An acutely embarrassing affair: Whitehall and the Indian-South African dispute at the United Nations (1946)

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# Abstract

Before the Second World War it was a cardinal Commonwealth principle that intra-imperial disputes must be kept away from international fora.  Yet in 1946 the not-yet-independent India complained to the United Nations about South African legislation discriminating against people of Indian origin. It did so without seeking Britain’s approval, and went on to level fierce criticism at Britain’s opposition to the UN General Assembly’s discussion of the matter.

This article explains the circumstances which led to these events; uncovers the divergent responses of the relevant British government departments – the India Office, the Dominions Office, and the Foreign Office – and shows how they were resolved; depicts the way in which Britain’s delegation to the General Assembly handled the matter; and discusses the significance and consequences of the dispute for South Africa and for Anglo-Indian relations.

# Key Words

Indians in South Africa, 1946 India-South Africa dispute, UN General Assembly, UN Charter, British Government departments, Commonwealth, Field Marshal Jan Smuts, racial discrimination, human rights

# Background

From the initial emergence of an Indian community in South Africa, European settlers sought to limit its size and encourage the idea of returning to India. The first Indians had arrived as a result of an 1860 agreement between the governments of India and the then colony of Natal for indentured Indian labourers to work on Natal sugar plantations. From 1874 they were no longer required to return to India after completing their contract, and in 1875 Lord Salisbury, the Secretary of State for India, assured Delhi that, after serving their indentures, the Indians would be ‘in all respects free men, with privileges no whit inferior to those of any other class of Her Majesty’s subjects resident in the Colonies’.[[1]](#endnote-1)

But European settlers had no intention of allowing this to happen. They wanted to get rid of or at least severely restrict the rapidly rising Indian presence[[2]](#endnote-2) – Indian traders and professionals having followed in the wake of the labourers. The Europeans therefore began introducing anti-Indian measures such as imposing a £3 annual ‘licence’ payment on Indian settlers (1895), denying them the vote (1896), requiring immigrants to pass a European language test, and placing restrictions on trade (1897). The stage was set for troubled Indian-South African relations and intermittent, but increasingly severe, crises as the Government of India felt an ongoing responsibility towards the descendants of people who had emigrated under an intergovernmental agreement.

In 1911, a year after the formation of the Union of South Africa, the Government of India terminated the indentured labour system after failing to receive satisfactory assurances regarding the treatment of Indians. Two years later the introduction of South African legislation preventing Indian immigration gave rise to Mohandas (Mahatma) Gandhi’s spectacular *satyagraha* (non-violent) campaign. In 1914 Gandhi and the then South African defence minister (and future prime minister) General Jan Christiaan Smuts settled the dispute in a spirit of compromise, and in the process formed a deep, lifelong friendship that was unaffected by their considerable political differences. Gandhi described Smuts as ‘a man of God’[[3]](#endnote-3) and gave him a pair of sandals he had made. Smuts wore them for ‘many a summer’ though he felt unworthy of standing ‘in the shoes of so great a man’.[[4]](#endnote-4)

Anti-Indian feeling re-emerged after the First World War and there was a major crisis in 1925 following the introduction of a Class Areas bill, making it unlawful for Indians to acquire town property for trading or residence except in designated areas. It was resolved at a round table conference between representatives of India and South Africa. The resultant Cape Town Agreement (1927) said that Indians who were willing to conform to ‘western standards of life’ could stay in the country; the Union Government would help them to attain such standards; and an Indian agent would be appointed to ensure effective communication between India and South Africa.[[5]](#endnote-5)

In 1938 there was a third major crisis when the Class Areas bill was revived and an ‘Interim’ Act banned the sale or hire of property and the issue of new trade licences to Indians in the province of Transvaal (where there was a small Indian community). Smuts settled it when he became Prime Minister in 1939. But anti-Indian feeling in Natal was reaching new levels, and allegations of Indian ‘penetration’ in its largest city, Durban, led in April 1943 to legislation extending the life of the Interim Act and preventing further property transfers in the province. There was uproar in India, and Dr N B Khare (an Indian member of the Council which assisted the Viceroy – the governor – in the administration of India) was spoiling for a fight.

Smuts swiftly reached agreement with the Natal Indians about licensing their occupation of buildings (the Pretoria Agreement). Unfortunately, during the passage of the requisite legislation the Natal Provincial Council attempted to restrict the *acquisition* as well as the *occupation* of property. Indian fury reached new heights. The Viceroy, Field Marshal A P Wavell, was sympathetic, but because of wartime considerations London turned a blind eye to Indian distress.

Smuts again broke the tension by blocking the Natal ordinance and setting up a commission to enquire into the lives of South African Indians. But by the time the commission reported the atmosphere in Natal had become too poisonous for reason to prevail, and Smuts’ United Party was losing ground to Dr D F Malan’s *Herenigde Nasionale* Party (HNP – the Reunited National Party – which embraced *apartheid*). The consequence was that in January 1946 Smuts told Wavell that he would introduce legislation restricting Indian rights to acquire and transfer property. Incensed, Dr Khare determined to draw international attention to the so-called ‘Ghetto Act’ (as it was known in India) by complaining to the newly-established United Nations (UN).

London was aghast but powerless to intervene directly. This was, because, first, although India had not yet achieved sovereign statehood, it was a full UN member and, as such, enjoyed the same rights and duties as every other member. It could therefore take disputes to the organisation. Second, Britain was treating India ‘as much like a Dominion Government as possible’[[6]](#endnote-6) as it hurtled towards independence. This meant India was increasingly asserting its own, independent line, particularly where its interests diverged from those of Britain or other Commonwealth members. Third, Britain had not intervened directly with South Africa on India’s behalf since 1923, and after India appointed an agent to South Africa in 1927 the latter had corresponded directly with the Union government on all matters. Any attempt to intervene now would cause grave difficulties with South Africa, especially if Britain gave the impression of favouring India.

# Attempts to avert open confrontation

Britain therefore resorted to diplomatic channels. The first move came from the Viceroy, who enjoyed a close relationship with Smuts (now a Field-Marshal). On learning of the proposed segregatory legislation Wavell privately asked him to desist, and suggested a conference. Smuts did not reply.

Wavell persevered, asking the minister in charge of Britain’s India Office (IO), Lord Pethick-Lawrence, to get the Dominions Office (DO) to urge Smuts to reconsider. Pethick-Lawrence was personally sympathetic to the Indians, but thought it unwise to press South Africa. However, he did as asked, and Britain’s high commissioner in South Africa, Sir Evelyn Baring, was contacted. Baring reported that Smuts was determined that the legislation should go through, but had privately indicated a willingness to administer it liberally.

London now tried to discourage India from pursuing the UN route. In early April it sent Delhi a telegram setting out four arguments against internationalising the dispute. The first was that as the Indians in South Africa were almost wholly South African nationals, their treatment was unquestionably a domestic matter, and it would do India no good if its complaint was dismissed by the UN. (Article 2.7 of the Charter forbade UN intervention in matters which were ‘essentially within the domestic jurisdiction’ of member states.)[[7]](#endnote-7) India was unmoved. For the point was not that India expected to win (it did not); rather, it wanted the publicity that could be gained by formally submitting the matter.

Britain’s second argument was that India’s complaint would neither stop the bill becoming law nor encourage Smuts to negotiate, and UN discussions would limit Smuts’ ability to administer the law in a liberal way. This, too, cut no ice. India’s patience had been strained beyond endurance. It had no faith in South African goodwill, and had to consider the extent to which South Africa’s actions had outraged the Indian public.

The third argument was that UN discussion might backfire on India, given its caste system and political problems with minorities. If it succeeded in overcoming the domestic jurisdiction hurdle, local minorities might also complain to the UN. However, India had already dismissed this as a remote possibility which should not stop it from going ahead. Fourth, Britain argued that internationalising the dispute would conflict with the imperial doctrine of *inter se* whereby intra-Commonwealth relations were not regarded as international, and disputes between members were kept away from international bodies. This carried even less weight. The South African issue was allegedly the chief reason many Indians wanted to leave the Commonwealth. Manifestly, the Commonwealth connection had not made Britain noticeably sympathetic to Indians overseas, and there was also anti-Indian prejudice in some of its members.[[8]](#endnote-8)

Having thus dismissed Britain’s arguments and learned in mid-May that he would soon have to relinquish his post, Khare moved swiftly. On 3 June the offensive ‘Ghetto Act’ became law. On 17 June the Viceroy’s Council decided to lodge a complaint with the UN, and this was done on 22 June. Khare rejoiced that India had acted ‘like a fully independent Government’ and struck ‘a radical blow on the very conception of the Empire’.[[9]](#endnote-9) He left office a few days later.

# India’s complaint[[10]](#endnote-10)

India gave four reasons for going to the UN. First, it had a moral responsibility for the descendants of indentured labourers who had gone to Natal at the latter’s request and under mutually agreed conditions. One of these was that former indentured labourers could settle as free men, with all the rights and privileges of citizenship. It was its duty to ensure the promise was fulfilled.

Second, the 1927 Cape Town Agreement was binding in international law and entitled India to be involved in the matter. South Africa’s failure to confer over the Ghetto Act violated the Agreement. And, although the Agreement had not been registered as a treaty with the League of Nations, the treatment of Indians in South Africa had nonetheless been transferred from the domestic to the international sphere through South Africa’s acceptance of limits on its freedom of action.

Third, denying human rights on racial grounds violated both Article 1.3 of the UN Charter (which said one of the UN's purposes was to promote and encourage ‘respect for human rights and for fundamental freedoms for all without distinction as to race’) and Article 55 (which spoke of promoting ‘universal respect for, and observance of, human rights and fundamental freedoms’).

Finally, the treatment of Indians in South Africa was not just damaging Indian-South African relations. It raised a wider political question: the Union’s undemocratic nature was ‘contrary to the democratic basis of the UN’ and was strikingly similar to ‘the Nazi principle and practice of race superiority’.

# Britain’s initial response

It was abundantly clear to Britain that any public discussion at the UN would be acutely embarrassing. As South Africa might, at best, only win by a small majority,[[11]](#endnote-11) London had to think the unthinkable: the possibility of an unfavourable outcome. There was also an immediate complication at the bureaucratic level, in that three Whitehall departments were directly involved: the IO, the DO, and the Foreign Office (FO). They were all trying to navigate along the same hazardous channel and the courses they took were nuanced by their different professional remits.

## The India Office

The IO oversaw the administration of India, which was conducted on the spot by the Viceroy. When there was a conflict between Indian and UK interests, the Viceroy’s officials tended to take ‘the view which [they] thought was right for India’[[12]](#endnote-12) and, in any case, British supervision had been hugely relaxed. India was more a client than a ward, and the IO was more than ever a representative of its interests in London. But at the same time the IO was part of the machinery of British government. Its officials had therefore to keep both these slippery balls in the air at the same time. Thus, although they were very much on India’s side, they recognised that from the imperial perspective India’s action was ‘deplorable’.[[13]](#endnote-13)

There was clearly no future in repeating the dissuasive arguments that had been put to India in April. Moreover, the Viceroy sympathised with the Indians and was committed to supporting India (although he and Pethick-Lawrence privately agreed that India’s complaint was a ‘rather empty gesture’),[[14]](#endnote-14) and the advent in India (on 4 July) of a caretaker government of officials did not affect its determination to forge ahead. Going to the UN was ‘one of the few issues on which Hindus, Muslims, Anglo-Indians and Europeans and other communities [were] united’.[[15]](#endnote-15) The dispute would have to run its UN course.

The best the IO could hope for was to ensure that India’s case was fairly stated and treated in inter-departmental discussions, and represented as much as possible in the instructions given to Britain’s delegation to the UN General Assembly. And as regards the line to be taken at the UN, the IO urged strict neutrality. However, in the inevitable bargaining about the instructions, the IO’s prospects were dim. Its competent and talented officials did their best to fight India’s corner, but they were in a ‘rather … delicate’[[16]](#endnote-16) position in Whitehall and felt disadvantaged in pressing India’s viewpoint. Moreover, as regards this particular dispute, the IO had less clout than the DO and the FO, and it could not rely on the support of the Colonial Office (CO), with whom it was often at variance over the treatment of Indians in various colonies. It was in a weak ministerial position, too. Pethick-Lawrence had excellent standing in India, but lacked a strong personality and close ministerial associations. He was hardly a match for more influential and abrasive colleagues.[[17]](#endnote-17) His junior minister, Arthur Henderson, was, according to his private secretary, not only ‘useless’ but also ‘the most contemptible individual I have ever known’.[[18]](#endnote-18)

## The Dominions Office

The DO was established in 1925, with responsibility for Britain’s relations with the self-governing dominions: Canada, Australia, South Africa, New Zealand, Newfoundland (whose dominion status was suspended in 1933), and Ireland.By 1946 the dominions were firmly established on the international stage and for the most part had cut the British apron strings. However, there remained much that was special about intra-Commonwealth diplomacy, and the DO continued to have an instinctive concern for the dominions’ happiness and well-being. In this context the DO was horrified at the prospect of Commonwealth linen being washed in public, as that would result in its members having to take sides. But it had no constructive suggestions about how to prevent that happening.

More specifically, given Malan’s growing electoral strength, it was vital to avoid conveying the ‘impression that it is the Union Govt. who are at fault & that it is for them to make some concession’.[[19]](#endnote-19) The Ghetto Act was ‘the minimum’ legislation ‘necessary to ensure … [Smuts] position in the Union’.[[20]](#endnote-20) And Smuts was not just a much-admired and widely-respected world statesman, he was also the key to maintaining South Africa’s Commonwealth connection. As Sir Hartley Shawcross, Britain’s Attorney-General (the government’s chief legal adviser), put it: ‘We regarded him as a very loyal friend of this country and were fearful … of anything which damaged his standing in South Africa’.[[21]](#endnote-21) UN discussion of India’s complaint could do just that. It might also endanger the Union’s internal peace.

For these, essentially political, reasons the DO was desperate to avoid UN involvement. If India would not withdraw, the domestic jurisdiction route went in the most promising direction. It was also the South African line, and might be endorsed by the many UN members with ‘racial Achilles heels’.[[22]](#endnote-22) But if there was a discussion, the DO was at one with the IO in wanting the British delegation to avoid expressing any opinion on the merits of the case, and (as will shortly be seen) it shared the IO’s unhappiness about using the Cape Town Agreement to buttress the legal argument.

However, in the wheeling and dealing which would occur over the instructions, the DO, like the IO, was not in a noticeably strong position. It was a relatively small, stuffy department, whose officers were generally not good enough to get into the FO and who were encumbered with pettifogging bureaucratic procedures. The position of Secretary of State for the Dominions was not highly-regarded, and the Department’s Permanent Under-Secretary (PUS – the senior official) Sir Eric Machtig, was too shy and reclusive to be an efficient Whitehall operator. Nor did the FO take the DO or the dominions very seriously, its attitude varying ‘from patronizing tolerance to mild derision’.[[23]](#endnote-23) Furthermore, the CO condescendingly regarded the DO as ‘only a post-office’.[[24]](#endnote-24) (And significantly for his standing in Whitehall – ‘where status and salary so often go together’[[25]](#endnote-25) – Machtig was paid less than other departmental heads.) In many quarters the DO’s remit would probably have made it more popular than the IO, and possibly the FO. But in the bureaucratic hierarchy it lagged well behind the latter.  Fortunately for the DO, the FO also favoured the domestic jurisdiction line.

## The Foreign Office

The FO, which was the lead department as regards Britain’s UN policy, was one of the great offices of state, towering above the IO and DO. The foreign secretaryship was a plum cabinet position and its holder, Ernest Bevin, was a combative political heavyweight who was close to Prime Minister Clement Attlee. His staff were first class, and devoted to him. And the FO legal adviser, Sir Eric Beckett, who made the running in determining Britain’s line in New York, was an unusually gifted and astute lawyer who seldom put a foot wrong.[[26]](#endnote-26) It was a very strong team, which took a hard-headed approach to British interests as an imperial power and one of the wartime ‘big three’.

To the extent which it concerned itself with South Africa and India, the sympathies of its UN (Reconstruction) Department probably veered in the South African direction. And as far as instructions to the UN delegation were concerned, the FO initially consulted only the DO. An early memorandum uncritically cited a South African government paper (commended by the DO) which was breathtakingly offensive in its references to South African Indians. *Inter alia*, the genesis of the problem was alleged to lie in ‘coolies or untouchables’ refusing to go home because there was no caste system in South Africa; and Natal Europeans were ‘in danger of being swamped’ by fecund Indians with frugal lifestyles.[[27]](#endnote-27) White civilisation in South Africa was at risk.

In this regard, therefore, the two departments were unlikely to fall out. But the FO’s view about the instructions to the British delegation to the Assembly had a different emphasis from that of the DO. Beckett was wholeheartedly behind the domestic jurisdiction argument on purely legal grounds. As an imperial power and one of the big five Britain could not remain silent, and at this early moment in the UN’s life it was vitally important that there should be a correct interpretation of the Charter provisions relating to the crucial issue of how far the organization was entitled to intervene in its members’ domestic affairs. That is to say, it should be interpreted restrictively. In strictly legal terms, it was a powerful case.

# Resurrecting the idea of a conference

Of course, the ideal outcome for all three departments would be the withdrawal of the dispute from the Assembly’s agenda, and in early August Baring reported that this was the thinking of moderate Indian leaders in South Africa. Conditions were deteriorating in Natal, where Indians were being denied loans, losing jobs, and suffering from a partial trade boycott. The leaders feared outbreaks of violence, and UN discussions would exacerbate the problem. Accordingly, they wanted the complaint withdrawn in favour of a conference.

Britain could not intervene to suggest this. Smuts, who was very confident about his prospects at the UN, would not make an overture. But in view of Baring’s message and DO reports that Indian nerves might crack, and despite the IO thinking it futile, Pethick-Lawrence telegraphed Wavell saying, ‘it was felt an effort should be made to avoid discussion in UNO’.[[28]](#endnote-28) However, the initiative would have to come from India, which would probably have to suspend the trade boycott as a condition of talks.

Wavell reminded London in some detail that they had already been down this track, and India had taken full account of the possibility of economic reprisals against Natal Indians. The Interim Government under Jawaharlal Nehru (which had taken office on 2 September) was ‘convinced that they have scored a good deal by the reference to U.N.O.’ and delegates to the General Assembly were probably ‘looking forward to making emotional speeches’.[[29]](#endnote-29) Nehru said Smuts had to make the first move and the Ghetto Act must be suspended. There was no hope of either.

The door to negotiations was clearly closed. Yet there were lingering hopes of finding a way to get the hot potato dropped. US reports suggested that India would like to withdraw its complaint, but Britain could not act on them because of its inability to intervene directly. This consideration also led the DO to reject suggestions that Attlee might offer to mediate, or that the subject might be broached over dinner when Smuts was on an about-to-occur visit to London. By October Machtig had accepted that it was doubtful India ‘would *in any circumstances* agree to cancel their request to U.N.O.’[[30]](#endnote-30) As far as Whitehall was concerned, that was that.

# Drafting the brief for the British delegation[[31]](#endnote-31)

Departmental representatives met regularly over the summer of 1946 to thrash out a cabinet paper. By 2 October, when it had finally been agreed and printed, the now lengthy document identified six factors to be taken into account in determining the instructions for the British delegation to the UN General Assembly.

First, it was ‘a new, and regrettable, departure’ for a dispute between two Commonwealth members to be taken to an international body. Second, India’s future as a Commonwealth member was uncertain and might be affected by Britain’s attitude. The Soviet bloc would support India and the discussions would ‘provide an opportunity for malicious or ill-informed attacks against administration in part of the British Colonial Empire’. If the dispute was not ruled out under Article 2.7 of the Charter, there could be future complaints about the treatment of Indians elsewhere.

Third, the Ghetto Act was ‘the work of the liberal elements headed by Field Marshal Smuts’. His defeat at the UN would benefit the Nationalists, who were ‘far less considerate of Indian welfare’. Fourth, the Nationalists were making political hay by suggesting that Britain must have approved India’s action.

Fifth, the memorandum discussed the legal considerations: whether the dispute was a matter of domestic jurisdiction, and whether it involved interpreting the provisions of the Charter relating to human rights and fundamental freedoms. And, sixth, Beckett maintained that those provisions did not constitute binding obligations.

The memorandum then identified four policy options. Policy I was to take no part in the discussions. This was hardly sustainable. It would not be consonant with Britain's leading Commonwealth role. Nor, as a great power and one of the leading framers of the Charter, could Britain remain silent in discussions about its ‘vital parts’. Britain’s interests as a colonial power were also affected, since accusations were ‘all too likely to extend beyond the immediate sphere ... to the treatment of native communities and minority groups in British territories generally’.

Policy II, which had alternative sub-sections, involved announcing that Britain would not express a view on the merits of South Africa’s action or India’s complaint, while reserving the right to comment on the interpretation of the Charter, and possibly also (briefly) on the status of the 1927 Cape Town Agreement.

Policy II(a) entailed accepting the admissibility of the dispute and then refraining from participating any further in the debate. In so doing, Britain would help ‘destroy the corner-stone of the South African defence’ and win India's support. It would also

constitute a rebuff to the liberal elements in the Union ... open the way for further cases to be brought before the Assembly in connexion with racial minorities in other parts of the world (including the British Colonial Empire), and ... it might act to the disadvantage of those countries, including the United Kingdom, where human rights are not specifically embodied in a Written Constitution.

Under Policy II(b) Britain would argue that the dispute was excluded under Article 2.7 of the Charter because almost all those discriminated against were Union nationals. If necessary, the delegation might express an inclination to share doubts about whether the Cape Town Agreement was an international obligation. And if India took its stand on the application of the human rights provisions of the Charter, Britain could point out that it had consistently maintained that there had to be an agreed bill of human rights before human rights questions could be taken to the UN. The disadvantage of Policy II(b) was that Britain’s delegates would ‘in effect, be working to destroy part of the Indian case’.

Policy III was to support India. But this

could only be justified by a decision that the United Kingdom must do everything to favour the future of the Indian relationship with this country, even to the extent of alienating South African friendship, prejudicing the development of a liberal policy towards the coloured populations in South Africa, opening the way for attacks on our administration in other parts of the world, and introducing a rigid interpretation of the human rights provisions of the Charter.

Policy IV, wholeheartedly supporting South Africa, would ‘go furthest toward alienating Indian sympathy and creating a bond’ between independent India and the Soviet bloc. However, it offered maximum support for Smuts as the leader of a friendly government that was ‘relatively liberal in its racial policy’.

The memorandum concluded that Britain should adopt Policy II(b). It should be possible to oppose India without giving offence and it was in Britain’s interests to do so. More particularly, Britain should seize the opportunity to put on record its view that until the Charter’s human rights provisions were closely defined

no one can state what precisely is meant by the terms 'human rights' and 'fundamental freedoms’. This consideration is particularly important when it is remembered that, possessing a humane and tolerant practice but no written constitutional guarantees, we in the United Kingdom must be specially on our guard against high-sounding formal texts which may not be seriously enforced even in those countries which are loudest in their support.

This was unsatisfactory from the IO point of view but the FO, and in particular its legal adviser, was in charge and the IO could hardly question Beckett’s judgment as a lawyer. On the other hand, it had made sure that India’s views were fully explained in an annex to the draft brief, as well as making clear its vehement opposition to Policy II(b), which would go down very badly in India. If, as Beckett insisted, Britain’s delegate had to speak on the legal aspects of the case, the IO wanted him to do so only if South Africa's claim of domestic jurisdiction was unlikely to succeed.

On one aspect of the brief the IO had joined the DO in opposing the FO. This concerned the claim that British policy was bolstered by the failure to register the 1927 Cape Town Agreement as a treaty with the League of Nations. The DO did not think there was the ‘remotest chance’ South Africa would raise it, and it would be ‘a little dangerous’ for Britain to do so.[[32]](#endnote-32) For although South Africa had not registered intra-Commonwealth agreements with the League, it regarded relations between Commonwealth members as the same as those with foreign states. If Britain now appeared to reject this claim, there was ‘a possibility of controversy with the Union as to its international status and even of a general discussion as to the status of the members of the Commonwealth’.[[33]](#endnote-33) If at all possible this must not happen.

The IO had three reasons for wanting to avoid using the non-registration argument. First, the Cape Town Agreement was unquestionably an international agreement in the ‘accepted sense’.[[34]](#endnote-34) Second, Britain could hardly argue that the Agreement was not a valid international agreement just because the Government of India had not registered it, for it was the UK that registered agreements on India’s behalf. Moreover ‘a large number of instruments *which we shd wish to regard as international agreements* were not so registered’.[[35]](#endnote-35) Third, the Cape Town Agreement showed that South Africa had admitted India’s special concern.

For Beckett, however, the details of the Agreement and the merits of the case were beside the point. The UN’s competence to discuss the dispute was a straightforward legal question. Non-registration of the Cape Town agreement demonstrated that it was a domestic matter. Intra-Commonwealth agreements,

even when they *were agreements* and indeed agreements of the greatest importance, were not in general registered at Geneva … because the members of the Commonwealth did not … regard them as international agreements …. The Governments of the Commonwealth regarded them as domestic or constitutional arrangements.[[36]](#endnote-36)

Beckett was a lawyers’ lawyer.

# Failing to reach agreement

The Cabinet Office asked that the memorandum be shortened and this was done by Paul Gore-Booth, the official who headed the FO’s UN department and was joint secretary to relevant cabinet committee. His resultant two-page summary recommended arguing that the dispute should be ruled out under Article 2.7 of the Charter because most South African Indians were Union nationals – the earlier Policy II(b). More generally, Britain should as far as possible keep out of the debate. This conclusion was firmly endorsed by the Dominions Secretary. But Pethick-Lawrence dissented, saying India’s view must be heard and Britain must avoid giving the impression that it was taking sides. That meant not participating in UN discussions. Even intervening to speak on the interpretation of the Charter risked an adverse reaction which might affect India’s attitude to Commonwealth membership, and push it into welcoming Soviet arms. Accordingly, Pethick-Lawrence favoured the earlier Policy I. If the Cabinet nonetheless decided otherwise, they should express the hope that in the future, as in the past, India and South Africa would confer and, in so doing, affirm India’s right to concern itself with the conditions of South African Indians. But on all occasions British delegates must maintain absolute neutrality on the dispute’s merits.

# The Cabinet decision

On 25 October, as expected, the Cabinet approved Gore-Booth’s revised memorandum on the grounds that ‘it would be impossible for the United Kingdom Government, as one of the leading members of the United Nations to dissociate themselves entirely from all discussion of this matter’. However, ‘every effort should be made to prevent the Assembly from discussing the merits of the complaint’,[[37]](#endnote-37) and British delegates should avoid doing so both in public and in private contacts. It was as much as the IO could have hoped for.

**The General Assembly**

By then the General Assembly was under way, having opened on 23 October. On 24 October, Philip Noel-Baker (the Secretary of State for Air, who in effect led the British delegation)[[38]](#endnote-38) hosted a ‘harmonious and almost hilarious lunch party’[[39]](#endnote-39) for the Indians. He then travelled to the Assembly with Mrs Vijaya Lakshmi Pandit (who headed the Indian delegation). Both made hugely successful plenary speeches, and Noel-Baker delighted Pandit by being ‘the first to come up and congratulate me even though my statement had been liberally sprinkled with … anti-imperialist jargon’.[[40]](#endnote-40)

# 24 October: the General Committee

India’s complaint, like all the items on the draft agenda, was first considered by the General Committee (also called the Special Committee), which comprised the Assembly president, the seven vice-presidents, and the chairs of the six standing committees. This was the body responsible for the conduct of Assembly business. It therefore considered which items should be discussed and by which of the Assembly’s committees, and reported its decisions to the full Assembly. (The one alternative was for a matter to be sent direct to a plenary meeting.) Once the latter had ruled on the report, substantive consideration of each approved item could begin in the relevant committee, which would submit a resolution for consideration at a plenary meeting of the Assembly.

The General Committee reached India’s complaint on the evening of 24 October (before the UK Cabinet had approved the delegation’s instructions). The British hoped to avoid any discussion of the dispute, and advised Smuts to keep his powder dry for the substantive committee stage. But just as the item was on the point of being nodded through, Smuts objected that the reference to ‘Indian nationals in the Union’ was wrong. The Secretary-General said the wording would be changed, but Smuts demanded that the dispute be deleted from the agenda as it concerned a matter that was within the Union’s domestic jurisdiction.

This prompted a two-and-a-half hour debate of precisely the kind that the British wanted to avoid. It ‘quickly showed signs of getting out of hand’[[41]](#endnote-41) as the Soviets strongly supported India’s contention that the dispute was an important political question involving the breach of an international agreement, which had led to virtual economic warfare. It looked as though they would win the day and the dispute would be sent to the First (Political) Committee, as every delegate supported India and no-one spoke up for South Africa. Feeling obliged to intervene, Shawcross suggested asking the Sixth (Legal) Committee whether the dispute was *ultra vires*. After a hard fight, he succeeded in ensuring the adoption of an American proposal that it be considered jointly by both the First (Political) and Sixth (Legal) Committees. The Indians were jubilant: the merits of their complaint would be discussed and Assembly opinion seemed to favour them.

# 29 October: the British delegates’ misgivings

In view of this the British delegation realised that, politically speaking, their instructions to take no view on the merits would place them in an awkward and exposed position. Shawcross believed the legal argument he was propounding was unsound, given the inclusion of the word ‘essentially’ in Article 2.7 and the reference, in Article 55, to ‘fundamental freedom for all without distinction as to race’.[[42]](#endnote-42) Most of the ‘leading members’ of the Sixth (Legal) Committee shared his view. The delegation therefore warned London that it must expect defeat ‘and that this might create an unfortunate impression’. Not only that, there would probably be ‘very powerful’ pressure to treat the dispute as a test case of the reality of the Charter’s human rights provisions.[[43]](#endnote-43)

One partial escape route from this looming dilemma would be for the Assembly to ask the International Court of Justice (ICJ) for an advisory opinion on the applicability of Article 2.7. This would not head off debate on the substance of the complaint, as a proposal to go to the ICJ would attract wide-ranging political arguments. Nonetheless, if carried, it would remove the dispute from the UN’s political spotlight at least for a while; and if the Court’s decision went against South Africa it could contribute to an eventual solution inasmuch as it might increase the pressure on the Union to settle and climb down gracefully. A telegram was duly despatched to London on 29 October, reporting developments and the delegation’s latest thoughts, and asking for further instructions.

Meanwhile, the Assembly’s consideration of the General Committee’s report was imminent. Smuts had originally intended at this stage to ask the Assembly to reject its recommendation and dismiss the Indian complaint. This would have prompted a long and acrimonious debate. The British persuaded Smuts and Pandit that it would be better to have the matter first discussed in committee and the President accordingly announced that the parties had agreed that the dispute should be discussed in joint sessions of the First (Political) and Sixth (Legal) Committees (subsequently referred to as the Joint Committee).

Nonetheless, by now the British delegation was getting ‘very worried’.[[44]](#endnote-44) Bob Curson (the IO delegate) was warning London that trouble was brewing: the Indians were determined to air their grievances thoroughly and obtain ‘a prestige victory’.[[45]](#endnote-45) They felt entitled to Britain’s support, but expected neutrality, and would ‘certainly be very bitter indeed’ if Britain seemed to be supporting South Africa.[[46]](#endnote-46) The British turned to the friendly Canadians and wondered if they could persuade the disputants to enter into direct discussions. However, Ottawa would not put Canada’s head above the parapet for fear of drawing attention to British Columbia’s discrimination against Asians.[[47]](#endnote-47)

# 4 November: the Cabinet reconsiders the delegation’s instructions

Sir Stafford Cripps, the influential President of the Board of Trade, was ‘very disturbed’[[48]](#endnote-48) by the reports from New York and called for British policy to be reconsidered. The FO disagreed, telling Attlee that it had always recognised that India might press its case. The Dominions Secretary, Lord Addison, supported the FO.

When the Cabinet considered the matter on 4 November. Pethick-Lawrence emphasised the strength of feeling in India and the ‘serious repercussions’ if Britain’s delegates were not neutral on both the admissibility and the merits of the dispute. They should take no part in UN discussions. Addison retorted that it was important for the Commonwealth to have India’s complaint dismissed or referred to the ICJ. Other ministers agreed. As the Cabinet minutes put it, ‘The point at issue was not the merits of the Indian case … but the expediency of its being discussed’. The delegation ‘should be made aware of the probable repercussions’ of setting an unfortunate precedent for UN intervention in domestic matters:

Once such intervention began, it would be difficult to set limits to it. Other Governments would see the weight of this argument .... the United States Government would hardly welcome the discussion by the United Nations of the rights of negroes in the United States. And in India itself there were questions of differential treatment between different communities which the Government of India would not wish to have discussed by the General Assembly.

The Cabinet accordingly reaffirmed its earlier decision that British delegates ‘should express no opinion on the merits of the question, but should support the view that this was a matter of domestic jurisdiction’. If this was not accepted, they should support a reference to the ICJ.[[49]](#endnote-49)

Naturally, the delegation was unhappy with this response, and on 14 November it again asked the Cabinet to reconsider the matter. Shawcross fundamentally disagreed with Beckett’s contention that the human rights provisions of the Charter could not be invoked until they had been clearly defined. It was, he said, ‘really beyond argument and is expressly conceded by Smuts that there are certain fundamental human rights which are universally recognised and in regard to which a right of humanitarian intervention has been claimed to exist in international law apart from the charter’.[[50]](#endnote-50) In response, Beckett reiterated his disagreement with Shawcross:

no doubt the Delegation are right in saying that certain forms of treatment even of nationals constitute a breach of an international obligation and … the extermination of a section of the population falls into this category … where you have something of this kind there is nothing in the Charter to prevent such an issue being raised and the domestic jurisdiction clause would not exclude it. For the moment, however, there is only really international authority for something in the nature of crimes against humanity and unless and until we know the meaning of human rights and fundamental freedoms in the Charter there is nothing to bring any form of discrimination as between nationals outside the domestic jurisdiction clause.[[51]](#endnote-51)

The outcome of the Cabinet discussion on 18 November was predictable. After summarising its 4 November decision, the minutes say the Cabinet took note of the delegation’s report that a majority of delegations would probably support a request for an ICJ ruling on the admissibility of the dispute, that Smuts might not ask for more, and that the delegation proposed to support such a proposal. After the meeting, the FO told the delegation that it had to obtain Smuts’ approval for such a course, and it was not itself to take any initiative in that direction. But by then it was beginning to look as if Britain was whistling into the wind: further soundings had revealed the absence of the anticipated support for an advisory opinion, and that the proposal might even fail.

# The Joint Committee 21-30 November

India’s complaint was discussed at six Joint Committee meetings between 21 and 30 November. Mrs. Pandit opened by moving a strongly-worded resolution criticising South Africa. Smuts congratulated her on her speech, rejected India’s complaint, and asked for an advisory opinion on the admissibility of the dispute. He was supported by Heaton Nicholls, his high commissioner in London, who offended many with a badly-argued and poorly-delivered speech. Mrs. Pandit, on the other hand, was cheered, and speaker after speaker supported her during what became a long and bitter debate on human rights.

Because the Indians performed so well, and the South Africans handled their case so badly, Shawcross had to play a larger than anticipated role in the debate and the British lobbied hard for votes. By 27 November Shawcross felt it would be safe to propose amending the Indian draft resolution so that the General Assembly decision would be postponed until after the ICJ had determined what, if any, international obligation had been broken by South Africa. The Indians were hurt and angry by Shawcross’ action and the Indian delegation’s report on the Assembly described him as having ‘perfervidely’ supported the Union.[[52]](#endnote-52)

As the Committee reached the end of its work, it was clear that the vote would be close. South Africa withdrew its resolution in favour of a British-US-Swedish one asking the ICJ for an advisory opinion as to whether India’s complaint touched on something that was essentially within the Union’s domestic jurisdiction. India, meanwhile, sought to attract more votes by withdrawing its resolution in favour of a more conciliatory French-Mexican one.

In the event the British-US-Swedish resolution was never voted on. After a heated and confused discussion the French-Mexican resolution was put to the vote and obtained a small majority.[[53]](#endnote-53)TheUkrainian Foreign Minister, who was in the chair, then ruled that it was unnecessary to vote on any other resolutions. Pandit shook hands with Smuts and condemned the British for betraying India.

# The plenary vote, 8 December[[54]](#endnote-54)

The Indians were ‘in high fettle’[[55]](#endnote-55) as the relevant plenary meeting approached, and the IO was not discomforted with the way things were working out. But although the DO and FO disliked the French-Mexican resolution, the delegation decided not to table an amendment or a separate resolution. Nor would the Americans or anyone else take a lead, so it was left to Smuts to table an amendment seeking an advisory opinion from the ICJ. (Bevin had persuaded Smuts to stay in New York for the plenary in order to increase the chances of success.)

Meanwhile, everyone was lobbying furiously. The Americans agreed to speak second in favour of Smuts’ amendment and, together with the British and South Africans persuaded the Netherlands, Belgium, New Zealand, and Argentina to support a reference to the Court. And, *inter alia*, the Indians won over France, China, the Communist bloc, Mexico, the Philippines, and the Arab states.

The plenary debate on the joint committee’s recommendation took place over 11 hours on 7 and 8 December. It started off in ‘[c]onditions [that] were just about as favourable for the South Africans as they could have hoped’, and the Belgian chairman was ‘helpfulness itself’.[[56]](#endnote-56) Smuts tabled his amendment. The US and El Salvador supported him. Then it was Pandit's turn. In a loudly applauded speech,

She ‘spurned legal arguments’ and demanded a verdict on a proven violation of the Charter. Over the years India had ‘appealed, complained, protested, sought compromises and agreements, and finally has been forced into retaliation and to bring this matter before the bar of world opinion’. It was now too late to argue about domestic jurisdiction. Unless allegiance to the Charter was a mockery they must decide this ‘test case’ and respond to the ‘[m]illions of voiceless people who, because of their creed or color,]sic.] have been relegated to positions of inferiority, [who] are looking to us for justice .... [who] have been moved to intense indignation at all forms of racial discrimination which stands focused on the problem of South Africa’.

During her speech Pandit had appealed for British support, but so had Smuts, and Shawcross felt impelled to respond to the latter’s request. This was because the mood of the Assembly was ‘overwhelmingly in favour of India’ and at first it looked as if every speaker would oppose Smuts’ amendment. Shawcross’ speech was brief, eloquent and warmly-applauded, but he antagonised Pandit by referring to ‘Indian politicians, so unhappily divided by communal strife and discrimination in their own country’ and by warning against ‘appeals to the emotions by practised orators’.

However, Mrs. Pandit held the Assembly in the palm of her hand and there was ‘hectic applause from the galleries and subdued clapping from the floor’ when she accused Shawcross

of bad taste in referring ‘with evident and unconcerned glee’ to differences in India which the British were responsible for fomenting. ‘[N]either aggressive nor humble,’ but wiping a fortuitous tear from her eye … she made a final plea to the emotions and conscience of those ‘who held the political fate of Asia and indeed the world in their grasp’.

By the end of the ‘long and sometimes emotional debate’[[57]](#endnote-57) it was clear India would win a majority vote, but it was doubtful whether there would be the necessary two-thirds majority if the Assembly determined (by a simple majority vote) that the treatment of Indians in South Africa was an ‘important question’ (Article 18.2 and 18.3 of the Charter). Voting at South Africa’s request, the Assembly did so decide. It then voted on, and rejected, South Africa’s amendment seeking an advisory opinion. It was midnight and the atmosphere was tense when the Assembly voted on the French-Mexican resolution. It was done openly and on an alphabetical basis, the first state to vote being chosen randomly. In calculating the requisite two-thirds figure abstentions were not counted – so that only at the end of the voting procedure would the result be known. India won by the barest majority: 32-15 with 7 abstentions. Pandemonium broke out.

As regards individual votes, Australia’s is worth noting. Australia had been primarily responsible for inserting Article 2.7 into the Charter and there was an ‘audible gasp’[[58]](#endnote-58) when, it abstained early on in response to a ‘strong’ Indian request.[[59]](#endnote-59) it abstained. The British thought this had encouraged others to follow suit, and the South Africans thought it had conclusively determined the outcome. However, Canada and New Zealand, voted with Britain (the leader of New Zealand’s delegation expressing horror at the way in which India had whipped up emotions: ‘It was a “disgraceful exhibition of hamacting [*sic*.]’’ and an especially painful one coming from India which hardly had a perfect human rights record’).[[60]](#endnote-60)

# Impact

The dispute had indeed been an emotional issue, especially for India. It believed it had right on its side and that its ‘dignity and prestige’[[61]](#endnote-61) were at stake. It was therefore very cross that Britain had – as India saw it – taken sides against it. Several additional factors exacerbated the tension. Britain was ‘one of the main stumbling blocks’[[62]](#endnote-62) on two other issues that mattered a lot to India (South-West Africa and trusteeship). The Indians (unjustifiably) felt in some way let down by Britain when they were soundly beaten in elections to the Security Council. And Indian worries about the deteriorating situation at home made them suspicious of British intentions regarding the transfer of power. There had also been personality clashes. Shawcross was arrogant, brilliant, ‘tended to shoot, rhetorically speaking, from the hip’[[63]](#endnote-63) and went all-out to win his cases. Pandit was hot-tempered, dramatic, ‘highly temperamental’,[[64]](#endnote-64) and deployed her theatrical skills to great effect, not least in her attacks on Shawcross.

Meanwhile Krishna Menon, the London-based Secretary of the India League (which campaigned for Indian independence) was a generally baleful influence. He had some saving graces, being idealistic and ‘very cordial … when it suited his own ends’.[[65]](#endnote-65) But he was also ‘congenitally’ dishonest; ‘unscrupulous, egotistical and unreliable’; and ‘an infernal nuisance’.[[66]](#endnote-66) Even India’s British friends, Noel-Baker and Curson, described him as ‘pathological’ and ‘an evil influence, consumed with an overwhelming bitterness’.[[67]](#endnote-67)

Unsurprisingly, the irritation arising from all these factors rubbed off on some British delegates, especially those from the DO – the junior minister Arthur Bottomley and two officials, Ben Cockram and Geoffrey Shannon. Their reactions also reflected the DO’s support for Smuts; its antipathy to Krishna Menon; irritation with the Indians (who were ‘very tiresome on occasion’);[[68]](#endnote-68) sheer weariness;[[69]](#endnote-69) and lack of calibre (Bottomley, while likeable, was ‘no great intellect’).[[70]](#endnote-70) Overall they appeared not to have tried to understand or establish good relations with the Indians – perhaps because it was generally assumed that that independent India would quit the Commonwealth. Further, in their report on the Assembly the two officials made dubious assertions about the Indians being uncooperative and throwing ‘taunts and jibes‘.[[71]](#endnote-71) (It is hardly surprising that the 1947 merger of the IO and DO into a new Commonwealth Relations Office was dismal, with ‘no attempt at integration, very little at co-ordination and [with] differences … resolved only at the ministerial level’.)[[72]](#endnote-72)

But all this needs to be put in context. Relations between the Indian and UK delegates were on the whole ‘very cordial’, ‘friendly’ and ‘co-operative’.[[73]](#endnote-73) They were keen to get on, and did so. The Indians, who had had a very difficult journey to New York, appreciated British assistance with travel arrangements at a time of transport shortages. The British invited them to Commonwealth discussions, and helped them ‘find their bearings’.[[74]](#endnote-74) For their part, the Indians made it clear at the outset ‘that they were out to function and co-operate to the fullest possible extent as one of the Commonwealth group’. [[75]](#endnote-75) And although they sometimes demonstrated independent-mindedness by taking a different course from the UK, they were generally cooperative on issues where they did not clash with Britain.

Personal qualities were also important in keeping things on an even keel. Noel-Baker, Curson, and K P S Menon (a popular and distinguished Indian delegate) contributed to the maintenance of very good personal relations throughout. Noel-Baker, who understood Indians ‘better than most’[[76]](#endnote-76) and appreciated the political importance of the dispute for them, cultivated Pandit and, together with Curson, made sure at every stage that she knew in advance and in detail the reasons ‘for our qualified support of General Smuts’.[[77]](#endnote-77) And Curson was the perfect liaison person. He knew the dispute from every Whitehall angle; understood the UN; and got on so well with the Indians that they spoke extremely frankly in his presence.

However, the FO feared India might hold Britain’s attitude against her in the future, a fear reinforced by a senior Indian official saying Britain’s support for South Africa would cast a long shadow over Anglo-Indian relations. But the UN clashes made no ‘deep or lasting impression in India’,[[78]](#endnote-78) and by June 1947 there was little interest there in the dispute. Nor did the Indians bear lingering personal grudges. Nehru felt no bitterness; Pandit spoke well of Shawcross in her memoirs; and the Indian delegate and jurist, M C Chagla, pointed out that ‘wordy duels’ and ‘vituperative language’ are part and parcel of courtroom debates and did not infringe on friendships. Though ‘outwardly aggressive’, Shawcross ‘was a friendly soul’, he said.[[79]](#endnote-79) Moreover, Pandit's later high commissionership in London was her most enjoyable assignment, and even Krishna Menon formed a firm friendship with a South African high commissioner in London.[[80]](#endnote-80)

Furthermore, the Indian and South African delegates managed ‘to some extent’[[81]](#endnote-81) to maintain good relations, and the Indians had excellent relations with Smuts. Nehru had reminded the delegation that they were the inheritors of Mahatma Gandhi’s high ethical and moral traditions, and Gandhi had told Pandit that her ‘mission would be a failure’ if she lost Smuts’ goodwill.[[82]](#endnote-82) Gandhi would not sacrifice ‘his friendship and respect for the sake of gaining a majority vote’. So she shook his hand after each debate, and after the final vote she asked him to forgive her if she had ‘said anything which was not up to the high standard Gandhiji had imposed on me’.[[83]](#endnote-83)

# Liberalism?

However, the dispute proved unfortunate for Smuts in several ways. First, he had shown himself to be a poor tactician. He was responsible for South Africa’s case being ‘badly represented’;[[84]](#endnote-84) underestimated the Indians; did not listen to advice; and was ‘completely out of his element’ in the General Assembly.[[85]](#endnote-85) He had witnessed but not heeded the humanitarian aspect of the 1945 San Francisco conference which established the UN, and dismissed the Assembly’s bark as harmless, thinking his personal prestige and his country’s international standing would protect the Union from serious criticism.[[86]](#endnote-86) Not so. It was a sorry performance.

Second, in terms of domestic politics it was a considerable setback, as the outcome provided a good deal of ammunition for his political opponents. Smuts tried to counter this by making some very modest reforms to South Africa’s racial laws. But this failed to have the desired effect and his United Party was deemed to have lost an important by-election ‘mainly because of Smuts’s alleged liberal attitude towards Indians’.[[87]](#endnote-87) The 1948 general election ushered in a long period of Nationalist rule and, with it, the application of the system of racial *apartheid* and South Africa’s growing international isolation.

Third, the UN defeat was in effect also a defeat for the Smuts version of liberal internationalism, with its emphasis on the values of western Christian civilisation and white supremacy. Evidently, this was no longer internationally acceptable. Smuts and his ideas had become ‘an anachronism’.[[88]](#endnote-88) And Britain, by putting too much faith in Smuts and effectively becoming South Africa’s cheerleader, failed to uphold liberal values and ideals.

But although it was not then apparent, Britain had set in motion its helter-skelter withdrawal from empire. As Lord Beloff put it, ‘Once the Indian Empire was given up there seemed little point in hanging on to the remainder. If there was threat of trouble, there was no point at all*.*’[[89]](#endnote-89) The ‘modern creed’[[90]](#endnote-90) of liberal democracy was a powerful spur to the process, as was the CO’s ‘very liberal’ attitude to independence and the arrival in the CO of a post-war generation of idealistic and slightly ‘pink’ officials who positively looked forward to dismantling the empire. [[91]](#endnote-91)

Furthermore, the 1946 dispute contributed to a rather different kind of liberalism being introduced onto the international stage. For in effect the UN had spoken out in favour of a liberal interpretation of Article 2.7 and, more generally, put racial discrimination of a formal kind on the international agenda. This proved to be the thin end of a wedge into the walls of state exclusivity. For one of the characteristics of the second half of the twentieth century was the gradually widening attention the international community paid to how states treated their citizens – which was in marked contrast to the practice of the previous 50 years. Thus in 1948 the UN adopted the Universal Declaration of Human Rights. The Declaration had no legal force. And it was the product of the events of the Second World War, not the Indian-South African dispute. But the latter had contributed to its tone, helping to create an environment in which matters which had earlier been firmly beyond international concern could now be cautiously introduced. Moreover, the Declaration was followed in 1966 by two covenants on human rights: one on civil and political rights and the other on economic, social, and cultural rights. Both came into force ten years later, and by the end of the century had been ratified by most of the world’s states.[[92]](#endnote-92) They had no enforcement provisions, but alleged breaches could be highlighted and possibly cause embarrassment. Several regional instruments aiming at the protection of human rights were also established. The milieu of international discourse was slowly amended in a liberal direction. The same phenomenon had occurred within many states by the end of the century, and despite some faltering, it remains a powerful ideal.

Not too much must be made of all this. Paper announcements or even promises may not much influence the world’s social fabric, but the atmosphere surrounding the treatment of human beings changed. This development cannot be attributed to the way in which the Indian-South African dispute was dealt with in 1946. But the UN’s response to it was one of the tributaries which converged to add a liberal hue to international politics. In that sense the dispute is a historical landmark.

# Acknowledgements

When I first researched this topic, I was assisted by the Nuffield Foundation; the National Archives of India, the Nehru Memorial Library, the India Office Library and Records, the British National Archives and the libraries of Keele University, Central Manchester and the FCO. Individuals who helped me included Ambassadors CS Jha and Khub Chand; Professors Sarvepalli Gopal, Partha Sarathi Gupta, KP Saksena and Jack Spence; Drs TG Ramamurthy and Panigrahi; Mr BR Curson and Mr Kenneth East. This article additionally benefited from: research in the South African National Archives, the UN Archives in New York and the US National Archives; online documents; and correspondence, conversations and interviews with, and material provided by, Lords Beloff and Shawcross, Drs FD Tothill and Peter Henshaw, Sir Brian Barder and Lady Barder, Sir William Dale, Mr Arthur Menzies, Mr Geoff Murray, Mr Bill Peters and Mr Basil Robinson. Dr Tothill also made valuable comments on earlier drafts. Professor Alan James remains my keenest and most constructive critic. I thank them all.

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1. # Endnotes

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2. In 1870, Natal’s Indian population was 6,448; in 1884 it was 27,000, in 1891 it was 35,00; and in the 1890s the Indians outnumbered Europeans: see *ibid*. 178-9. The Transvaal also introduced tough anti- Indian legislation but most South African Indians lived in Natal where, in 1946, there were 233,000 Europeans and 228,000 Indians. [↑](#endnote-ref-2)
3. Vijaya Lakshmi Pandit: *The Scope of Happiness. A Personal Memoir* (London: Weidenfeld & Nicolson, 1979) 206. [↑](#endnote-ref-3)
4. Smuts quoted in Peter Beinart, ‘The Day my Father lost his Country’, *The Atlantic*, 16 Dec. 2016, http://tinyurl.com/he2kcjj. Dr FD Tothill alerted me to this. [↑](#endnote-ref-4)
5. Agreed communiqué announcing Cape Town Agreement, Annex V to FO draft memorandum for Cabinet Steering Committee on International Organisations, IOC (S)(46), 2 Oct. 1946, London: India Office Records (IOR), L/E/9/1403. [↑](#endnote-ref-5)
6. Cabinet Delegation and Wavell top secret telegram S/3 to Attlee, 4 May 1946, IOR, L/P&J/5/337. [↑](#endnote-ref-6)
7. The only exception is when the UN is taking enforcement action under Chapter VII of the Charter. [↑](#endnote-ref-7)
8. Indians had grievances in East Africa and Ceylon, Australia had a ‘white’ immigration policy, and the Canadian province of British Columbia discriminated against Asians. [↑](#endnote-ref-8)
9. N B Khare, *My Political Memoirs or Autobiography* (Nagppur: Nakshatra Press, c. 1959) 183. [↑](#endnote-ref-9)
10. For the sources of quotations in this section, and a longer discussion of India’s case, see Lorna Lloyd, ‘“A Most Auspicious Beginning’: The 1946 United Nations General Assembly and the Question of the Treatment of Indians in South Africa”, *Review of International Studies*, 16(2) 1990, 133-5. On the background to the dispute, see Lorna Lloyd, ‘“A Family Quarrel”: The Development of the Dispute over Indians in South Africa’, *The* *Historical Journal*, 34 (3) 1991, 703-25. [↑](#endnote-ref-10)
11. Paul Gore-Booth (Head of Reconstruction Department, FO) draft memorandum, 24 Jul. 1946, Kew, The National Archives (TNA), UN1691/432/78 FO371/59785. [↑](#endnote-ref-11)
12. Humphrey Trevelyan, *The India we Left* (London: Macmillan, 1972) 246. [↑](#endnote-ref-12)
13. G H Baxter (senior official, IO) minute, 3 Jul.1946, IOR, L/E/9/1403 [↑](#endnote-ref-13)
14. Wavell to Pethick-Lawrence, 8 Jul., Pethick-Lawrence to Wavell, 25 Jul. 1946, IOR, L/PO/474. [↑](#endnote-ref-14)
15. R N Gilchrist (IO) minute for J.P. Gibson (Head of Political Department), 29 Jun. 1946, IOR, L/E/9/1403. [↑](#endnote-ref-15)
16. Gibson minute, 29 Jul. 1946, IOR L/E/9/1403. [↑](#endnote-ref-16)
17. Lord Shawcross interview, 1990. [↑](#endnote-ref-17)
18. Kenneth East, *A Part of All that I Have Met* (unpublished memoir 1988); private communications and conversations 1987, 1988. [↑](#endnote-ref-18)
19. Machtig minute, 1 Aug. 1946, TNA, DO121/107. [↑](#endnote-ref-19)
20. FO draft memorandum, 2 Oct. 1946. [↑](#endnote-ref-20)
21. Lord Shawcross to author, 19 Feb. 1990. [↑](#endnote-ref-21)
22. Gilchrist minute, 29 Jun.1946. [↑](#endnote-ref-22)
23. Joe Garner, *The Commonwealth Office 1925-68* (London: Heinemann, 1978) 142. Brian Barder conversation (1999). Interviews: Arthur Menzies (1998), Bill Peters (1998), Basil Robinson (1998). [↑](#endnote-ref-23)
24. Sir Cosmo Parkinson, *The Colonial Office from Within* (London: Faber & Faber, 1947) 96. [↑](#endnote-ref-24)
25. J A Cross, ‘Whitehall and the Commonwealth’, *Journal of Commonwealth Political Studies*, 2(3), 1964, 201. [↑](#endnote-ref-25)
26. Sir Gerald Fitzmaurice, ‘Sir Eric Beckett’, *The Times*, 14 Sep. 1966. Beckett was probably ‘the most gifted person ever to have held the post’. See also G G Fitzmaurice, and F A Vallat, ‘Sir (William) Eric Beckett, KCMG, QC (1896-1966)’, *International and Comparative Law Quarterly*, 17(2), 1968, 267-326. [↑](#endnote-ref-26)
27. *South Africa’s ‘Indian problem’. Background to the new legislation*, Public Relations Officer, South Africa House London, 10 Apr. 1946. [↑](#endnote-ref-27)
28. Pethick-Lawrence telegram 15024 to Wavell. [↑](#endnote-ref-28)
29. Wavell telegram to Pethick-Lawrence, private & secret, 15 Oct. 1946 in Nicholas Mansergh and Penderel Moon (eds), *The Transfer of Power 1942-47,* vol. 8, *The Interim Government* (London: HMSO, 1979) document 469. [↑](#endnote-ref-29)
30. Machtig to Monteath (PUS, IO), secret & confidential, 2 Oct. 1946, TNA, DO35/1290. [↑](#endnote-ref-30)
31. Unless otherwise indicated, quotations in this section are from the FO draft memorandum, 2 Oct. 1946. [↑](#endnote-ref-31)
32. Charles Dixon (Constitutional Adviser, DO) minute, 1 Aug 1946, TNA, DO35/1122/G715/36. [↑](#endnote-ref-32)
33. Dixon to Berkeley (FO), 13 Sep. 1946, TNA, DO121/107. [↑](#endnote-ref-33)
34. Curson (IO) minute, 13 Sep. 1946, IOR, L/E/9/IOR, L/E/9/1403. [↑](#endnote-ref-34)
35. Gore-Booth minute, 9 Sep. 1946, TNA, UN2388/432/78 FO371/59787. [↑](#endnote-ref-35)
36. Beckett minute 10 Sep. 1946, IOR L/E/9/1403. On the doctrine of *inter-se*, whereby Britain insisted that intra-imperial relations were of a special, non-international nature and, accordingly, were not governed by international law, see J E S Fawcett, *The British Commonwealth in International Law* (London: Stevens & Sons, 1963) 144-207. [↑](#endnote-ref-36)
37. CM9(46), minute 3, <http://filestore.nationalarchives.gov.uk/pdfs/large/cab-128-6.pdf>. [↑](#endnote-ref-37)
38. See *The Memoirs of Lord Glaldwyn* (London: Weidenfeld & Nicolson, 1972) 194, [↑](#endnote-ref-38)
39. Noel-Baker to Arthur Bottomley (Parliamentary Under-Secretary, DO), 7 Mar. 1947, Noel-Baker papers, Churchill College Cambridge. [↑](#endnote-ref-39)
40. Pandit, *Scope*, 213. [↑](#endnote-ref-40)
41. Ben Cockram (DO official attached to British embassy Washington) to Sir John Stephenson (senior official, DO), 30 Oct. 1946, TNA, UN3736/432/78 FO371/59794. [↑](#endnote-ref-41)
42. UK delegation telegram 1395, 1 Nov. 1946, TNA, UN3325/432/78 FO371/59792. Curson said Shawcross never actually said that he or his government considered India’s complaint inadmissible under Article 2.7. See ‘Summary of discussions’, 27 Jun. 1947, IOR, L/E/9/1405. [↑](#endnote-ref-42)
43. UK delegation telegram 1332, 29 Oct. 1946, TNA, DO 121/107. [↑](#endnote-ref-43)
44. Hugh Keenleyside memorandum, “The India and South Africa Problem”, enclosed in New York telegram 83, 1 Nov. 1946. Document 862 in Donald M Page (ed), *Documents on Canadian External Relations,* vol. 12, *1946*. http://epe.lac-bac.gc.ca/100/206/301/faitc-aecic/history/2013-05-03/www.international.gc.ca/department/history-histoire/dcer/details-en.asp@intRefid=12211. [↑](#endnote-ref-44)
45. Shawcross during UK delegation meeting, 3 Nov. 1946, TNA, UN3640/434/78 FO371/59974. [↑](#endnote-ref-45)
46. Curson telegram 1395 to R M J Harris (Pethick-Lawrence’s Private Secretary), private & personal, 3 Nov. 1946, IOR, L/E/9/1403. [↑](#endnote-ref-46)
47. On Canada’s policy, see Peter Henshaw, ‘Canada and the “South African Disputes” at the United Nations, 1946-61’, *Canadian Journal of African Studies*, 33(1) 1999, 9-12. [↑](#endnote-ref-47)
48. Cripps minute for Attlee, 31 Oct. 1946, TNA, DO35/1293/G715/46. [↑](#endnote-ref-48)
49. CM94(46) minute 1, http://filestore.nationalarchives.gov.uk/pdfs/large/cab-128-6.pdf. [↑](#endnote-ref-49)
50. UK delegation telegram 1668, 14 Nov. 1946, TNA, DO35/1293/G715/46. Looking back, Shawcross thought ‘the British were right on a strict legal basis but, possibly correctly from a broader point of view, most of the delegates were concerned with the politics of the human rights moment’: Lord Shawcross to author, 19 Feb.1990. [↑](#endnote-ref-50)
51. Beckett minute, 18 Nov. 1946, TNA, U3704/432/78, FO 371/9794. [↑](#endnote-ref-51)
52. Report of the Indian delegation to the second part of the first session of the General Assembly of the United Nations 1946, Lucknow, 27 Feb. 1947, New Delhi: Indian National Archives, 2(19)-UNOI/47 1947. [↑](#endnote-ref-52)
53. By 24 to 19 with 6 abstentions and 5 absent. [↑](#endnote-ref-53)
54. For the sources of unreferenced quotations in this section, see Lloyd, ‘Auspicious Beginning’, 146-8. [↑](#endnote-ref-54)
55. Curson to Anderson, 2 Dec.1946, IOR L/E/9/1404. [↑](#endnote-ref-55)
56. F D Tothill, *South African-Australian Diplomatic Relations 1945-1961* (PhD thesis, University of South Africa, 1995) 408. [↑](#endnote-ref-56)
57. Australian delegation cablegram, 9 December 1946. Document 302, in Hudson, W J & Way, Wendy (eds),*Documents on Australian Foreign Policy*, vol. 10, <https://dfat.gov.au/about-us/publications/historical-documents/Pages/volume-10/1946-july-december-volume-10.aspx> . [↑](#endnote-ref-57)
58. Donald Sole, *This Above All. Reminiscences of a South African Diplomat* (unpublished, undated memoirs) 102. [↑](#endnote-ref-58)
59. Tothill, *South African-Australlian*, 409. [↑](#endnote-ref-59)
60. Berendson to Fraser, 23 Dec. 1946, quoted in John Battersby, ‘New Zealand, Domestic Jurisdiction, and Apartheid, 1945-57’, *The Journal of Imperial and Commonwealth History*, 24(1), 1996, 109. [↑](#endnote-ref-60)
61. C S Jha, *From Bandung to Tashkent: Glimpses of India's Foreign Policy* (London: Sangam Books, 1983) 25. [↑](#endnote-ref-61)
62. Minute on Curson to Anderson, 28 Nov. 1946. [↑](#endnote-ref-62)
63. Shawcross obituary, *The Guardian*, 11 Jul. 2003, <http://www.theguardian.com/news/2003/jul/11/guardianobituaries.obituaries>. [↑](#endnote-ref-63)
64. M C Chagla, *Roses in December*, (Bombay: Bharatiya Vidya, 1974) 231. [↑](#endnote-ref-64)
65. Garner minute, 9 Feb. 1954, TNA DO35/9014; Curson top secret report on Krishna Menon, 31 Dec. 1946, IOR L/E/9/1396; Curson note on the Indian Delegation, 27 Dec. 1946, IOR, L/E/9/IOR, L/E/9/1392. [↑](#endnote-ref-65)
66. Shawcross interview; P H Gore-Booth (High Commissioner, New Delhi) to Joe Garner (PUS Commonwealth Relations Office) 3 Feb. 1962, TNA, DO196/209; Garner minute, 9 Feb. 1954, Malcolm MacDonald (High Commissioner, New Delhi) to Lord Home, 18 Sep. 1957, TNA, DO35//9014. [↑](#endnote-ref-66)
67. Curson to Shannon (DO), 18 Jan. 1947, IOR, L/E/9/1392; Curson to Anderson, 28 Oct. 1946, IOR, L/E/9/1396. [↑](#endnote-ref-67)
68. Curson to Shannon, 18 Jan. 1947. [↑](#endnote-ref-68)
69. ‘Lasting for at least three months, a regular session is a grinding task’: Paul Gore-Booth, *With Great Truth and Respect* (London: Constable, 1974) 159. [↑](#endnote-ref-69)
70. Interviews: Lord Shawcross, Sir William Dale (1998), Geoff Murray (1999). [↑](#endnote-ref-70)
71. Cockram and Shannon confidential note, 19 Dec.1946, IOR L/E/9/1392. [↑](#endnote-ref-71)
72. Garner, *Commonwealth Office*, 288. [↑](#endnote-ref-72)
73. Pethick-Lawrence to Wavell, private & secret, 22 Nov.1946 in Nicholas Mansergh and Penderel Moon (eds), *The Transfer of Power, 1942-47*, vol. 9, *The Fixing of a Time Limit, 4 November 1946-22 March 1947* (London: HMSO, 1980) document 78; Curson note on Indian delegation, 27 Dec. 1946. [↑](#endnote-ref-73)
74. Pethick-Lawrence private & secret to Wavell, 8 Nov. 1946, in *Transfer of Power*, vol. 9, document 18. [↑](#endnote-ref-74)
75. Ibid. [↑](#endnote-ref-75)
76. Pandit, *Scope,* 213. [↑](#endnote-ref-76)
77. Noel-Baker to Bottomley, 7 Mar. 1947, Noel-Baker papers. [↑](#endnote-ref-77)
78. Curson to J D Peek (Cabinet Office), 7 Mar. 1947, C&0 1067/47, IOR, L/E/9/1405. [↑](#endnote-ref-78)
79. Chagla, *Roses,* 242, 243. Chagla became a distinguished judge, diplomat and member of the cabinet. [↑](#endnote-ref-79)
80. See Leif Egeland, *Bridges of Understanding. A Personal Record in Teaching, Law, Politics and Diplomacy* (Cape Town & Pretoria: Human & Rousseau, 1977) 202. [↑](#endnote-ref-80)
81. Curson note on Indian delegation, 27 Dec. 1946. [↑](#endnote-ref-81)
82. Pandit quoted in Cockram note enclosed in Cockram (Washington) to Shannon, 19 Aug. 1947, IOR, L/E/9/1405. [↑](#endnote-ref-82)
83. Pandit, *Scope*, 206, 211. [↑](#endnote-ref-83)
84. Curson during interdepartmental discussion, 24 Jun. 1946, TNA, DO35/3284. [↑](#endnote-ref-84)
85. ‘He did not hear very well, especially when listening to interpretations … he knew nothing about rules of procedure and how they could be manipulated’: Sole, *This above all,* 101-2. [↑](#endnote-ref-85)
86. See F D Tothill, ‘Evatt and Smuts in San Francisco’, *The Round Table*, (96)389 2007, 187-8; See also Saul Dubow, ‘Smuts, the United Nations and the Rhetoric of Race and Rights’, *Journal of Contemporary History*, 43(1) 2008, 66. [↑](#endnote-ref-86)
87. Lord Listowel (Pethick-Lawrence’s successor at the IO) in Peter Henshaw, ‘Britain and South Africa at the United Nations: “South West Africa’” “Treatment of Indians” and “Race Conflict”, 1946-61’, *South African Historical Journal*, 31(1) 1994, 87-8. Tothill points out that in 1948 the Nationalists won office in 1948 with 37.7 per cent of the vote (401,834 votes) to the United Party´s 49.2 per cent (524,230 votes): Tothill email. [↑](#endnote-ref-87)
88. Tothill ‘South African-Australian’, 444. [↑](#endnote-ref-88)
89. Beloff, ‘The British Empire’, manuscript in author’s possession. [↑](#endnote-ref-89)
90. Ibid. [↑](#endnote-ref-90)
91. Sir Brian Barder conversation, 1999. British Diplomatic Oral History Programme interviews: Denis Doble 29 Mar. 2004, Brian Barder 6 Mar. 1997; Rex Browning nd, <https://www.chu.cam.ac.uk/archives/collections/bdohp/>. [↑](#endnote-ref-91)
92. In May 2018 there were 170 parties to the covenant on civil and political rights and 167 parties to the covenant on economic, social and cultural rights. [↑](#endnote-ref-92)