as a result of a *coup d'état*. I also mentioned that the provisions contained in sections 17 to 29 of that Constitution have themselves since been replaced by the provisions in the present Constitution, which was adopted and became operative on 8 September 1967.

My reference to a *coup d'état* calls for some explanation. The matter was fully dealt with and discussed in the judgement in *Uganda* v. *Commissioner of Prisons ex parte Matovu* ((1966) E.C.A. 514) and requires only a brief mention here.

Briefly, under the Independence Constitution of Uganda of 1962 and as subsequently amended from time to time, Uganda was described, though not quite accurately for reasons not necessary to go into in this paper, as a quasi-federation. The most important unit, apart from the Central Government purportedly in federal relationship with the Central Government, was the Kingdom of Buganda, whose king bore the title of the Kabaka of Buganda. In or about 1963 in an effort to unite the country and create stability, the Prime Minister nominated the Kabaka of Buganda as the only candidate for the office of President. He was duly elected by the National Assembly, which is the Parliament of Uganda. After taking the oath of allegiance to the Sovereign State of Uganda, the President was installed as a Constitutional President—a ceremonial Head of State and Commander-in-Chief of the Armed Forces of Uganda. But the reins of Government were under the control of the Prime Minister as Head of Government and Administrator.

In 1966 a strong disagreement and disenchantment developed between the President, the then Vice-President and some Cabinet Ministers on the one hand, and the Prime Minister on the other, and resulted in the Prime Minister suspending the Constitution of 1962, dismissing both the President and the Vice-President and seizing all the powers of government. Five former Ministers who apparently supported the President and the Vice-President were detained. Subsequently the 1962 Constitution was by the resolution of the National Assembly abrogated and replaced by the 1966 Constitution under which the Prime Minister became an Executive President. A state of general emergency was declared. The situation developed almost into a civil war in which the dismissed President and Vice-President and their supporters were worsted. The ex-President fled the country.

During the period of emergency, a large number of supporters of the ex-President were detained, one of whom was Michael Matovu. On his behalf an application for his release under a writ of habeas corpus was brought and the matter had to be enquired into by the High Court.

In the course of dealing with the application of a writ of habeas corpus, the question of the validity of the 1966 Constitution was raised and the matter was, in accordance with the procedure prescribed by s.95 of the Constitution of 1966, now replaced by articles 87 and 88 already cited above, referred to the Constitutional Court consisting of three judges in terms of s.2 of the provisions of the Constitutional Cases Procedure Act (cap. 66). The Constitutional Court, after due enquiry, held among other things that the Constitution of 1966 was legally valid it being the product of a *coup d'état*, which is recognised in international law as a legitimate means of changing a government. Subsequently, the present Constitution, now partly suspended, was passed and adopted by a Constituent Assembly and came into operation on 8 September 1967.

It is well known that the primary task of a constitution is to give authority to government and to define the areas in which such government shall exercise authority. It is also the duty of a

constitution to deal with the ultimate question of the distribution of legal powers and functions among the competing organs of the State, thereby creating a system of checks and balances, which should result in equilibrium and stability in society.

While it is appreciated that according to modern notions whatever broad classification may be adopted, no sharp lines can be drawn *a priori* which will enable all governmental functions to be assigned by logic alone to one category or another. In my view, the aim of an ideal constitution should be so to distribute the functions between the member organs of the State that no room should be left for friction between the judiciary and the State in particular. Thus while the function of Parliament is to enact general laws by means of statutes or otherwise, it should be the function of the courts to interpret the law and make binding and enforceable decisions applying existing law to disputes before it. It is of course well recognized that the old myth that judges do not make law has been discredited because courts do make law by deciding disputes. A court is bound by such authority as exists (whether by statute or precedent), and its creative power is called into play only within the limits set by such authority.

U. UDOMA
March 1971

3

REFLECTIONS ON THE PACIFIC SETTLEMENT OF INTER-STATE DISPUTES IN AFRICA

One finds within some international institutions several contending forces which can be conveniently reduced to two. The first is the evil that breeds tension, discord, and war. The other is the creative goodness which seeks harmony, peace and justice. Conscious of this fact the founding fathers of the Organisation of African Unity created *ab initio* a machinery for the pacific settlement of inter-State disputes. Ours is a continent in which a number of its forty-one States exhibit clear signs of political instability. The internal pressures in many of the member States of the O.A.U. are still towards instability and crisis. During my two and a half years in Addis Ababa as the resident President of the Commission of Mediation, Conciliation and Arbitration I was convinced that that instability is built into the O.A.U. itself but it is not beyond the genius of its foremost statesmen to save it from disaster which an in-built instability can produce.

Dr Elias opens his excellent monograph on the Commission published in the 1964 edition of the British Year Book of International Law with a masterly analysis of some of the problems facing the new States of Africa. He divides inter-State disputes in Africa into two categories:

(*a*) Those that may be regarded as inherited, in the sense that they emanate from the complex of rights and obligations that devolved upon the new states in consequence of the application of the doctrine of state

succession, e.g., boundary disputes or frontier incidents resulting from the partitioning of Africa among the Great Powers during the nineteenth Century.

(*b*) In the second category we have disputes that are the results of post-independence alignments mainly in the economic and technical spheres. African States have entered into a number of international conventions and arrangements *inter se*. The interpretation and application of such conventions could provoke inter-state disputes.

Before I describe briefly the machinery for the settlement of inter-State disputes in Africa I would underline the first category of inter-State disputes, namely, boundary disputes. Most of the present international boundaries in Africa were fixed through bilateral agreements between rival colonial powers at the beginning of the notorious scramble for Africa. Some of them were fixed by administering powers with astoundingly inadequate knowledge of socio-economic conditions in Africa or rather of the political, social, economic and ethnic interests in the areas where the boundary lines now exist. The result is that today we have many pending boundary disputes, e.g.,

(*a*) between Somalia and Ethiopia,
(*b*) between Somalia and Kenya,
(*c*) Tunisian claims in Algerian Sahara,
(*d*) between Algeria and Morocco,
(*e*) between Morocco and Mauritania,
(*f*) between Niger and Dahomey over the island of Lette.
(*g*) between Malawi and Zambia,
(*h*) between Malawi and Tanzania,
(*i*) between Ghana and the Ivory Coast.

The Border Dispute between Algeria and Morocco

When trouble broke out in 1963 between Algeria and Morocco, a meeting was held in Bamako on 30 October 1963 at which His Imperial Majesty Haile Selassie I of Ethiopia and President Modibo Keita of Mali successfully appealed to His Majesty King Hassan II of Morocco and President Ahmed Ben Bella of the Republic of Algeria. As a result of the agreements reached at this meeting a ceasefire was obtained between Algeria and

Morocco. Later, because of continued strained relationship between the two States an Extraordinary Session of the Council of Ministers was convened.

The first Extraordinary Session of the Council of Ministers held in Addis Ababa from 15 to 18 November 1963, adopted a Resolution which 'Reaffirmed the unwavering determination of the African States always to seek a peaceful and fraternal solution of all differences that may arise among them by negotiation and within the framework of the principles of the institutions prescribed by the Charter of the Organization of African Unity'; and also reiterated the fact that all the Member States were bound by Article VI to respect scrupulously all the principles formulated in Article III of the Charter of the O.A.U.

Considering the fact that the Commission of Mediation, Conciliation and Arbitration provided for in Article XIX of the Charter had not yet been set up, the First Extraordinary Session of the Council of Ministers created an *ad hoc* Commission provided for in Article IV of the joint Bamako Communiqué. Since then the Commission consisting of Ethiopia, Ivory Coast, Mali, Nigeria, Senegal, Sudan and Tanzania has held about nine sessions in various places including Tangiers and Algiers. Today Maghreb unity and diplomacy has for all practical purposes solved the problem.

Border Dispute between Somalia and Ethiopia and between Somalia and Kenya

In the aftermath of an army mutiny in the Republic of Tanganyika, now Tanzania, the Second Extraordinary Session of the Council of Ministers was held in Dar-es-Salaam from 12 to 15 February 1964. Apart from the problem in Tanganyika, the Session decided to discuss the border conflict between Ethiopia and Somalia and the border incidents between Somalia and Kenya. After hearing the statements by delegates of Ethiopia and Somalia, the Session adopted a Resolution calling on the Governments of Ethiopia and Somalia to order an immediate ceasefire and to refrain from all hostile actions. The matter was

later discussed at the Second Ordinary Session of the Council of Ministers in Lagos from 24 to 29 February 1964 and at subsequent meetings of the Council. The Second Extraordinary Session of the Council of Ministers in Dar-es-Salaam also adopted a Resolution on the border incidents between Somalia and Kenya and subsequent sessions of the Council of Ministers have again discussed the matter.

Dahomey and Niger

In 1965, a border dispute arose between the Republic of Dahomey and the Republic of Niger but as a result of diplomatic intervention by the Federal Republic of Nigeria and the appeals from African States the matter was quickly settled.

Ivory Coast and Guinea

In 1966, a dispute arose between Ivory Coast and Guinea. The matter was brought to the attention of the Administrative Secretary-General of the O.A.U. who referred it to the President of the Commission of Mediation, Conciliation and Arbitration. Both States were contacted by letter by the President, and asked to submit their case in writing to the Commission. But neither party to the dispute submitted any memorandum.

Dispute between Ghana and Guinea

Following the ousting of the former President Kwame Nkrumah from power in Ghana on 24 February 1966, the ex-President took refuge in Guinea. Ghana later demanded his extradition and the repatriation of Ghanaians allegedly detained in Guinea but Guinea refused on the grounds that no Ghanaians in Guinea were in that Republic against their will.

Dispute between Rwanda and Burundi

In February 1967, a dispute arose between Rwanda and Burundi as a result of the refugee problem in both countries. The Eighth Ordinary Session of February/March in Addis Ababa requested President Mobutu of the Democratic Republic

of the Congo to intervene on behalf of the O.A.U. As a result of the Congolese President's intervention, the dispute was successfully settled.

The above therefore represent the diplomatic methods adopted so far in settling disputes between States. Of all these, only the dispute between Ivory Coast and Guinea was referred to the Commission for Mediation, Conciliation and Arbitration but because neither State to the dispute pursued the matter further by presenting a written memorandum, the Commission was unable to take any action on the dispute.

The dispute in the Caprivi Strip Area of South West Africa (Namibia) involves Namibia, Zambia, Rhodesia and Lesotho. The concept of Greater Somalia raises a four-way controversy involving territories within Kenya, Ethiopia and French Somaliland. There are other boundary problems within the continent.

One encouraging development on the continent, however, is the expanding response of some boundary disputes to bilateral and multilateral diplomacy. There is now no boundary problem between Kenya and Ethiopia because of the recent treaty between the two countries.

The dispute between Ghana and the Ivory Coast has been solved through direct negotiation between the two republics.

The dispute-resolving machinery built into the O.A.U. is the Commission of Mediation, Conciliation and Arbitration which received a brief attention during the discussion of one of the papers read at the first annual conference of this society. The protocol of the Commission was approved and signed by the O.A.U. Heads of State and Government in Cairo on 21 July 1964. The protocol provides for a Commission of twenty-one members elected by the Assembly of Heads of State and Government from among the member States, now forty-one, of the Organization. The membership of the Commission is reserved for persons with recognized professional qualifications and no two members thereof are nationals of the same State.

Every member is elected for a term of five years in the first instance and is eligible for re-election. The work of the Commission is carried on by a Bureau comprising its President and two

Vice-Presidents. The Bureau is charged with the duty of consulting with the States in dispute regarding the most appropriate mode of settling it in accordance with the provisions of the protocol.

The first members of the Commission included two judges one of whom was at one time an *ad hoc* judge of the International Court of Justice, five Attorneys-General, two law professors and two government legal advisers.

Article 19 of the Charter of the O.A.U. provides:

> Member States pledge to settle all disputes among themselves by peaceful means and, to this end decide to establish a Commission of Mediation, Conciliation and Arbitration the composition and conditions of service of which shall be defined by a separate Protocol to be approved by the Assembly of Heads of States and Governments. The said Protocol shall be regarded as forming an integral part of the present Charter.

Article 7 set out the four principal institutions through which the Organization seeks to accomplish its purposes.

These institutions are:

1. The Assembly of Heads of State and Government,
2. The Council of Ministers,
3. The General Secretariat,
4. The Commission of Mediation, Conciliation and Arbitration.

You can see from this brief description of the machinery for the peaceful settlement of disputes within the O.A.U. that the member States by consent have made significant departures from the traditional rules relating to sovereignty and have *prima facie* considerably limited the exercise of their independence. They have granted to the Commission such specific and implied powers as are indispensable for the fulfilment of its appointed functions. They have done so in order to make possible the achievement of their common objectives, e.g., the promotion of the unity and solidarity of African States; and the co-ordination and harmonization of their general policies in so many important fields.

From the beginning, however, member States of the O.A.U. showed noticeable reluctance to submit to such a body matters of vital interest to them. There are political and diplomatic

reasons for this reluctance. In any case the Commission of Mediation, Conciliation and Arbitration does not provide a remedy for all O.A.U. ills. It is an adjunct to rather than a substitute for other methods of settling disputes peacefully within the Organisation. Direct negotiation between States in dispute, the friendly intervention of a third party, diplomacy within the Assembly of Heads of State and Government—all these techniques have produced excellent results in recent years. The speedy promotion of reconciliation between Nigeria and the States which recognised the so-called Republic of Biafra is a good example of what the good offices of friendly States can achieve.

Articles 12 and 13 of the Protocol of the Commission provide as follows:

12. The Commission shall have jurisdiction over disputes between States only.

13.1. A dispute may be referred to the Commission jointly by the parties concerned, by a party to the dispute, by the Council of Ministers or by the Assembly of Heads of State and Government.

2. Where a dispute has been referred to the Commission as provided in paragraph 1, and one or more of the parties have refused to submit to the jurisdiction of the Commission, the Bureau shall refer the matter to the Council of Ministers for consideration.

The jurisdiction of the Commission is optional and not compulsory in spite of the fact that as soon as a State subscribes to the charter of the O.A.U. it automatically pledges itself to settle disputes between it and any other members of the Organisation by means of mediation, conciliation and arbitration. It is a well-established principle of international law that no State can be compelled to submit its dispute with another State to any mode of pacific settlement of international disputes. The consent of the State must in my view be given in every special case quite apart from any commitment in advance. The jurisdiction of the Commission depends on the will of the parties to a particular dispute. Consent freely given is the true basis of this jurisdiction. Sovereign States are understandably jealous of their sovereignty

and independence. My O.A.U. experience is that they will always show great reluctance in limiting their own political and diplomatic freedom beyond what they regard as absolutely necessary to secure their immediate objectives. In one inter-State dispute after another secret offers of assistance by my Commission could not induce the States involved in the disputes to submit to the jurisdiction of a body they persistently regard as judicial. The political element in most inter-State disputes even where such political element is not the predominant one makes States assume that their vital interests are at stake in every dispute. I did not find helpful the conditions of secrecy under which the Commission promises to operate nor the assurance which I have often given that mediation and conciliation procedures do not involve the determination of right or wrong, innocence or guilt. The restoration of harmony between two disputing States does not require any such determination.

Article 6 of the protocol of the Commission was amended by the Heads of State and Government last September in order to make the members of the Bureau, namely the President and the two Vice-Presidents, serve on a part-time basis. No other part of the protocol however has been amended. What is significant about this amendment is that such a proposal in my report to the 7th Ordinary Session of the Ministerial Council in 1966 was not favourably received by some States. Liberia and Tanzania took to the Assembly of Heads of State and Government in Kinshasa in 1967, resolutions for the activation of the Commission in order to make its President and the two Vice-Presidents reside at the Commission's statutory headquarters at Addis Ababa.

I have come here to think aloud and to pick your brains about the problem of settling inter-State disputes by peaceful means within the O.A.U. because it does not appear to me that the O.A.U. is organisationally ready yet for more of the type of shock administered to it by the recognition of the so-called Republic of Biafra by four of its members nor for the disastrous diplomatic consequences of an event like the recent *coup d'état* in Uganda. The Uganda political crisis has already produced quite a crop of inter-State disputes. When a constitutional government is overthrown by force in Africa is it the business of any

State member of the O.A.U. to question the justification of the *coup d'état* by reference to domestic conditions within the State or to ask whether the army violated the constitution? Is it necessary to summon an *ad hoc* meeting of the Heads of State, and Government or the Council of Ministers to find out whether in the overthrow of the government there was foreign government complicity or aid? Should any Head of State lose any sleep over the wishes of the new government to hold elections within a reasonable or an unreasonable time? Has any member State the right to question the representative character of the new government? Should we have clearly defined O.A.U. policies on these matters to prevent a multiplicity of earth-shaking disputes in the near future? At the moment member States reserve to themselves the right to determine what an inter-State dispute is, whether or when it should be brought within the jurisdiction of the Commission of Mediation, Conciliation and Arbitration.

Finally, may I say that events within such regional agencies as the Organization of American States and the Arab League with different mediation and conciliation procedures do not inspire high hopes about the peaceful settlement of inter-State disputes within a regional agency of the United Nations.

There may, however, be some reason for hoping that deviation from the O.A.U. Charter will always be checked by opinion within the Organization, or by internal State morality, or by the desire of the State members to unite against the forces of imperialism in Africa. It certainly is in the interest of member States to set a good example of obedience to the multilateral treaty which the Charter of the Organization is. The citizens of a State may sometimes learn to obey the laws of the State from the obedience of the State itself to the laws of the international organization to which it belongs.

M. A. ODESANYA
March 1971

4

THE IDEOLOGY OF PAKISTAN: A HISTORICAL INTERPRETATION OF MUSLIM NATIONALISM IN THE SUBCONTINENT

I deem it a great honour to have been invited to speak today on a Pakistani theme before such a distinguished gathering. It was with much diffidence that I accepted this invitation, being conscious of the high standards of your Society, and my own limitations. I should, however, state that I have expressed in this paper my views more in a personal capacity than as a High Commissioner of Pakistan.

Introduction

It will be my endeavour to explain to you in its correct perspective, the Muslim nationalism in the Indo-Pakistan subcontinent, as a purely political phenomenon, and a genuine development in its unique circumstances in the subcontinent.

I consider this necessary because an erroneous impression exists in certain quarters—no doubt due to a sedulously fostered propaganda of certain interested groups—that Pakistan came into existence as a result of religious fanaticism and the time-aged formula of '*divide et impera*' of alien rulers. This type of explanation of the Muslim national movement in the subcontinent is a subjective over-simplification of a complex situation. It either conceals or attempts to ignore how the Muslim social

and cultural mores and values acted as a cohesive force on a multi-racial people and kept them as a distinct group, conscious of its identity, passing through historical processes of a thousand years in the subcontinent, and finally bringing about the State of Pakistan. What led to the sharpening of the differences between the Hindus and the Muslims and the schism between them was not a result of external manipulations, but inter-play of indigenous forces.

Pakistan: a unique Muslim experience

It is no doubt true that the base of nationhood in Pakistan is Islam, but Pakistan was not created by fanatic religious forces. The movement owes its existence to the socio-cultural values of Muslims of the subcontinent which drew inspiration from Islam and, no less, from a thousand years of their history in the subcontinent. To dissociate the one from the other, of these two elements, would be most unfair to an objective enquiry into the movement. Moreover, the Pakistan idea was conceived by modernist Muslims, the Pakistan struggle was led by modern Muslims and Pakistan State itself adopted modern concepts and intermingled them with the cultural and social values of the subcontinent's Muslims, rejecting theocracy from its very inception. It is a unique Muslim experience and unless studied without bias can be misunderstood.

The Muslim nationalism of the subcontinent is thus proud of its history, retains the basic values of Islam, but is a forward looking scientific and modernisation oriented movement. The Indian Muslims gave supreme sacrifices to create their homeland. Eight million Muslims were forced to migrate mainly from the Punjab and its adjacent areas, and Bengal which went to India, but there was no part of the subcontinent from which the exodus did not take place. This was the greatest exodus ever recorded in the history of the world. They reached Pakistan completely bare-handed; their houses were burnt; their caravans moving towards Pakistan were looted and ambushed and half a million Muslims were massacred; eighty thousand women were listed as abducted.

For years they lived in makeshift refugee camps or with a bare roof on their heads with nothing except hope and the satisfaction of having achieved their homeland.

Understanding of this movement is vital for a proper appreciation of an important force in a pivotal area in Asia.

Historical Process Leading To The Muslim Nationalism

In a paper of this nature, only general outlines of the movement can be given, but even then certain inescapable details of history must be stated. A historical approach has the advantage of giving better understanding of the forces that had been at work in moulding the movement.

(a) *Hindu-India*

The subcontinent has been the home of many conquerors. The earliest forefathers of the present-day Hindus themselves came as foreign conquerors from Europe via Central Asia, about a thousand years before the Jews left Palestine. The Aryans, a white people conquered the natives, a short statured dark race, and through superior military art and a higher culture established their mastery over the subcontinent. The Aryans were able to eliminate totally any traces of the indigenous peoples, and it is believed that the 'Untouchables' in India are the descendants of the latter.

Some of the natives were surely not uncivilised, as the relics of a five-thousand-year-old civilisation excavated in their original conditions in Mohenjodaro (in Sind) show. These include a fully planned town with planned roads, public baths, and bricked houses.

(b) *The Hindu social order at the advent of the Muslims*

Many foreign conquerors subsequently defeated the Aryans on the battlefields, but were then absorbed in the superior Hindu culture, so completely that they are now indistinguishable from the Aryans. The Hindus had achieved this with a well-founded

philosophy, religion and a culture based on *Vedas* (their ancient religious philosophy). The Hindus developed, in ancient India, a theocratic society with the population divided into four rigid divisions or castes, a graduated social superiority of groups beginning from Brahmins, the religious clergy class and ending at the Shudras, the untouchables. The caste society was further sanctified through the legal system of Manu. The Hindu social concepts were later developed on these values: theocracy, caste system, *vedic* culture and supremacy of the Brahmin caste, the religious learned group. As the main socio-cultural system of Hinduism developed in the first five hundred years, or around 500 B.C. of its entry into India and continued in its glory up to a thousand years, its economic system was an agrarian village economy. In its spirit Hinduism is essentially conservative capitalism with Lakshmi, Goddess of Wealth, being one of the deities. Their political—or theocratic—system at its zenith became known as *Ram Rajya*.

These concepts were later echoed in the Hindu revivalism in the late nineteenth and twentieth centuries, and thus had very important bearing on Indian nationalism.

(c) *The Coming of Muslims*

I may similarly describe briefly the advent of the Muslims in the subcontinent.

An accident brought the Muslims to India. The cargo ships of the Caliph at Baghdad, carrying merchandise to Ceylon, and beyond to China, were a few times looted by pirates operating from the coastal areas of Sind. In A.D. 712 and 713, two experienced and older Muslim Generals led expeditions to (what is now) Karachi to eliminate the pirates, but were defeated. In A.D. 715, fifteen-year-old Mohammad Bin Kassim was given the command. He captured Karachi and moved into the interior of Sind. Apparently the Muslims did not find the desert of Sind an attractive addition to the Caliphate, since in the same year, under the same Caliph they conquered Spain, and considered Europe a more profitable area to concentrate on than the deserts of the subcontinent.

Then the Muslim Turkish Emperors of Central Asia, from the tenth century made conquest of India a continuous objective. They annexed areas in India and ruled over them from Central Asia. Living of the Muslim groups together with the Hindus started in A.D. 1206 when Sultan Qutubuddin Aybek founded the first Muslim Empire in India, the Slave Dynasty—so named because Aybek was bought as a slave by his Master—with Lahore and Delhi as capital. From then on, till the establishment of the British Empire in India, in A.D. 1858, the Muslims ruled India.

The Muslims were the sole conquerors of India, who having made the subcontinent their home were not conquered by Hinduism, culturally or otherwise. They achieved not only spectacular military victories, but also made outstanding contributions to social and cultural values.

Five Stages of the Muslim Society in the Subcontinent

The following are the five distinct stages of the history of the Muslims in the subcontinent:

(1) *The era of exclusiveness and uneasy coexistence of the two groups*

I would like to include in this period Muslim rule up to A.D. 1526, although in extending it up to the beginning of the Mughal rule, one may have justified objections that the basis of coexistence of the two groups was laid in the latter part of the Sultanate of Delhi, as the Muslim Empires of that era are described.

Due to strong differences in the two social orders, the Quranic Muslim and the Vedic Hindu societies of this age, at the political level, very little intermingling took place between the Muslim conquerors and the conquered Hindu. As an extremely microscopic minority group, most of the time challenged on battlefields, the Muslims remained conscious of their conqueror's status. The two groups lived in watertight compartments. Even sheer military necessity must have kept the feeling of a group alive among the Muslims, even though they did not belong to any one particular race. The Muslim power elite of that time included Turks, Arabs, Persians, and Muslims from Java and Black Africa. Nor did their racial affinities affect the extent to

which they enjoyed power, as is evident from the fact that Malik Kafur, a Black African Muslim, became the Commander-in-Chief of the Turkish Emperor Alauddin Khilji, and after having conquered from Kashmir to almost the end of South India, in A.D. 1310, was officially designated the Deputy to the Emperor; and on the death of the Emperor, ruled as Regent to the infant Emperor. The Muslim rulers opened higher ranks to the Hindus gradually; though there were exceptional examples, too.

It was the era of military assertion of Muslim power in the subcontinent. Many a time the Muslim armies, outnumbered many times over by Hindu forces, faced in battles the combined Hindu chivalry. It would be incorrect to describe them as Hindu-Muslim battles as such, for many complex motives, both of the Emperors and of the Hindu princes, led to the battles. But, the early Sultans of Delhi, and other independent small Kings, had adopted a theocratic form of rule and at times gave the impression that their battles were, in fact, religious. The Hindu Kings did use similar descriptions. The Muslims would have found it impossible to defeat huge Hindu armies, but for the fact that they compensated for their extremely small numbers by a higher technology (use of cannons and gunpowder) superior art of war, organised battles, use of cavalry against elephants, etc.), a well-knit group (an extremely democratic society for their age) and above all, much higher physical fitness. They lived in the age of the sword, and power came out of the sharp edges of the steel.

In spite of the wars in which the Muslim Afghan, Turkish and Syed Emperors and some minor Kings had to indulge over long years, they left great monuments bearing witness to their achievements in arts. Even today their palaces are well preserved, their mosques are usable in original conditions and their tombs stand as silent evidence of the greatness that was theirs. The tallest minaret in the world, the Qutub Minar in Delhi, intended to be one of the four minarets of a Mosque, built seven centuries ago is as fresh as yesterday.

Outside the nobility and military circles, Muslim saints, poets and artists were freely intermingling with the natives and preaching the new social values. The influence of the saints, like Moinuddin Chishti of Ajmeer, Nizamuddin Aulia of Delhi, to name

only two, was greater than that of the Emperors with the masses. Their retreats were open to all, and they never paid visits to the Emperors or Kings. Living in utter poverty, away from political strifes and cities, they founded new 'orders'—existing even today. Wise men, poets and scholars, like Amir Khusro, created an era of their own.

Examples of those very persons who were bought as slaves becoming Emperors (like Aybek, Iltamash and Balban) and some becoming great Commanders and Generals, jolted the caste apartheid of Hindu society to its very foundations. Conversion to Islam took place in large numbers. The concept of a casteless society, and practice of equality of human beings, which were the central themes of Muslim culture, were the main causes of large-scale conversions of Hindus to Islam.

As a result of this development, a new Hindu reformation movement, the 'Bhakti Movement' took place in this period. The famous Hindu saints, Kabir and Surdas combined the Islamic values with Hindu culture, teaching human equality, brotherhood of mankind, peace and love—the same principles as were practised by the Muslim saints of that age who founded 'Sufism'.[1] As a result of this social intercourse, a new language was coming into existence resulting from the mass contacts of the Muslim saints and the multi-racial composition of the Armed Forces. In spite of the wars and internecine struggle, the Muslim rulers gave India prosperity. The stories of India's wealth of this age tempted Columbus to seek a new sea route to India.

(2) *The Mughal Rule: An Era of Peaceful Coexistence*

The Mughal rule was the Golden Age of Muslim rule in the subcontinent, as well as of the subcontinent itself. It began in A.D. 1526 when Babur established his empire in India, and its glory lasted up to the middle of the eighteenth century, but the rule lingered on till A.D. 1858. During their reign, India blossomed

[1] The Sufi's approach to religion was somewhat different from the ecclesiastical 'clergy'. The former was a devout Muslim in all details of Muslim worship, but he described God as love and beauty, and service to Humanity as the main purpose of religion. To him, hurting the feelings of another fellow man was the greatest sin. They shunned all power, and involvement in power and lived only with the masses.

under a prosperity never known in its history before. In such wealth, cohesion of the society was bound to occur, and as its by-product came cultural sophistication, advancement in art, music and poetry. The Mughals appeared to have made determined efforts to pursue a policy of befriending the Hindus, and with much success, particularly under Akbar the Great (1556–1605) and Shahjehan (1627–66), the builder of the Taj Mahal. Under these two Emperors, maximum understanding took place between the Hindu and Muslim groups. Hindus entered into the inner circles of power, and of the five closest Wazirs (or Ministers) of Emperor Akbar, three were Hindus, but then his Queen was also a Hindu princess, who became mother of his successor, Emperor Jehangir.

It seemed that a common Hindu-Muslim culture was being evolved. It was during this time that the Muslims left an indelible mark on the dress, food and even etiquette of the common man in major parts of India.

Urdu, which had come into existence in the early days of the Muslim rule in the subcontinent started to become a *lingua franca*.

Muslim achievements in the fields of arts, science and medicine left an everlasting impact on all groups of people in India.

However, the Muslim inspiration in the new culture came from Central Asia, the home of the Mughals (which is itself a corruption of the word 'Mongols') and Persia. Arab influence continued to play its part, and the main languages of the Government were Persian, Turkish and Urdu, with Persian being the language of the Government and official records. This resulted in Urdu acquiring the Persian alphabet, similar to Arabic. In this new culture, which is a continuation of the one which began in the early days of the Muslim rule, the Hindus made many contributions, but the leadership in the fields of arts, sciences and culture remained with Muslims. It is perhaps natural that the power elite also sets the pace of the cultural and other mental achievements of its time. One wonders whether a group deprived of political power ever excels in mental fields.

This picture would, however, not be complete without recalling that the Hindu society remained still essentially *Vedic* in values, and whatever changes took place were of the nature of

an additional new look it had acquired. Similarly, the Muslim retained their *Quranic values*. The two had established a peaceful coexistence but had not merged into a single national stream. Where the Muslim simplicity of monotheism and equality of human beings changed the Hindu concepts, it resulted in a new religious reformation movement, like Sikhism in the Mughal period, creating a new branch in the Hindu society.

Perhaps it is in the nature of things that a climax also creates its own antithesis. Notwithstanding the closer coexistence reached between the two groups in this period, the first Hindu revivalist assertion also began in the days of the last powerful Mughal Emperor, Aurangzeb (A.D. 1666–1707). Shivaji, a Hindu Chieftain, in South India, rose in revolt against the Mughal authority, and successfully created a small area of control for himself and his band. He was finally persuaded to owe allegiance to the Mughal Emperor, but when he was given a place in the Court, he found himself with Corps Commanders rather than Army Commanders. Protocol-minded Shivaji was disgusted and fled away to the jungles to continue his revolt. He pillaged and plundered in the South under the pretext of an anti-Muslim Hinduism. He was later adopted as the 'hero figure' by the Hindu revivalist movement in the late nineteenth century.

(3) *The Early British Era: The decline of the Muslim power, and Muslim despondency; Indian national movement*

From the middle of the eighteenth century, the Muslim power in the North declined, and the British East India Company turned into a political force. Muslim principalities in Bengal and upper India easily fell to the British. In the South, two brilliant Muslim military rulers, Hyder Ali and after his death Tipu Sultan gave stiff, and at times successful armed resistance to the British. When Tipu died in a battle with the British, the latter's supremacy was easily extended over the subcontinent.

In 1857, the British Indian troops staged a 'mutiny', which lasted for one year, and at its end, the British Empire was formally proclaimed. The British were infuriated with Muslims on the so-called 'mutiny', because the sepoys or (soldiers) had put up the last titular Mughal Emperor, Mohammad Shah Zafar, as

their head, much against his wishes, because of the prestige that the Mughal name then carried, and in whose name, for form's sake, orders were issued in India, even by the British. Although the so-called mutiny was organised jointly by the Hindus and Muslims, the British wrath was directed against the latter. Apparently, the British considered Muslims as the only rivals to their power. So the British felt it necessary to crush them.

In crushing the Muslims after the mutiny, the British went absolutely brutally after them. Hangings on mass scale after summary 'trials' of a few minutes were the order of the day; for five miles on both sides of the main road in Delhi, makeshift gallows were erected for these executions. The titular Emperor was banished to Burma, his sons beheaded, etc., etc. Details are too gruesome to narrate; nor is it necessary to refer to them here.

The Muslims' reaction was to withdraw into their shells and close their minds totally to the new era which the British had ushered in. Co-operation with the British was counted as an anti-Muslim act, acquiring Western education was denial of Islam, and wearing Western dress was a declaration of dissociation from Muslim culture.

Muslim religious leaders led this anti-British and anti-West stream of thought. They later formed anti-British political organisations such as Jamiatululema and Ahrars. Their anti-imperialist fervour was so strong that they refused co-operation with any Muslim group which preached even as a tactic some co-operation with the British.

The Muslim abhorrence for British rule, and the new system introduced by them, greatly helped the Hindus in acquiring a new place in the subcontinent's power structure, and brought about a Hindu-British *entente*. In Bengal, the Hindu elite acquired Western political thought, understood the British system of democratic organisations and began the Hindu Bengali Renaissance. An eminent Hindu writer, Sisir Gupta, observed 'The Muslims were hardly touched by these changes'.

An eminent Muslim writer has described the situation as follows:

> The British adopted it as a cardinal principle of policy to suppress the Muslims of the areas which they conquered from them or otherwise took over. This they did in a particularly systematic manner in the vast

region of Bengal and the adjoining North Western Provinces. Thus in Bengal, much of which is now in East Pakistan, in contravention of their engagements, the British under the 'Permanent Settlement' substituted Hindu landlords for the Muslim landlords of former days, contending that the latter were corrupt. They thus struck a crushing blow at the economic and cultural life of the Muslims. The British destroyed the Muslim system of education. They confiscated Muslim educational trusts or misapplied their income. They kept the Muslims out of the law and other professions. By the middle of the last century the Muslims had been almost wholly excluded from all civil and military services of any consequence. Thus a Calcutta Muslim paper wrote in 1869: 'All sorts of employment, great and small, are being gradually snatched away from the Muhammadans, and bestowed on men of other races, particularly the Hindus. The Government is bound to look upon all classes of its subjects with an equal eye, yet the time has now come when it publicly singles out the Muhammadans in its gazettes for exclusion from official posts ... In short, the Muhammadans have now sunk so low, that, even when qualified for Government employ, they are studiously kept out of it by Government notifications.'[1]

This situation is confirmed by Sir William Hunter, who in the late nineteenth century wrote:

> The truth is, that when the country passed under our rule, the Musalmans were the superior race, and superior not only in stoutness of heart and strength of arm, but in power of political organization and in the science of practical government. Yet the Muhammadans are now shut out equally from Government employ and from the higher occupations of non-official life.[2]

During the Muslims' non-co-operation with the new rule, the British and the middle class Hindu elite came close; a retired English Government servant, Hume, founded the Indian National Congress, which later was the platform for Nehru, Gandhi and other nationalists. Mr Hume had defined the main objective of the body as 'social regeneration of India as a means for political advancement'. In its early phase, it was exclusively in the control of middle class Hindus. The Hindus were organising themselves through three groups; the moderates in the Congress, the revolutionaries in West Bengal and Calcutta, and the Hindu revivalists.

[1] K. S. Hasan, *Pakistan and the U.N.*, pp. 22–3.
[2] Ibid.

However, it was very difficult to distinguish between the three as far as their objectives and terminologies used to define the objectives were concerned. Only the means to be adopted to achieve the goal were different.

The Hindu leaders expressed their objectives in secular or religious, including Hindu revivalist, terminologies. This inhibited the Muslims all the more from joining the Indian nationalist movement even though the Congress was formed as more or less a British sponsored organisation. Apparently, the British were satisfied with the Hindu co-operation with them.

The various mixtures of Hindu religious slogans from the so-called national platform included the attempt to lionise Shivaji as a national hero. India was being described as Bharat Mata, which to an iconoclast Muslim was rather harsh on the ears being again a religious description of India; the objective to be attained was 'Swaraj' another purely Hindu term, even though it meant 'Good rule or self-government'. These movements also claimed that they wanted to establish 'Ram Rajya'—in the subcontinent which to a Muslim at any rate meant a Hindu theocratic State.

While on this subject it will be appropriate to say that even Gandhi and the Congress under him used purely Hindu terms for their political objectives.

(4) Use of Hindu Religious Terminology by the Congress and Gandhi

Admitting that Gandhi appealed to the Hindu religious sentiments, an eminent Hindu Indian writer, Sisir Gupta (himself an ex-Assistant Secretary of the Congress) wrote:

> Interestingly enough, the Congress itself had attempted to tread a short cut to mass support in its unceasing struggle against British subjugation by the use of such symbols and slogans as 'Ram Rajya'... It is also true that in making use of quasi-religious slogans the other national leaders of India had by no means taken into account its possible impact on widening the communal fissure. Gandhi, for example, attempted his best to interpret Ram Rajya in terms acceptable to non-Hindus.[1]

[1] Sisir Gupta, *Kashmir—A study in India-Pakistan Relations*, p. 4.

The author adds:

> However, in practice, this failure of the Congress to discard modes of struggle and symbols of politics which smacked of religion might have intensified the communal consciousness in India (i.e. Hindu-Muslim separation).

He then says:

> To make a quasi-religious appeal ... was the surest means of building up a mass movement ... it was necessary for the national movement to shift the focus from the relatively modern coastal areas to the inland regions where the religious sense of belonging played an even more important part.

An eminent Pakistani writer has further expanded the theme:

> Unlike some of the earlier Westernised leaders of the Congress party Mr Gandhi did not keep religion altogether out of politics. He himself led the ascetic life of a Hindu *par excellence* and was venerated as Mahatma, a Hindu holy man. Speaking in Hindu religious metaphors, Mohandas, Gandhi espoused ancient Hindu ideals ... These attitudes which won him the allegiance of the vast Hindu masses, eventually alienated the Muslims.

B. G. Tilak, another great early Hindu leader (d. 1920) of the Congress, 'revived militant Marhatha religious and political traditions and carried them into the Congress'. In his political career he agitated for many purely Hindu religious matters from the national political platform.

The centres of the Hindu revivalist movement were South India and Bengal. Under the European liberal ideas, which had become the basis of the Indian nationalist movement, 'the Hindus started to resent intensely past Muslim imperialism over them. This heightened the antagonism between the two communities'.

This was the main cause that kept the Muslims aloof from the Hindu-dominated political activity.

Abul Kalam Azad, a famous Congress leader, in his book *India Wins Freedom* recalls:

> In those days (in Bengal) the revolutionary groups were recruited exclusively from the Hindu middle class. In fact, all the revolutionary groups were then actively anti-Muslim... The revolutionaries felt that the Muslims were an obstacle to the attainment of Indian freedom, and must like other obstacles be removed. [p. 4]

During this era of despondency, the Muslim stream of thought developed in two channels. I have already stated that one was that of the orthodox religious leaders.

(c) Sir Syed's Movement

The second stream of thought started as a movement for reformation of the Muslim society led by Sir Syed Ahmed Khan. He felt that the main cause of despondency among the Muslims was their utter backwardness which made them an outdated people. He preached co-operation with the British as the only means of achieving modern education and technique, and stressed that a drastic change in the Muslim outlook was essential. He mercilessly blamed the Muslims themselves for their despondency, decadence and demoralisation and prescribed only one treatment for the ailment—modernisation in outlook and education. Sir Syed Ahmed Khan was not only an outstanding realist and reformist of the modern Muslim in the subcontinent, but also the first who had clearly foretold the separation of Hindus and Muslims. On 16 January 1883, in the course of a discussion on the local self-government pointing out the need for safeguarding the special interest of the Muslims, he stated that India was inhabited by different races following different creeds. In 1867 he had predicted that the Hindus and Muslims would not be able to live together. He is reported to have said that:

> Now I am convinced that both these nations will not join wholeheartedly in anything. At present there is no open hostility between the two, but on account of the so-called educated people it will increase immediately in future.

However, Sir Syed's achievement was social and educational reform. He preached much against the opposition of the religious leaders who branded him a heretic. He founded the Muslim University at Aligarh in 1870. 'The Aligarh movement within a decade spread out to other parts of Muslim India, and Aligarh became the visible emblem of Muslim hopes and desires'. His main task was twofold: he pleaded for adjustment with the new environment created by Western influences, scientific and philosophical. With inexhaustible energy he plunged wisely into the crucial task of revaluation for the new society'.

Hali, a famous Urdu poet, and a contemporary of Sir Syed wrote moving poetry depicting the Muslim decadence and decline and exhorting them to reconstruct their society. The poetry is

entirely Muslim in inspiration and appeal and refers to Muslim history only. This era ended with Indian nationalism increasingly taking the shape of a Hindu revivalist movement, attacking Muslim values and culture, and the Muslims becoming conscious of the need to reorganise, and re-examine their social structure.

Coexistence and Political Geography—
Causes of Coexistence

By and large, under the Muslim rulers a peaceful coexistence for the reasons enumerated below between these two conflicting groups and cultures was ensured, though broken for brief periods. But no communal riots, which became a special feature during the Indian national movement, took place between the Hindus and Muslims.

(*i*) In spite of the military nature of the rule, and the fact that power rested on the sword, the Muslim rulers were broad-minded and practised what, for their age, must be counted as tolerance. When their imperial interests demanded, they indulged in the typical brutality of the Middle Ages. But, individuals or groups were not subjected to maltreatment for any reasons. They had a developed political philosophy to guide them. Timur,[1] himself a Mughal, perhaps the greatest military conqueror, cautioned against use of brute force in his autobiography:

> It is my experience that many a time the knot that cannot be cut with a sword can be untied with the dexterous fingers of tact and wisdom. I have found that if the art of statescraft rests on ten factors, nine are concerned with wisdom, tact and circumspection, and only one with sword.

(*ii*) The Muslim rule did not disturb the local Hindu societies, even after conquests. In quite a few cases, after the conquest, the Hindu Kingdoms were only converted into vassalages. In both cases, of direct administration or rule through the vassals, the Hindu laws and customs only were applicable to the

[1] Timur, known as Tamerlane (1336–1405) was the most qualified person to make this statement. His conquests extended from the River Moscow to the Ganges on one side and from China to the Nile, and included much of Eastern Europe, Turkey, the Middle East, Central Asia, etc.

Hindus. Muslims were governed by their own laws, and the Court of the King was open each day for any complaint to be heard by the ruler himself.

(*iii*) No attempt was made to develop one social system, or single community in the heterogeneous and multiracial societies inhabiting the Empires and Kingdoms. This was the general picture anyway. This policy avoided Hindu-Muslim bitterness or conflicts. The fact that after centuries' rule over India the Muslims remained a 'minority' itself is evidence of their broad-mindedness and that force was not used to convert Hindus.

(*iv*) Hindus gradually entered in the inner sanctums of power of their Muslim rulers. In fact, a Hindu prince, Rai Raja Jaswant Singh, was the Commander-in-Chief, the Armies of Emperor Aurangzeb—described by Hindus as a bigoted person—although the Emperor was a devout Muslim to the extent that he depended for his personal income on the sale of his hand-written Qurans and caps he stitched.

(*v*) The coexistence was not at the expense of separate group identities of the Muslims and the Hindus. What happened in the Mughal era, and a few times later was merely lowering of walls, but not elimination of boundaries.

The Subcontinent's Political Geography

Having described the factors which accounted for the two separate and distinct Hindu and Muslim groups, and on which their coexistence rested, it is necessary to take up another related topic—the subcontinent's—or India's political geography.

It will show that India has never been one during its authentic recorded history of three thousand years, except for a short period of 90 years of a foreign rule, and that too with a qualification.

Among the Hindus of India, the concept of India's geographical entity was given semi-religious sanctity. Hindu attachment to Bharat's unity is, however, not backed by their own ancient history. However, it may be stated that for reasons of appeal to purely religious Hindus, even the Constitution of India describes

the State as 'India—that is Bharat'—though whenever any official document mentions India as Bharat, the Government of India protests against the use of this very name.

From the earliest period of its history, till the advent of Muslims, the largest Hindu empires were founded in India four times: under the Mauriya Empire (third and fourth centuries B.C.) during Ashoka's reign whose royal emblem was adopted as the central piece of independent India's national flag, in Emperor Kanishka's days in the first century B.C., under the Gupta in the third and fourth centuries, and finally under Emperor Harsha in the seventh century. None of them was larger than West Pakistan in area, and they were confined to the traditional Northern India.

Greater political entities were formed under the Muslim Emperors, but they were short-lived when their borders extended beyond the limits of traditional central power in India—the plains of the Ganges and the Punjab. They lasted as long as the military prowess of the particular Sultan remained unchallenged. The maximum limits of the main State—if I may use this terminology—were reached twice; once under Alauddin Khilji (1296–1316). In the year 1310 Khilji's Empire was somewhat equal to the British Indian Empire but not quite, since some of the areas of West Pakistan and some part of East Pakistan were not included. Again in the year 1707 the Empire of Aurangzeb included most of India, excluding a few small independent States in the South.

Muslims seek new Equations and Safeguards through Democracy—Sharpening of the Conflict

In the last section, I attempted an analysis of the evolution of the coexistence, and its causes, in order that the next stages of developments may be viewed more clearly. In the next 40 years, the conflict between the Muslims and Hindus sharpened, a schism took place and then came the separation.

For a clearer perspective of these developments, it will be useful to survey the situation affecting the Muslims in the subcontinent, which can be analysed as follows:

(*a*) After 1858, 'for a generation they literally lived in a state of inward terror'[1] under British rule;

(*b*) They continued to decline after the middle of the eighteenth century; a degeneration among them had already set in, worse still, by refusing to modernise themselves, they had, in fact, gone down further and become a backward group;

(*c*) Economically, too, their backwardness had been compounded. In feudal days, soldiering and farming had been the two vocations to which they were attracted. In a modernised society, commerce and industry had become important components of power. The Muslims were not in these fields; and

(*d*) Western political thought and traditions were alien concepts. In the subcontinent, till the advent of modern British system, the ideal government had always been the 'Good King'. The Muslims, not having modernised themselves, were not adapted to the new system of power through politics.

As an introduction to the situation then prevailing, I can do no better than quote K. Sarwar Hasan:[2]

> As a result of English education, the twin ideas of nationalism—I may add geographical nationalism—and democracy were introduced into the subcontinent. Both these concepts were born in Europe ... The Hindus and the Muslims who formed the bulk of the population, constituted two distinct communities... The situation created by two such divergent communities, living side by side, was without parallel in any country, for clearly the differences between them were not to be compared with those prevailing in a Western country, between Christians and Jews or between Catholics and Protestants.

Introduction of voting and Muslims' fears

A recurrent theme of this stage was Muslim demand for *safeguards*, which meant, first, proper representation in the elected bodies, and then proportionate representation, resulting in the controversy over joint and separate electorates.

[1] K. S. Hassan, *Pakistan and the United Nations*, p. 24.
[2] K. S. Hassan, ibid., p 24.

The politically advanced Hindus had started to become vocal in demanding a voice in the management of the country. In 1892 the Indian Councils Act was passed, and the electoral system was introduced, though to a limited extent, in the politics of the subcontinent.

Sir Syed Ahmed Khan was the first to doubt if in a democratic system, outright imitation of the Western pattern would safeguard Muslim interests. It was felt that the two groups were so opposed in many respects that it would be almost hopeless to find a meeting place for national fusion.

This passing idea of an educationist was not adopted as a dictum; the view that Muslim interests required protection through some special device was confirmed by the implementation of democratic procedures. Practically no Muslim was elected, even from mixed constituencies, and none from purely Hindu constituencies. Their representation was thus so negligible that it was almost non-existent in the Legislatures, which was the first experience of implementation of voting rights. The Muslims reacted by demanding separate electorates in 1906. The Agha Khan led a Muslim delegation consisting of 70 members and explained to the Viceroy of India that 'the representative institutions of the West were inappropriate and inadequate for India, and their application raised difficult problems, that it was necessary to proceed in this unchartered field with utmost care and that in whatever spheres it was intended to introduce or extend the electoral system, the Muslims should be represented as a community'.

The Viceroy concurred with this proposal. It has been said in certain quarters that this representation led to the far-reaching consequences of partitioning of India; and was readily accepted by the British Viceroy in his own imperial interest of dividing the Muslims and Hindus. It is rather a facile explanation. Given the disappointing results of the elections for the Muslims and the desire of the Muslims to preserve their communal identity, it was a logical step, even if Lord Minto, the Viceroy, agreed to it to pull the Muslims out of the anti-Government Hindu-led political movements. However, there was great sympathy for the Hindus in British circles in London. Ramsay MacDonald

and Keir Hardie of the nascent Labour Party in Britain were staunchly pro-Hindu. Sir Henry Cotton, M.P., a member of the Indian Parliament Committee, prided himself on being 'an interpreter of the wishes of the Indian people' in the House of Commons. Radical members of the Parliament were in correspondence with the Hindu leaders in India.

The Morley-Minto Reforms of 1909 (granting some more powers to the legislature and appointment of Indians to the Viceroy's Executive Council) did not satisfy the Muslims over the question of joint electorates. The Muslim agitation for 'adequate, real and genuine representation' continued for the next seven years.

Sensible Hindu leaders showed an understanding of this demand. Gokhale believed in 'slowly evolving a nation out of the heterogeneous elements of which India was composed'. This appreciation might have resulted from the dissatisfaction the Hindus too felt over certain aspects of the 1909 Reforms. The attempt at bringing about a common platform against the British was succeeding. In 1916, perhaps as a price for this co-operation, the Hindus agreed to 'separate electorates'.

In the 1919 Reforms, the provinces were given some real powers and Indians were appointed as Ministers of certain specified departments. Wiser by the experience of 'dyarchy' and the powers exercised by 'the majority', the Muslims got some ideas of the Federal Constitution that could suit them: Federal system vesting residual powers in the units, reforms in the Pathan areas, separation of Sind from Bombay and statutory Muslim majorities in the Punjab and Bengal. This actually was intended to safeguard the Muslim majority areas in the North-West (somewhat more than West Pakistan of today) and North-East (much more than East Pakistan of today). They had also asked for separate electorates.

The Hindu leaders, however, started to have second thoughts on separate electorates after 1921, apparently as the Hindu revivalist leaders like Pundit Madan Mohan Malwiya gained power, and Hindu-Muslim communal riots grew in intensity. The separate electorates had nothing to do with the deterioration of the communal situation. On the contrary, 'friction between

Hindus and Muslims had visibly abated after the grant of separate electorates' as one ex-Minister, and a leading Hindu journalist, Chintamani, had testified to the Reforms Enquiry Committee set up by the British Government. It was argued that 'even if this were admitted, the objection still remained that electoral separatism encourages narrow and sectional politics'.

Jinnah was not personally in favour of separate electorates; he was of the opinion that the Muslims should agree to joint electorates, provided their political and cultural interests were safeguarded in the Constitution. He favoured local autonomy for the Muslim majority areas, and suggested constitutional safeguards similar to those enjoyed by the French minority in Canada. In 1927, Jinnah and thirty other Muslim leaders deliberated on the new pattern of a suitable Constitution which included five proposals given by the Congress President. The Muslims proposed joint electorates in return for statutory Muslim majorities in the Punjab and Bengal legislatures, Sind and Frontier (Pathan areas), and a one-third Muslim representation in the Central legislature. Strict proportionate representation of the two groups on the basis of population was suggested for the provincial legislatures.

At first the Congress endorsed this proposal, but within six months, it went back and started a new thinking on the subject; and produced its own recommendations, the Nehru Report, named after the then President of the Congress, Motilal Nehru (father of Jawaharlal Nehru). The main features of the Report were: It asked for Dominion Status for India, and suggested parliamentary government, with a strong centre. It agreed to certain Muslim demands (creation of Sind as a province, and legislative reforms to be extended to the Frontier Province). It substituted adult and universal franchise and elections on joint electorate for the 1916 agreed formula of separate electorate. It fixed quotas for Muslims in minority provinces, and in one Muslim majority province (Frontier Province), but none in Sind, Punjab and Bengal. The Congress-League Pact of providing for a veto on measures discountenanced by two-third membership of either community, reached in 1916, was scrapped.

Disillusionment came in 1928, when at an All-Parties Convention, attended by the Congress, Muslim League and Hindu

Nationalists, the Nehru Report was pushed through. Jinnah was disgusted, and remarked that the 'parting of ways' had come.

Two comments need be stated here. Mohammad Ali, who was then the top Muslim leader wrote:

> Gandhi has defeated all Muslim attempts at compromise. He is giving free reins to the Communalism of the majority. [The Nehru Report] is the legalised tyranny of members, and is the way to rift and not peace. It recognises the rank communalism of the majority as nationalism. The safeguards proposed to limit the highhandedness of the majority are branded as communalism.

Another prominent Hindu Indian leader wrote:

> A constitutional scheme of reforms [i.e. the Nehru Report] which was acceptable to the Hindu Maha Sabha was produced by the Congress Leader with the help of liberals to the disgust of the Muslims... who openly rebelled against it. The incident shows that organised communalism can confuse and overwhelm nationalism.

The Hindu-Muslim question then went to the three Round Table Conferences in London. The question of constitutional safeguards to Muslims remained unresolved at those parleys as well. The Government of India Act of 1935 was then enacted by the British on their own initiative. This provided for a Federation, but with *weightages* which reduced the Muslim majority to a precarious position in certain provinces. The Congress rule in the provinces led to the complaint of misrule by the Muslim League. When the Government resigned, *day of deliverance* was celebrated by the Muslim League which published a voluminous Pirpur Report, listing the stories of maltreatment of the Muslims. These constitutional attempts finally failed, leading to the demand in 1940 for the creation of Pakistan.

Partition of Bengal

The Muslim fears on their future in a Hindu majority rule under democracy were in the beginning, i.e., up to 1905, not well pronounced, and anyway, they were limited to the upper middle class which understood the game of power politics. What brought them down to the common man was the partition of

Bengal. At that time the Bengal Presidency province included the present-day States of Bengal, Bihar and Orissa of Indian Union plus East Pakistan. It was too large an area administratively to be governed as a single unit.

For administrative reasons, and some other considerations such as Assam's interest in developing the port of Chittagong, the British decided to divide Bengal and create a province of East Bengal and Assam. In the new province the Muslims formed two-thirds of the total population, and thus became the only province in which the Muslims outnumbered the Hindus overwhelmingly. Dacca, the small but ancient town, was made its capital.

Hindu Bengal—the Western part of Bengal—reacted violently to this development, which it counted 'First as an attack on its growing "national solidarity"; later as a chastisement for its leading role in the political movement; still later, as a proof of government partiality towards the Muslims, and finally as establishing "Muslim Ascendancy".'

The attacks organised against this administrative act then, knew no limits. No political propaganda was left unused. Muslims were branded tools and puppets of the government. Constant attempts were made to depict the Muslims of Bengal in the worst colours. They urged the Hindus to arm and drill for self-protection. This hatred was kept alive by an extensive literature comprising historical drama and romance in Bengali. No Bengali play written by a Hindu showed any sense of dignity and restraint about Muslims and their past in India. Bankim Chandra Chatterji, the best seller of the day was positively and fiercely anti-Muslim. Surendra Nath Banerjee declared in his 'Bengalee' that the grievances of the Hindus of the new province would be shared by other co-religionists throughout the Empire. Amrita Bazar Patrika described partition as 'the greatest conspiracy against the Hindus'. No stone was left unturned to seek political support in the British Parliament, and Mr Ramsay MacDonald when he visited India was taken round Western Bengal where he made many, rather one-sided statements in support of the Hindu stand.

The Hindus took this partition with such anger that when it was announced a day of mourning was observed and finally in an attempt to apply pressure, the Congress decided on the boycott of English goods, but ruled that it was to be confined to Bengal only.

In five years, these attempts succeeded. In the Royal Proclamation at his Coronation in Delhi in 1911, King George V announced annulment of the partition of Bengal. Hindus celebrated it with bonfires throughout Bengal. The Congress expressed full throated gratitude in its official resolutions. The Muslims were most disappointed.

Muslim Politics: Rise of the Muslim League

It may be interesting to note that Muslim politics from the beginning remained under the control of moderates, middle class modern-minded persons, by and large, and very rarely used religion as an appeal or basis of politics. Their talk in the earliest stages was confined to reconstruction of Muslim society, modernisation, acquisition of modern scientific knowledge and revitalisation of Muslim society—as in the case of Sir Syed Ahmed Khan. The first Muslim organisation was the 'Mohammadan Educational Conference', which was devoted to purely educational and cultural matters.

However, when the demand for separate electorates was made, the Muslims felt that some concerted efforts were necessary to ensure implementation of the British promise. For this, an organisation would be necessary working through such a central place as Aligarh University.

Accordingly, Khawaja Salim Ullah of Dacca sent a circular to the delegates of the Educational Conferences proposing establishment of an organisation to be called All India Muslim Confederacy. About 3,000 delegates from all over the subcontinent considered the proposal and agreed to establish the All India Muslim League.

The stated aims of the Muslim League were:

(*a*) Firstly, to inculcate among Muslims a feeling of loyalty to the Government, and disabuse their minds of misunderstandings and misconceptions arising out of its actions and intentions;

(*b*) Secondly, to protect and advance the political rights and interests of the Muslims of India and their aspirations; and

(*c*) Finally to prevent the growth of ill-will between Muslims and other nationalities without prejudice to its own purposes.

The Agha Khan was appointed President of the Muslim League. For many years the League was a moribund organisation.

It retained its moderate posture for a long time, and from 1915 to 1921 its meetings were attended by Hindu Congress leaders, a period in which an extraordinary co-operation took place between the Muslims and the Hindus. In these days the League produced no outstanding leaders till Mohammad Ali and Shaukat Ali—the Ali Brothers—emerged on the scene. But Mohammad Ali, who appeared to have become the voice of the Muslims in those days, co-operated closely with Gandhi and Nehru, and even presided at the Congress Annual Sessions. Similarly, at times, the Congress President (if a Muslim) acted as President of the Muslim League. No cry of 'Islam in danger'—as is sometimes believed—was raised by the Muslim League. In fact, the Khilafat Movement, to save the Caliph of Turkey as the Turkish Sultan was then known, became more popular than the League. The Muslims were very keenly interested in the fate of the Muslim Sultan of Turkey, who appeared to be under attack by the British in the World War I, and subsequently by certain European powers. Even Gandhi lent his support to it, and because the Congress during this period accepted separate electorates, safeguards for Muslims and respected a Muslim cause, cordial relationship between the Muslims and Hindus existed.

What then led to the Muslim leaders and their League drifting away to separatism? There were reasons for it beyond the Muslims' control. As Nehru observed:

> After his year of [Congress] Presidentship (i.e. 1923–24) Mohammad Ali gradually drifted away from the Congress.... The process was slow.... But the rift widened, estrangement grew. Perhaps no particular individual or individuals were to blame for this, it was an inevitable result of certain objective conditions in the country.

Perhaps a correct synopsis, at least from the Muslim viewpoint, will be as follows:

An attempt was made, particularly since the twenties to evolve in India one nation, exclusively Hindu in concept, based entirely on *Vedic* values. This movement intended to subjugate the Muslims forcefully and bring about their fusion into the Hindu religious stream. Now Hinduism is a great world philosophy, and it was entitled to have its assertion, as the professed culture of the majority. But it was not the positive aspect of Hindu religious thought that this movement was seeking.

This movement had many facets: Arya Samaj, Brahmo Samaj, and Rama Krishna Mission and even the Theosophical Society were its early manifestations. Later, they merged as the forces creating the Hindu Maha Sabha. Mathematically expressed, the preaching of this political body amounted to establishing the equation: Indian Nationalism-Hinduism-Muslims. It openly, and in the streets, preached an anti-Muslim doctrine. It seemed that this movement was seeking to eliminate the Muslims, their influence, and their identity more than anything else, and it was only exploiting the name of Hinduism for an aggressive purpose.

K. M. Pannikar (in the *Contemporary Review*, Vol. 131, 1937, pp. 232–3) stated that by this time the Hindus had come to regard India as their country in a special sense, and looked upon all Muslims as foreigners, believing that by conversion to Islam a Hindu ceased to be an Indian.

From this developed the Shuddhi movement (forceful conversion of Muslims to Hinduism), which came into being with the intention that most of the Muslims who were converted to Islam long, long ago, would be brought back to the fold and thus 're-nationalised'. Sangathan, the forging together of all Hindus for this purpose was another movement, which intended to increase the political power of the Hindu communalists. In fact, the main responsibility for causing serious fears in the minds of Muslims about their future in India were these two movements.

Then, an attempt was made to manufacture history. The Muslim rule was shown as a foreign oppression. Bhai Permanand, the most influential Hindu leader of North-Western India, propounded the view that 'the advent of Islam inflicted a deep wound on India and that a true history of India will have to be a record of the Hindu struggle against foreign tyranny'.

Shardhanand was another famous leader of this group of thought.

These attempts aimed at creating a new image of Muslims in the subcontinent: Muslims were painted in the darkest colour, in books, novels, pamphlets, newspapers, etc.

These Hindu leaders felt that the real source of power of Muslims had been their physical force, and fitness (due to the northern climate, and rugged mountains of Afghanistan, etc., from where the early Muslim conquerors came). The result was establishment of para-military Hindu organizations, in large numbers under the patronage of the Hindu aggressive leaders. Rashtrya Sewak Sangh (a Hindu para-military organization) was set up and in the years near independence, it organized mass scale communal riots; even today Jan Sangh and the R.S.S. (the two sub-divisions of the Maha Sabha) are the hard-core of the anti-Muslim activities in India.

It was natural that such activities were to result in most unfortunate Hindu-Muslim riots, vitiating political environment, and causing irreparable damage to Hindu-Muslim relations. I do not want to go into these sordid developments, nor is it pleasant to state further details of the Hindu revivalist activities.[1] I may, however, quote what Gandhi observed on these series of riots, which extended over two decades:

> There is no doubt in my mind that in the majority of quarrels the Hindus come out the second best. My own experience but confirms the opinion that the Mussalman as a rule is a bully, and the Hindu as a rule is a coward. Where there are cowards, there will always be bullies.

The unfortunate situation in the late twenties was that the Hindu Maha Sabha made political gains, in elections and otherwise, and a closer relationship developed between it and the Congress, leading to greater fears among Muslims.

The process of alienation of the Muslims was completed—from here on, the Muslims feared that they had a dark future in a Hindu majority rule in the post-independence era.

Let me say a few words by way of completing the picture. There were a few exceptions in Hindu leadership who were men of outstanding goodwill and genuine believers in Hindu-Muslim

[1] Considerable details of these movements with substantiating evidence is given in Chapters IV & V of *The Muslim Separatism in India* by Abdul Hamid (Oxford University Press publication).

friendship. Notwithstanding his messing up of India-Pakistan relations at a crucial early period of independence, when a different approach could have brought about a new look in the relations of the two sovereign groups (known as Pakistan and India), Nehru was one such person. But, the irony of the situation was that the rabid Hindu communalist could cloak himself under the Congress flag, and being of the majority group could present any view under the name of nationalism, but Muslim demands for safeguards were branded as 'Communalism'. The majority of Congress leaders were Hindu communalists. To the Muslims, for practical purposes, the difference between the Congress and the Maha Sabha disappeared as the forties approached.

The Final Phase: Pakistan Movement

The Idea

The demand for creation of a separate Muslim Homeland in the subcontinent was made on 23 March 1940 at the Annual Session of the All India Muslim League, meeting under the chairmanship of Mohammad Ali Jinnah. But the idea had been mooted a few times earlier, sometimes only as a vision or shape of things to come, as in a chance remark of Sir Syed Ahmed Khan (quoted earlier), or by a famous Urdu author, Abdul Halim Sharar, in 1890. Once in a while some unimportant persons made a formal proposal. One Dr Abdul Jabbar Khairi submitted a written statement in October 1917 at the Stockholm Conference of the Socialist International to partition the subcontinent into Hindu and Muslim India. But some important personalities also suggested the creation of Muslim States in the North-Western and Eastern zones of India, where Muslims could form the majority, these notables included the late Agha Khan, and Nawab Sir Zulfiqar Ali Khan. The idea was also presented by Chaudry Rahmat Ali, a student leader in Cambridge University, who gave to the proposed State the name of 'Pakistan'. But it did not seem that his proposal received serious consideration for quite some years.

Then, in 1930, at the Allahabad Session of the All India Muslim League, a famous poet-philosopher of the subcontinent, Dr Sir Mohammad Iqbal,[1] declared:

> To base a Constitution on the conception of a homogeneous India, or to apply to India principles dictated by British democratic sentiments, is unwittingly to prepare her for a civil war.

Dismayed by the failure of attempts to find a suitable solution of the Muslims' problems, he proposed a separate homeland:

> The formation of a consolidated North-Western Indian Muslim State appears to me to be the final destiny of the Muslims at least of North-West India.

Causes for adoption of the idea by the masses

The idea ceased to be the dream of a poet, or an overseas student leader, after the Muslim masses started to entertain fears about their fate in an independent India. The main causes of these fears were the never-ending communal riots, communal organised violence and instances where the Muslims were believed to have been discriminated against merely because of their Muslim status. Since 1937 when the Congress formed Ministries in the provinces, it appeared that the machinery of law and order was being utilised to help Hindus, discriminate against Muslims and take a partisan attitude against the Muslims during the communal riots. The Muslim League suddenly shot up in popularity with the Muslims, and started to take the shape of a mass movement instead of being a party of landed aristocracy, armchair politicians and middle class leisure groups. No doubt Mohammad Ali Jinnah was always highly regarded as an able, honest and upright Muslim leader, with a reputation of incorruptibility, but it was after the Congress misrule in 1937–9 that he rose in stature as the most important Muslim leader.

An eminent Hindu leader, Setalvad (Sir Chamanlal Setalvad), who was against creation of Pakistan, sums up his own views about the origin of Pakistan:

[1] The celebrations of Independence of India began on 15 August 1947 with a song of Iqbal.

> The real parentage of the Pakistan movement can be traced to the Congress leaders, who, by the wrong way in which they handled the communal questions and by their behaviour when they were in power, created great distrust in the minds of the Muslim community which has driven them to advocate Pakistan. In the beginning, Congress leaders said that there was no communal problem in India and if there was, it could be settled after India got independence, forgetting that for the very purpose of getting independence, communal unity was essential. Then there is the tragic perversity which the Congress displayed when they assumed office under the Act of 1935... They dealt unjustly with the Muslim community and made them hostile.

Its adoption by the Muslim League

In 1938–9, various proposals were mooted in the Muslim League Working Committee recommending partition of India, establishment of Muslim zones and separate States. Finally, the Muslim League agreed to approve a resolution on the matter. It was quite clear from Jinnah's Presidential Address at the Lahore Session in 1940 that this would be the main topic before the League. It might be noted again that neither an appeal to religious fanaticism nor a cry of 'Islam in danger' was made in this address or anywhere in the proceedings:

> The Hindus and the Muslims belong to two different religions, philosophies, social customs and literature. They neither intermarry, nor interdine together and indeed they belong to two different civilizations which are based mainly on conflicting ideas and conceptions. Their aspects on life and of life are different. It is quite clear that Hindus and Mussalmans derive their inspiration from different sources of history. They have different epics, their heroes are different, and they have different episodes. Very often the hero of one is a foe of the other and likewise their victories and defeats overlap. To yoke together two such nations under a single State, one as a numerical minority and the other as a majority, must lead to growing discontent and final destruction of any fabric that may be built up for the government of such a State.

The Resolution

The Pakistan Resolution was moved in the open session of the Muslim League by Fazlul Haq, then Premier of Bengal. Moving the Resolution, he said:

> We have stated definitely and unequivocally that what we want is not merely a tinkering with the idea of federation, but its thorough overhauling so that the federation may ultimately go.

It is noteworthy that among its supporters in the session were Maulana Zafar Ali Khan, who had had long association with the Congress, and for which he had gone to jail many times, and one-time President of the Punjab Congress Committee, Dr Mohammad Alam.

The Resolution reads as follows:

> . . .On the constitutional issue, this session of the All India Muslim League emphatically reiterates that the scheme of federation embodied in the Government of India Act, 1935, is totally unsuited to and unworkable in the peculiar conditions of the country and is altogether unacceptable to Muslim India.
>
> It further records its emphatic view that while the declaration dated October 18, 1939 made by the Viceroy on behalf of His Majesty's Government is reassuring in so far as it declares that the policy and plan on which the Government of India Act is based, will be considered in consultation with the various parties, interests and communities in India, Muslim India will not be satisfied unless the whole constitutional plan is reconsidered *de novo* and that no revised plan would be acceptable to the Muslims unless it is framed with their approval and consent.
>
> Resolved that it is the considered view of this session of the All India Muslim League that no Constitutional plan would be workable in this country or acceptable to the Muslims unless it is designed on the following basic principle, viz., that geographically contiguous units are demarcated into regions which should be so constituted with such territorial readjustments as may be necessary that the areas in which the Muslims are numerically in a majority as in the North-Western and Eastern Zones of India should be grouped to constitute 'Independent States' in which the constituent units shall be autonomous and sovereign. That adequate, effective and mandatory safeguards should be specifically provided in the Constitution for minorities in the units and in the regions for the protection of their religious, cultural, economic, political, administrative and other rights and interests in consultation with them and in other parts of India where the Mussalmans are in a minority adequate, effective and mandatory safeguards shall be specifically provided in the Constitution for them and other minorities for the protection of their religious, cultural, economic, political, administrative and other rights and interests in consultation with them.

In this connection, I reproduce below subsequent developments of the Resolution and its interpretation, as stated by Sharifuddin Pirzada[1] in his book *The Pakistan Resolution and the Historic Lahore Resolution.*

[1] Syed Sharifuddin Pirzada—One-time Private Secretary to Jinnah—Foreign Minister of Pakistan 1966–8, and at present Attorney-General of Pakistan.

Interpretation of the Resolution

The Lahore Resolution was subjected to searching analyses, and critical discussions and debates. The expression 'States' (in plural) had been used in the Resolution; some comments were made regarding the alleged ambiguity thereof, especially whether the resolution contemplated one or more Muslim States. Dr Ambedker wrote:

> 'It speaks of grouping the zones into "Independent States" in which the constituent units shall be autonomous and sovereign. The use of the terms "constituent units" indicates that what is contemplated is a Federation. If that is so then the use of the word "sovereign" as an attribute of the units is out of place. Federation of units and sovereignty of units are contradictions.'

Professor Coupland says:

> 'It could scarcely mean that the constituent units of the independent states were really to be sovereign, but that it did mean that the States were really to be sovereign.'

The Muslim League and its leaders tried to clarify the position. At the Annual Session of the Muslim League held in Madras in April 1941, the Lahore Resolution was made the creed of the Muslim League and the aims and objects of the Muslim League were amended so as to conform to this ideal. It is interesting to note that the word 'together' was added after the word 'grouped' and the amendment reads:

> 'The North, Western and Eastern zones of India shall be grouped together to constitute independent States as Muslim Free National Homelands in which the constituent units shall be autonomous and sovereign.'

However, to remove all doubts, the Muslim League Legislators' Convention in Delhi in April 1946, adopted a resolution which already indicated that Pakistan was intended to be a single sovereign State. The resolution, *inter alia*, provided:

> 'That the zones comprising Bengal and Assam in the North-East and the Punjab, North-West Frontier Province, Sind, Baluchistan in the North West of India, namely Pakistan zones where the Muslims are in a dominant majority, be constituted into a sovereign independent State.'

An authoritative interpretation of the Lahore Resolution by Quaid-i-Azam is found in the famous Gandhi-Jinnah Correspondence of September 1944. Below are given the questions raised by Mr Gandhi and their replies by the Quaid-i-Azam:

Question: Are the constituents in the two zones to constitute 'Independent States', an undefined number in each zone?

Answer: No. They will form units of Pakistan.

The Muslim League's point of view in demanding a special position for the Muslims was based on two points:

(*a*) India was not a country, but a subcontinent; and

(*b*) The Muslims might have been a 'minority' in the terms used in the Western text-book descriptions of democracy, but it was wrong to apply the minority status to them. They were 100 million as against 300 million Hindus, with a distinct entity—and as such, a nation. This reasoning did not evolve out of *a priori* concepts, but out of political realities of the subcontinent.

Subsequent to the Lahore Resolution of 1940, three attempts were made to find a compromise, in which the subcontinent could be retained as a political unit, but Muslim majority provinces were to be given some kind of autonomy.

The Cripps proposals, which were rejected both by the Congress and the Muslim League, suggested the possibility of partition, as they vested the right of secession in the provinces and permitted non-acceding provinces to form a union of their own. The proposals were found unacceptable in many details by both parties.

In the Gandhi-Jinnah meeting, the Congress offered either union on their terms, or a mutilated Pakistan, cut to the smallest size, and that too only then if all sections of the population of the provinces concerned voted for it. Even this separation was offered only after independence.

Finally, the Cabinet Mission Plan was evolved in 1946. In this plan, Indian Union was to be given a loose centre (Foreign Affairs, Defence, Communications, Currency and such Finances as would support the Centre) and three 'Groupings' were to be created—*Group A* was composed of the entire Hindu majority provinces, whereas *Groups B & C* contained the Muslim majority provinces (without any alterations in their boundaries) in the North-Western and Eastern zones. Real power was to be exercised by the Groups, not by the Centre or provinces.

The Muslim League accepted the plan, and so did the Congress. But soon, the Congress had second thoughts. They did not consider the plan binding on them after independence, and felt free to modify all provisions, including the 'Groupings' and their powers. The plan had also given the option to the Groups to

secede after ten years of the implementation of the proposed Union. The Muslim League announced its rejection of the plans on this interpretation.

I think it best to quote Abul Kalam Azad, a former President of the Congress, who himself played a role during these negotiations:

> Now happened one of those unfortunate events which changed the course of history. On 10 July, Jawaharlal held a Press Conference in Bombay in which he made a statement which in normal circumstances might have passed almost unnoticed, but in the existing atmosphere of suspicion and hatred, set in train a most unfortunate series of consequences. Some press representatives asked him whether with the passing of the Resolution by A.I.C.C., the Congress had accepted the Plan *in toto*, including the composition of the interim Government.
>
> Jawaharlal stated in reply that Congress would enter the Constituent Assembly 'completely unfettered by agreements and free to meet all situations as they arise.'
>
> Press representatives further asked if this meant that the Cabinet Mission Plan could be modified.
>
> Jawaharlal replied emphatically that the Congress had agreed only to participate in the Constituent Assembly and regarded itself free to change or modify the Cabinet Mission Plan as it thought best.
>
> I must place on record that Jawaharlal's statement was wrong. It was not correct to say that the Congress was free to modify the Plan as it pleased. We had, in fact, agreed that the Central Government would be federal. There would be the compulsory list of three Central subjects while all other subjects remained in the provincial sphere. We had further agreed that there would be the three Sections, viz., A, B, and C in which the provinces would be grouped. These matters could not be changed unilaterally by the Congress without the consent of other parties to the agreement.
>
> Mr Jinnah was thus not very happy about the outcome of the negotiations, but he had reconciled himself as there was no alternative. Jawaharlal's statement came to him as a bombshell. He immediately issued a statement that this declaration by the Congress President demanded a review of the whole situation. He accordingly asked Liaquat Ali Khan to call a meeting of the League Council and issued a statement that the Muslim League Council had accepted the Cabinet Mission Plan in Delhi as it was assured that the Congress had also accepted the scheme and that the Plan would be the basis of the future constitution of India. Now that the Congress President had declared that the Congress could change the scheme through its majority in the Constituent Assembly, this would mean that the minorities were placed at the mercy of the majority.

> The Muslim League Council met at Bombay on 27th July. In his opening speech Mr Jinnah reiterated the demand for Pakistan as the only course left open to the Muslim League. After three days' discussion the Council passed a resolution rejecting the Cabinet Mission Plan. It also decided to resort to direct action for the achievement of Pakistan.
>
> I was extremely perturbed by this new development. I saw that the scheme for which I had worked so hard was being destroyed through our own action. (*India Wins Freedom*, pp. 155–6.)

Before achieving Pakistan, the Muslim League passed through two tests. In the 1946 elections for the Central and Provincial Legislatures, the League won all the Muslim seats in the Central Assembly and 428 out of 492 Muslim seats in the Provinces. Later, when the demand for Pakistan was accepted, it faced a 'referendum' on adult franchise basis in the N.W.F.P. (Pathan area) and Sylhet on the issue whether they wanted to remain in India or join Pakistan. It won both with overwhelming majority. The Provinces, through their elected representatives, were asked to vote whether they would join Pakistan. There too, it received affirmative votes.

However, the Hindus now asked for partition of Punjab and Bengal, to detach those districts for India where the Muslims were not in majority. Even this simple logic was not followed. Gurdaspur District, which was the only link between Kashmir and the Punjab given to India, and which had Muslim majority was allotted to India. Vast areas in Punjab and Bengal where Muslims were in the majority were on consideration of 'other factors' given to India. Even in Sylhet, which had voted in a referendum for joining Pakistan, areas were parcelled out to India. This 'just' boundary demarcation was the 'achievement' of Sir Cyril Redcliffe. Muslims have suspected that there were 'other motives' rather than 'other factors' behind this kind of a Boundary Award. Their feelings about Mountbatten's role in all these deals—the cutting of Pakistan's Punjab and Bengal, the Boundary Award, etc.—however, need not be mentioned here, nor it is necessary to recall that the one person who dominated Mountbatten's 'Kitchen Cabinet' and is considered to have been the draftsman of the Partition Proposal was V. P. Menon.

S. M. KORESHI
March 1971

5

THE INSTITUTIONAL PROBLEMS OF A WEST AFRICAN ECONOMIC COMMUNITY

The establishment of an economic union embracing the two language groups in West Africa is worth embarking upon by the States in this part of the African continent. Already many of the Heads of State and Government in the region have at one time or the other spoken in favour of such a union, what is actually needed to bring the required union into existence is the will and determination of the leaders to put a finishing touch to a well conceived idea.

It is an accepted principle that one of the surest ways of attaining true political union among States is through economic integration. This was realised by the Western European countries and it was one of the main motives behind the establishment of the European Economic Community (E.E.C.) as is even revealed in a passage in the preamble to the Treaty which provides, *inter alia*, that the Contracting Parties were 'Determined to establish the foundations of an ever closer union among the European peoples'. The E.E.C. was established at that time to serve as the foundation for a Western European Federation, an idea which was seriously being discussed in Europe shortly after World War II.

The success of the E.E.C. has a great impact on the thinking of many people in Africa. One argument it has precipitated is that when economically advanced nations like the six States that teamed up in the E.E.C. could so value the necessity for economic union and Britain which did not join as foundation

member could put up as much efforts as she has now been doing for over a decade to join the union, there is no justification for the African States' continued delay in establishing their own economic unions comparable with the E.E.C.

Another factor in favour of economic unions in Africa is that the political division of the continent makes economic union a necessity before any meaningful economic development programme can be successfully embarked upon in many of the States as at present constituted. Africa has the largest number of States and territories (41 independent States excluding South Africa and the territories still under colonial rule) in comparison with Asia and Latin America and within a relatively small area. In population Africa has an average of six million inhabitants per State while in Latin America it is eleven million and in Asia 43 million.[1] The Continent is also found to be the lowest developed continent in the world.[2] In 1964, an average African had less than one-twenty-seventh of the income of an average North American and about one-tenth of his counterpart in Western Europe. These factors do not favour industrial development which Africa now needs very badly. Economists agree that factors necessary for industrial development are large markets to absorb the manufactured products, capital, managerial and entrepreneurial skills and efficient means of transport and communication. The population figures of most African States do not allow for large enough markets which perhaps is the most important factor for industrialisation. It is therefore thought that industrialisation can only be achieved through economic unions of a number of States.

The third factor is the lead given to the subject of economic union by the United Nations Economic Commission for Africa (E.C.A.). Since 1962 the E.C.A. has conducted many research studies on the question of African economic union and the idea of dividing Africa into four regions—North, East, Central and West for the purpose of founding economic union may be

[1] See *Economic Bulletin for Africa*, Vol. IV, p. 149.
[2] See tables 9 & 10 of U.N.: *Pattern of Industrial Growth 1938–58*, New York, 1960.

credited to the E.C.A. The West African region is made up of fourteen States, these are Dahomey, Gambia, Ghana, Guinea, Ivory Coast, Liberia, Mali, Mauritania, Niger, Nigeria, Senegal, Sierra Leone, Togo and Upper Volta.

The West African region is perhaps the most affected of all the four regions by the impact of imperialist division of Africa. Of the fourteen States in the region only two—Nigeria with 56 millions and Ghana with about 8 millions—have populations of over five millions. The region is also divided into two language groups—the French-speaking group and the English-speaking group. Nine of the States—all former French colonies—are French speaking while the remaining five—four of them former British colonies, together with Liberia—constitute the English-speaking group. A glaring legacy of colonial rule in the region is that the foreign trade of the States in each language group is closely linked to the former metropolitan State. The result is that there is virtually very little inter-State trade going on between the States. In fact where inter-State trade exists at all its development is hindered by currency exchange problems between the two language groups.

Another dividing obstacles in the region is the impact the E.E.C. Treaty has on the relationship of the two language groups in the region. Part IV (Articles 131–6) of the E.E.C. Treaty permits association of overseas countries and territories 'which have special relations with Belgium, France, Italy and the Netherlands'. In Annex IV, the nine French speaking States in the West African region are listed among the overseas territories entitled to association in virtue of Part IV of the Treaty. Two agreements—Yaounde I and Yaounde II—have been entered into since the pre-independent grant was made to the associated member States of E.E.C. Yaounde I was signed in July 1963 and entered into in January 1964. It was replaced by Yaounde II in 1969. Two advantages accrued to the associated members (eighteen in all in Africa) as a result of their association. The first is that their exports could enter the markets of the six at preferential rates of duty. In the 1957–8 circumstances, this might have been thought of as significant advantages but the relative value of the concessions have been whittled down by the agreements

reached between the E.E.C. and the United Kingdom and in GATT to reduce external tariffs on certain tropical products. The second advantage is the establishment of an overseas development fund capitalized at U.S. $581.25 million for the first five-year period 1957–62. There were similar provisions in the Yaounde I and II with increased capital. The fund was for financing development projects in the territories of the eighteen associated States.

The main criticism of the idea of association with the E.E.C. is that because of the disparity in economic power and the inequality in size the arrangement would offer more real advantages to the Community than to the associated States. While the Community was proceeding to integrate the economies of the Six, the associated States would represent eighteen separate markets, each in isolation and too small to have any influence on the course of the trade policy of the others or the Community. Thus, according to Dr Okigbo, close association within Part IV of the Treaty of Rome would mean absorption by the Six of the Eighteen separate markets—the Community would thereby have 'eighteen captive markets in Africa'.[1]

Many world leaders have also expressed their disfavour of the association arrangements. Sir Abubakar Tafawa Balewa, our late Prime Minister, in rejecting Britain's offer of association under Part IV in the event of Britain joining the Community made to him at the September 1962 Commonwealth Prime Ministers' Conference, argued that such association had not solved the economic problems of the countries that became associated in 1958 and suggested that the only solution would be to dismantle all preferential areas and place the preferred countries on an equal footing with other States.[2]

Dr Nkrumah, then President of Ghana, was reported as describing the association arrangement as the greatest danger to Africa. He said nobody was against the European countries coming together but argued that they had drawn Africa into their association because they had wanted to enslave her economically.[3]

[1] Okigbo, *Africa and the Common Market* (London 1966), p. 27.
[2] ibid., p. 76.
[3] *The Times* (London), 3 July 1961, p. 10.

He again denounced the whole idea in his subsequent statement to Ghana's Parliament as 'one which uses unification of Western Europe as a cloak for perpetuating colonial privileges in Africa'.[1]

The President of Uruguay was also reported as saying during his opening address to a conference of Latin American Common Market countries in July 1961 that the formation of the E.E.C. and the European Free Trade Areas (E.F.T.A.) constituted a state of near war against Latin American exports. He therefore urged the Latin American countries 'to reply to one integration with another one; to one increase of acquisitive power by internal enrichment by another; to inter-European co-operation by inter-Latin-American co-operation.'[2]

It will not be fair at this stage if mention is not made of similar discriminatory preferences granted by other Powers outside the E.E.C. The imperial preferences between the United Kingdom and the Commonwealth countries and the preferences between the United States of America and the Philippines are examples of such preferences. Under the imperial preference, imports from Commonwealth countries enjoy preferences in United Kingdom markets, and by virtue of prior international obligations arising under the Congo Basin Treaties of 1883 entered into on their behalf by Britain, Nigeria, Ghana, Kenya, Tanzania, Uganda and Aden are not to grant reciprocity to Britain. The argument against the E.E.C. association policy therefore is not that it introduces a new form of discrimination into international trade but that it seeks to put the clock back and revive policies associated with the colonial era because it has been taken for granted that discrimination of this sort was on its way out with the colonial period and was not likely to be revived. The ties of Britain and the United States with their affiliated areas were tending to be loosened rather than tightened. The E.E.C. policy, on the other hand, extends and generalises areas of discrimination of each of the participating countries and brings West Germany within the scope of that discrimination.

1 Republic of Ghana, 'State Opening of Parliament July 3, 1961', p. 6.
2 *The Observer*, London, 30 July 1961, p. 4 and see also Sidney Dell: *Trade Blocks and Common Markets*, 1963, p. 210.

The question then is what should the African States do to surmount the economic division of the continent by means of these discriminatory preferences. The simplest solution would have been for each of the countries affected to denounce the various preferences. But most of the countries affected are unwilling to do this because of the uncertainties surrounding the notion of African Union and the fear that denunciation by the States in one group may not necessarily be followed by denunciation by States in the other group and finally because many of them are not sure of what retaliatory actions the European Powers may take against them as their economies are still closely tied to their former metropolitan Powers.

One approach is for more States to negotiate for associate membership with E.E.C., the result of which would be that the E.E.C. would have to extend the preferential concessions to more States in Africa thereby reducing its value. Already there is an association agreement between the E.E.C. and the East African Economic Community (made up of Kenya, Tanzania and Uganda) which came into force on 1 January 1971. Nigeria also signed one with the Community in 1966 but it was never ratified[1]. However, there is likelihood that Nigeria may still enter into an association agreement with the E.E.C. as indication to this effect was given by Professor Vignes of the Institute of European Studies, University of Brussels during his intervention at the United Nations Regional Seminar in International Law held in Accra in January 1971 when he announced that negotiations had already resumed between the E.E.C. and Nigeria with a view to concluding an association agreement.

It is necessary to comment briefly on the pattern of the association agreements between the E.E.C. and African States. The concept of association under Part IV of the Treaty of Rome had been rejected for India, Pakistan and Ceylon. The reason for the

[1] For details of the E.E.C. and Nigeria Association Agreement see article by Dr Elias: 'The Association Agreement between the E.E.C. and the Federal Republic of Nigeria', 2 *J.W.T.L.* (1968), pp. 189–209; and for an account of its repudiation by Nigeria see *West Africa*, Saturday, 12 October 1968, p.1189 (No. 2680) and *Daily Times* (Lagos), 5 October 1968, p. 2.

rejection was that the structure of their economies and the importance of their manufacturing industries had reached a stage which the community thought would disrupt their local market. This principle was defined in Article 58(2) of Yaounde I. There, it was stated that association on terms similar to the Eighteen would be available to countries with an economic structure and production comparable to those of the Eighteen. It follows therefore that association would not be acceptable for developing countries with powerful manufacturing industries and trade predominant in manufactures and semi-manufactures. The fact that the average life span of each association agreement is five years makes it inevitable that after a few years some of the African States would no longer qualify for association.

Mr Heath, who was the British negotiator with the E.E.C. in 1962, explained at the 1962 Commonwealth Prime Ministers' Conference why association would not be possible in the cases of India, Pakistan and Ceylon. He said that the more industrialised a country was, the more difficult it became to accept its association with the Community. He said further that no associated State was likely to become sufficiently advanced industrially in the next five years to create a disruptive problem for the Community and that where an associated State becomes so industrialised the logical development would be for a bilateral trade agreement to substitute for association.[1]

Associations within Part IV of the Treaty of Rome are therefore granted to States with primitive economies and as soon as they start developing industrially they lose the right to them.

It is therefore not surprising that where association agreements exist, the products allowed into the Community are usually agricultural products and in some cases the quantities allowed into the Community are restricted to specific figures.

Five principal types of economic association are now known. These are (1) preferential area (2) free trade area (3) customs union (4) economic union and (5) common market.

---

[1] See Okigbo: op. cit., p. 76.

In a 'preferential area' the member States agree to grant one another more favourable tariff treatments than they give to third countries. This does not mean that they abolish all tarrifs on trade with one another but only that tariffs are lower than tariffs applied to imports from non-member countries. The difference between the two tariff levels is referred to as the 'margin of preference'.

In a 'free trade area' the parties agree to abolish customs duties on each other's products either at once or progressively. They further agree to remove quantitative restrictions and other barriers to trade, but each party retains autonomy in its commercial policy. The concept of the origin of goods traded in is usually one of the problems confronting members of a free trade area.

A 'customs union' is said to exist when all tariffs and other restrictions on trade among member countries are abolished and a common tariff is applied to imports from third countries. There may also be unification of excise duties throughout the union.

An 'economic union', in addition to possessing the qualities of a customs union, removes all obstacles to free internal movement of labour and capital, co-ordinates economic, financial and social policies of the participating States, and operates as a single unit in economic relations with third States. It may or may not adopt a single currency and establish a common Central Bank.

The term 'common market' is used rather loosely to convey the idea of an area within which there are no artificial barriers to free movement of goods or services. It may be limited in terms of commodity coverage as for example the Coal and Steel Community maintains a common market in coal and steel products only.

Some economists argued that a customs union will be beneficial to its member States only if on balance it is 'trade creating', and that it will be harmful if on balance it is 'trade diverting'. A union is said to be 'trade creating' if it causes a member State to replace its own high-cost production of particular commodities with imports from other members of the union which have low costs. This, they argue, is likely to occur when there is union

between countries which produce much the same range of products but differ in their comparative advantage for the various products. Before union, both countries were actually competitive but potentially complementary; after union competition gives way to specialisation: each country produces and supplies to the other members of the union products in which it has comparative advantage.

A union, on the other hand, is said to be 'trade diverting' if its effect is to cause members to switch their purchases from low-cost external sources to high cost sources within the union. Such union is said not to be beneficial, and it only causes a shift of resources into less efficient uses. It is further argued that trade creation is likely to be predominant in unions between countries where only a small proportion of their total expenditure is on external trade and where a high proportion of that external trade takes place between the countries which form the union.[1]

In the light of the above argument, it seems that very little advantage would be derived from unions of African States. This is because although the African States at present produce the same range of primary products, removal of barriers within them would not have any great redistributive effect on the pattern of production within the union. Also, their external trade is not small in relation to their domestic trade and only a very small proportion of their external trade is with other African States. Thus it is argued that the economic characteristic of the countries of Africa make the formation of customs unions between them a matter of small importance.

However, the above argument is now felt to be applicable to customs unions among developed countries. The basic argument for creation of a customs union or a preferential area among developing countries, as advanced by the United Nations Regional Economic Commissions and some economists, is that it may help to stimulate the process of economic development particularly where the countries are very small and have relatively low incomes. A customs union or preferential area, in such cases, is

[1] Hazlewood (ed.), *African Integration and Disintegration: Case Study in Economic and Political Union* (1967), pp. 5–6.

likely to be more effective in promoting new types of business activities than the separate protection of each small market area individually. It provides a more suitable condition for the creation of new productive capacity particularly in manufacturing industries. It is necessary in Africa to develop new industries behind protective tariffs and these industries will operate more efficiently and at lower cost if they are able to serve a wider common market than if they are restricted to the market of a single country.

Population is the most essential element when considering economic union. The size of the area covered by a union may in fact be a disadvantage and as such may increase transport cost if the area is sparsely populated. The Report of the East African Economic and Fiscal Commission headed by Sir J. Raisman even held the view that the size of the market in East Africa (that is Kenya, Uganda and Tanzania with a total population of about 27 million) is too small for technically efficient operations in a number of industries.[1]

It may be correct to say that now is the right time for economic integration in Africa because of the low level of industrialisation and before resources are wasted on establishment of duplicate and inefficient industries and before a vested interest in them is created in a number of countries.

Recent efforts at founding a West African Common Market

Economic co-operation agreements are not new to Africa. Already, the East Africa Common Market established by the Treaty for East African Co-operation signed at Kampala in Uganda on 6 June 1967 is a good example of a successful effort by a group of African States in the economic field. The members of the Union are Kenya, Uganda and Tanzania and already Somalia, Zambia and Ethiopia have applied for membership of the Union. If the three States are admitted and the Community itself is able to survive its present crisis created by the January 1971 *coup d'état* in Uganda, the Community would be the first union in Africa to include States from more than one language

1 HMSO. Cmnd. 1279, p. 16.

group. Hitherto, attempts at economic integration in Africa have been confined to States within a particular language group.[1]

In North Africa, the Treaty for Economic Co-operation among the Maghreb Countries (made up of Libya, Tunisia, and Morocco) which was signed in 1964 is another example of attempt at economic union in Africa. Progress is, however, very slow in that sub-region as in West Africa.

In Central Africa, efforts have also been made. The Union Douaniere Equatoriale (U.D.E.) based on the Treaties of 1959 and 1960 was the first attempt in this area. U.D.E. was made up of the Central African Republic, Congo (Brazzaville), Gabon and Chad. On 8 December 1964 the Treaty Establishing a Central African Economic and Customs Union (Union Douaniere et Economique de l'Afrique Central) (U.D.E.A.C.) was signed in Geneva, Switzerland by Cameroon, the Central African Republic, Congo Brazzaville, Gabon and Chad. Apart from Cameroon all the other members were also members of U.D.E. which ceased to exist on the coming into force of U.D.E.A.C. The Treaty itself virtually adopted the provision of U.D.E. with some necessary additions. On 2 April 1968, a Charter of the Union of Central African States (Union Economique de l'Afrique Central (U.E.A.C.) was again signed in the same region. Parties to it are Congo (Kinshasa), Chad and the Central African Republic. The objectives of U.E.A.C. are the same as the U.D.E.A.C. and it seems therefore that U.E.A.C. might have automatically terminated U.D.E.A.C.

In West Africa an attempt at economic union was made in 1959 when Dahomey, Ivory Coast, Upper Volta, Mali and Senegal (then a federation), Mauritania, and Niger formed the West African Customs Union with headquarters at Abidjan in the Ivory Coast. It seems, however, that the union has faded away as there have not been regular meetings of the member States since 1965.

The first step at evolving a West African Economic Community embracing the two language groups in West Africa took

[1] The Ghana-Guinea union of 1958 (with Mali joining later) was only on paper and cannot be regarded as creating a breakthrough.

place when the West African Conference on Economic Co-operation held in Accra, Ghana from 27 April to 4 May 1967 adopted the Articles of Association for the establishment of an Economic Community.[1] The agreement was signed by twelve of the fourteen States in the West African group. These are Dahomey, Ghana, Ivory Coast, Liberia, Mali, Mauritania, Niger, Nigeria, Senegal, Sierra Leone, Togo and Upper Volta. Only Guinea and Gambia were absent.

The objectives of the member States were set out as (*a*) promoting, through the economic co-operation of the member States, a co-ordinated and equitable development of their economies, especially in industry, agriculture, transport and communications, trade and payments, manpower, energy and natural resources; (*b*) furthering the maximum possible interchange of goods and services among its member States; (*c*) contributing to the orderly expansion of trade between the member States and the rest of the world; and (*d*) contributing to the economic development of Africa through the above stated means.[2]

Article 5(1) of the Article of Association established an Interim Council of Ministers pending the conclusion and entry into force of a Treaty for the Establishment of the West African Economic Community. Membership of the Interim Council of Ministers is open to all the fourteen member states in the 'E.C.A. West African sub-region'. The principal task assigned to the Interim Council of Ministers is the drafting of the Treaty governing the Economic Community of West Africa. The Interim Council is also empowered to determine those areas of economic development to be undertaken jointly or in common by member States, the manner and degree of such development and the requirements therefor.[3] A simple majority of member States is to form a quorum at the meetings of the Interim Council of Ministers.[4] Each member State is to have one vote and every decision, resolution and recommendation of the Interim Council is to be taken by a simple majority.[5] The Interim Council is to be

[1] For text of the Agreement see U.N. Doc. E/CN. 14/399 (24 May 1967) Annex. IV.
[2] Art. 1. [3] Art. 5(5). [4] Art. 5(8). [5] Art. 6.

automatically wound up upon entry into force of the Treaty for the Establishment of the West African Economic Community.[1]

A provision of the Agreement worth mentioning is that contained in Article 4 which stipulates that the Community, when established should have such principal organs and subsidiary bodies as may be required for the attainment of its objectives. This provision does not in any way tie the hands of the members of the Interim Council of Ministers, it merely gives them general guidance.

The first meeting of the Interim Council of Ministers was held in Dakar, Senegal from 21 to 27 November 1967. Represented at the meeting were delegates from thirteen West African States; these are Dahomey, Gambia, Ghana, Ivory Coast, Liberia, Mali, Mauritania, Niger, Nigeria, Senegal, Sierra Leone, Togo and Upper Volta. Not much was achieved at the meeting. However, agreement was reached on broad principles on which the Treaty for the Economic Community of West Africa would be based. One such principle expressed by the Council was that the ultimate goal of economic co-operation should be the achievement of economic union rather than simply a free trade area or customs union. The meeting entrusted the task of drafting the provisional secretariat and adopted a resolution requesting the provisional secretariat to convene a meeting of legal and economic experts of member States to study and consider the draft Treaty and make recommendations to the Second Session of the Interim Council of Ministers scheduled for Monrovia, Liberia not later than November 1968.

In his opening address to the meeting of the Interim Council of Ministers, President Senghor of Senegal expressed his desire that the proposed Economic Community should have the solid backing of the Heads of State in the Sub-Region just as it is in the E.E.C. where the Conference of the Heads of State takes the ultimate decision in respect of economic matters in that Community. He saw the problems that might beset the proposed Community as the complexity and diversity of customs arrangements, the association agreements with the E.E.C., the economic and

[1] Art. 7(1).

monetary co-operation with France, the economic relations with a number of other African States and other international agreements. He suggested that the Community should grapple with these problems in stages so as to be able to surmount them through mutual compromise. He further suggested that the process of economic co-operation should be conducted in stages so as to avoid tackling certain problems prematurely. The provisional headquarters of the Council was to be taken on by the host government of each session of the Council until the establishment of a permanent secretariat.

A preliminary draft Treaty[1] prepared by a legal consultant sponsored by E.C.A. and financed by the United Nations Development Programme (U.N.D.P.) was made available at the Dakar meeting of the Interim Council of Ministers to serve as a working paper during the drafting of the Treaty for the West African Economic Community.

On 24 April 1968, at the conclusion in Monrovia, Liberia, of a meeting of the Heads of State of the West African region, a Protocol Establishing the West African Regional Group was signed by representatives of nine States. These are Gambia, Ghana, Guinea, Liberia, Mali, Mauritania, Nigeria, Senegal and Upper Volta.. Article I of the Protocol established the West African Regional Group. The organs of the Group are set out as:

(*i*) a Conference of Heads of State and Government;
(*ii*) a Council of Ministers;
(*iii*) an Executive Secretariat, and subsidiary bodies

The Conference of Heads of State is to be the supreme authority of the Regional Group and it is expected to meet at ordinary session once a year. The functions of the remaining institutions were not set out in the Protocol.

However, the Accra agreement was adopted in the Protocol and the detailed provisions of the organisation were to be defined in a treaty to be concluded at a later date. At the same meeting, Liberia and Senegal were assigned the task of preparing a full treaty for the Community while Nigeria and Guinea were to prepare lists of priorities and studies.

[1] DocumentE/CN.14/WA/EC 5.

Since the signing of this Protocol in April 1968, progress has been very slow on the question of reaching an agreement on a Treaty for the Establishment of a West African Economic Community. The second meeting of the Interim Council of Ministers which was to take place before November 1968 did not meet.

The E.C.A. Sponsored Draft Treaty

The Liberian Senegalese draft Treaty is yet to be published. However, there is no doubt that the E.C.A. sponsored draft will help them a lot in their task. The E.C.A. draft provides a general outline of what the Treaty should cover and leaves out most of the issues that need to be negotiated by the drafting panel. It provides, *inter alia*, for the setting up of a Regional Development Authority to provide for development financing but leaves the statute of the Authority to be enacted in a Protocol.[1] The draft envisages three organs:

(*a*) the Council;
(*b*) the Economic Committee and
(*c*) the Secretariat.

The Council is designated as the principal organ of the Community and as such is to be responsible for implementing the provisions of the Treaty and for the supervision and co-ordinating of the activities of the Community. Membership of the Council is to be one representative from each member State and such a representative should be a Cabinet Minister or an official of equivalent rank. The Council is to meet once a year at ordinary session but may hold sessions at the request of at least three members. Its decisions are to be reached by a two-thirds majority vote of members. But resolutions and recommendations are to be adopted by simple majority.[2] It is not stated whether members referred to during voting should be the total number of members of the Council or those present and voting at meetings. Also

[1] Art. IV of the Preliminary Draft for Economic Community of West Africa and Explanation Notes. E.C.A. Doc. No. E/CN.14/WA/EC/5 of 27 October 1967.
[2] Ibid., Art. VI.

what amounts to a decision as opposed to a resolution or recommendation is not defined. These two points may lead to confusion in interpreting this particular Article.

The Economic Committee is to be made up of one representative from each member State who should be a senior technical officer. The Committee's role is to formulate recommendations or opinions for submission to the Council in matters within the scope of the Treaty.[1] The Committee is empowered to establish sub-committees on Industrial Integration and other matters. The draft is silent on the voting system in the Committee meetings. However, as the Committee's rule is formulation of recommendations and opinions—a simple majority voting should be appropriate.

The Secretariat is to be headed by an Executive Secretary-General and is to comprise such divisions as approved by the Council.[2] There is, however, no provision regarding who should appoint the Secretary-General and what should be his conditions of service.

It is a great relief that this draft has avoided the notion of involving the Heads of State in the day-to-day running of the proposed Community. This is necessary for the smooth running of the organization as more tangible results are bound to come out of a meeting of representatives of Ministries concerned with economic matters rather than a meeting of Heads of State which is bound to be more political in nature and filled with ceremonial activities. Another point in favour of the idea of delegating the executive powers to a body below the Heads of State is that there is bound to develop a body of men who will be dedicated to the cause of the organization and will be more interested in projecting its cause than anyone else.

The budget of the Community is, according to Article VII of the draft, to be considered and approved by the Council. The expenses are to be borne by member States in accordance with proportions to be agreed upon. It is also suggested that the percentage used in the African Development Bank (A.D.B.) subscription would be a possible example to be followed. Under

[1] Ibid., Art. V(4).
[2] Ibid., Art. VI(6).

this arrangement Nigeria would take 39% of the total budget while Ghana's share would be 20%; Ivory Coast 9.7%; Liberia 4.2%; Mali 3.4%; Senegal 8.9%; Togo 1.6%; Mauritania 1.7, etc.

The idea of relying on the annual contributions of member States should be encouraged only during the early years of the Community. It is necessary to establish the Community's financial independence and this can be done only by introducing a levy system as is done in some similar economic organisations. The European Coal and Steel Community is one of such organisations that have introduced the levy system. It introduced a levy of one per cent of the value of Coal and Steel output which would be used to finance its annual budget. Another example is the East African Common Market where in Article 67 a general fund is created into which a fraction of the customs and excise duties collected by the East African Customs and Excise Department is paid and the expenses of the Community is defrayed from this fund. Both in the U.D.E. and in the U.D.E.A.C. this same method is adopted. There, 3% of import duties and taxes is reserved for the cost of running the customs service.

The voting system also needs some review in view of the great disparity in both size and population among the member States in the sub-region. A sort of weighted voting similar to the system adopted by the E.E.C. is a good example that can be adopted. In the E.E.C., voting in the Council of Ministers, which is its highest decision-making body, is not on equal basis. France, Germany and Italy have four votes each while Belgium and the Netherlands have two each and Luxembourg, one.[1] However, the weighted votes are only used in cases where qualified majorities are required and in such cases at least twelve votes and in certain cases these must include the favourable votes of at least four States out of the six member States. It is thereby not possible for the big three—France, Germany and Italy, to take decisions without the concurrence of at least one of the small States. In fact, where a decision of the E.E.C. Council has any bearing on the national sovereignty of member States the voting must be unanimous. Similar provision should be considered for adoption.

[1] Article 148 of the Treaty setting up the E.E.C.

A very important provision in the E.C.A. draft is that establishing the Regional Development Authority. This authority should be devoted to financing industrial development particularly in the less developed member States where investment prospects are at present not encouraging. The idea behind economic union is to provide a larger market than individual States can provide. Industries established in the smaller States will be quite viable once their products can be marketed in all the member States of the Community. The Economic Committee should be charged with the problem of identifying areas needing allocation of industries and what type of industries should be located in a particular area. The money so invested should be recoverable with interest. This provision is very important in that the main reason behind the reluctance of some of the States in the region is that they feel they are not likely to derive much benefit from such union and that their role would be to supply the raw materials to the States that have better investment prospects. States in this class have to be convinced that they are going to derive enough benefit from economic union and the only way this can be done is through the operation of the Development Fund on the lines suggested above.

Conclusion

It seems that the views expressed by President Senghor in his opening address to the first meeting of the Interim Council of Ministers that the Conference of Heads of States should be the body capable of taking the ultimate decisions has now been incorporated into the 1968 Protocol Establishing the West African Regional Group. This, therefore, means that the draftsmen are now bound to adopt this principle in their draft. However, the Council of Ministers should be given enough powers either through delegation to it of some of the powers of the Heads of State and Government or directly from the Treaty itself so that it can take policy-making decisions. This is very necessary because while the Heads of State are expected to meet about once a year, the Council of Ministers could be made to meet more regularly—for instance quarterly or even monthly—so that they can devote enough time to the work of the Community.

Lastly, but also important is the fact that whichever organ possesses the supreme policy-making power, such body must be supra-national; that is, it must have power to take decisions directly binding upon individuals, institutions and enterprises as well as the governments of the member States and which they must carry out notwithstanding the wishes of such governments. Disputes arising from the Treaty and questions of interpretation should be handled by an *ad hoc* panel of judges to be made up of a judge from each of the member States. The nomination to the panel should be made by the Chief Justice of each State at the request of the Executive Secretary-General. Decisions of the panel should be by a simple majority vote of the judges and where there is a tie, the President of the Court, who should be elected by the panel itself, should have a casting vote. An alternative to this provision is to make use of the Commission on Mediation, Conciliation and Arbitration of the O.A.U. In no case, however, is a permanent tribunal recommended as such a panel will not have enough work to keep it busy and it will heavily increase the budget of the Community.

There is no doubt that with good planning and careful execution the proposed economic union will open a new chapter in the economic, political and social development of the West African Region. It is, therefore, a cause worth pursuing and everything should be done to make it a success.

S. A. AKINTAN
March 1971