C.R. (48) 19th Conclusions - Points made in discussion of C.P. (48) 72. (N.C.R.)

43rd Conclusions - Leakage of Information. (N.C.R.)

67th Conclusions, Minute 3 - Commonwealth Relations; Constitutional Developments in India and Eire. (C.A.)

71st Conclusions, Minute 2 - India. (C.A.)

78th Conclusions - Lynskey Tribunal; Evidence by Ministers. (N.C.R.)
Points made in the discussion of C.P. (48) 72 which are not included in the open Minute

(1) There had recently been signs that Soviet pressure would be directed more towards Northern Italy and Spain and less towards Greece and Turkey. The Norwegian Government were also apprehensive of Soviet pressure.

(2) The antagonism between clericalism and freemasonry in countries such as France made it difficult to secure united support for a policy of democratic socialism in Europe.

(3) In working out the new policy proposed by the Foreign Secretary, account should be taken of the importance of Germany in the European economy.

(4) We should use United States aid to gain time, but our ultimate aim should be to attain a position in which the countries of western Europe could be independent both of the United States and of the Soviet Union.

(5) It should be possible to recruit fairly rapidly experienced staff for service in an organisation on the lines of the war-time Political Warfare Executive.

(6) The campaign against Communist penetration of the trade unions should continue. The means of carrying on this campaign required careful consideration, since the Communists did not work openly and direct attack on them might do more harm than good.

(7) The Home Secretary received periodical reports on Communist and Fascist activities and his impression was that at present more danger was to be apprehended from Communists than
It was suggested that some of the B.B.C. staff had Communist sympathies and that this resulted in the distortion of news. The Foreign Secretary felt that this did not apply to the Overseas Services of the B.B.C.

The Foreign Secretary was disposed to favour the setting up of an official committee, on the lines of the London Committee on European Economic Co-operation, to co-ordinate Departmental action under the general direction of the Cabinet. Other Ministers favoured the appointment of a Ministerial Committee.

Cabinet Office, S.W. 1.
C.M. (48) 43rd Conclusions

(Friday, 25th June, 1948 – 10.0 a.m.)

The Prime Minister recalled the reference which he had made, at the Cabinet's meeting on 14th June, to the publication in the Press of reports purporting to describe the course of the Cabinet's discussions on the Iron and Steel Bill and the views held by individual Ministers.

The first, and the most serious, of this series of disclosures had been made in an article by Mr. Trevor Evans in the "Daily Express" of 12th June. The Prime Minister said that he had caused enquiries to be made into the source of this leakage of information. It had been established that Mr. Evans obtained his information on the evening of Friday, 11th June from an informant who had discussed the matter with a Cabinet Minister earlier the same evening. There was reason to believe that the person who gave the information to the newspaper was a member of the Labour Party.

The Prime Minister said that on this occasion it was known that some Minister had disclosed the course of discussions in Cabinet, and the information which he had given had been promptly communicated to the Press. He must, therefore, again impress upon all his colleagues the importance of using the utmost discretion in respect of Cabinet discussions.

Cabinet Office, S.W. 1.
C.M. (48) 67TH CONCLUSIONS, MINUTE 3

Confidential Annex

(28th October, 1948 - 10.30 a.m.)

The Cabinet had before them a memorandum by the Prime Minister (C.P. (48) 244) on the nature of the constitutional relation between the various countries of the Commonwealth and the probable course of future constitutional changes in India and Eire.

The Prime Minister said that it had been clear for some time that the new Indian constitution might emerge from the Constituent Assembly in a form not fully consonant with the preamble to the Statute of Westminster, which described the members of the Commonwealth as "united by a common allegiance to the Crown". He had therefore set up a small Committee of Ministers to re-examine the nature of the Commonwealth relationship and to consider on what constitutional basis India might remain within the Commonwealth, if in the event she were unable to accept the Crown as "a symbol of free association" in the Commonwealth. Certain papers which had been considered by this Committee were annexed to C.P. (48) 244. The Ministerial Committee had approved the draft statement of general principles set out in the Appendix to Annex III, as a basis for the informal conversation which he had proposed to hold with other Commonwealth Prime Ministers while they were in London for the recent conference. In the meantime, two major developments had taken place: first, the Eire Government had announced their intention to repeal the Executive Authority (External Relations) Act, 1936, and discussions had shown that they were unwilling to put in its place any other constitutional link involving any recognition of the Crown.

Secondly, it had become clear that the new Indian Constitution would provide for the establishment of India as a "sovereign independent republic", and that India would not be willing to accept The King's jurisdiction, even for the purpose of her external relations. In his discussions he had been much assisted by the helpful attitude adopted by the representatives of Canada, Australia and New Zealand, who had shown themselves greatly concerned to secure that India should remain within the Commonwealth. Any proposals for a new form of constitutional link must be considered in relation, not only to its acceptability to the country concerned, but also to its effect on other members of the Commonwealth; and, in any further discussions, it would be essential to maintain the closest touch with the Governments of Canada, Australia and New Zealand.
Discussion turned first on the future relationship of India to the Commonwealth.

The Cabinet were informed that the Prime Minister of India had made it clear, during recent discussions in London, that he was anxious to keep India within the Commonwealth, if a constitutional basis could be found which would be acceptable to the Constituent Assembly; and, as was shown by a report from India published in the "Times" that morning, public opinion in India on this issue had radically changed in recent months. During discussions which Ministers had had with Pandit Nehru, various suggestions had been made which, taken together, might constitute an adequate basis for India's continued membership of the Commonwealth in a form acceptable to Indian opinion generally. The precise form of these suggestions was now being further studied by Pandit Nehru, but their general effect was as follows. The King's sovereignty in India should be regarded as dormant, but not extinguished; no United Kingdom legislation should be enacted to terminate The King's sovereignty over India, and this could therefore be revived by a unilateral act on the part of India at any time. In statements to the Parliaments of the United Kingdom and India, an identical formula would be used to the effect that, under the new Indian constitution, His Majesty would not exercise any of the functions of sovereignty. An historical link with the Crown would be preserved by the enactment, as Indian law, of Sections 1, 2 and 7 of the United Kingdom Indian Independence Act, 1947. India would adopt the provisions of the British Nationality Act, 1948, in so far as they related to India. The King would conclude with the new President of India an agreement by which he would act as the President's representative for the protection of Indian citizens in the United Kingdom, and the President would act as The King's representative for the protection in India of Commonwealth citizens other than citizens of India. In countries where India maintained no separate diplomatic representation, the diplomatic protection of Indian citizens would be undertaken by the diplomatic representatives of other Commonwealth countries. The King would be regarded as the fountain of Honour for the Commonwealth, and a new Commonwealth Order might be instituted, for which citizens of all Commonwealth countries, including India, would be equally eligible. In all future legislation in India, care would be taken to treat Commonwealth countries as a class apart from all foreign countries.

After further consideration, Pandit Nehru would inform the Prime Minister of the exact proposals on these lines which he was prepared to put to his Government. Although there would be no desire to approach this question in a purely legalistic spirit, it was clearly desirable that, as a first step, Ministers should be advised whether these proposals would together constitute an adequate legal basis for India's continued membership of the Commonwealth and, in particular, whether they would afford a basis which would enable foreign Governments to claim most-favoured-nation treatment in respect of any privileges granted to Indian citizens in other parts of the Commonwealth.
The Cabinet -

Invited the Lord Chancellor, in consultation with the Attorney-General and the Solicitor-General, to consider whether the constitutional proposals discussed with the Prime Minister of India would -

(i) constitute an adequate legal basis for India's continued membership of the Commonwealth;

(ii) provide an adequate basis for resisting claims by foreign countries under the most-favoured-nation provisions of existing treaties.

Cabinet Office, S.W.1.
28th October, 1948.
The Cabinet discussed the issues raised in C.P.(48) 254 regarding India's future relations with the Commonwealth.

At their meeting on 28th October they had invited the Lord Chancellor, in consultation with the Attorney-General and the Solicitor-General, to consider whether the constitutional proposals which had been discussed with the Prime Minister of India during his recent visit in this country would (i) constitute an adequate legal basis for India's continued membership of the Commonwealth, and (ii) provide an adequate basis for resisting claims by Commonwealth countries under the most-favoured-nation provisions of existing treaties. They now had before them a note by the Prime Minister (C.P.(48) 254) covering a summary of these proposals in the form in which they had finally been put forward by the Prime Minister of India, together with an Opinion which the Lord Chancellor had prepared, in consultation with the Law Officers, on the two questions remitted to him.

THE LORD CHANCELLOR said that he had reached the conclusion that, if the Indian Constituent Assembly adopted a constitution establishing India as a "sovereign democratic republic" on the lines at present contemplated, the effect would be to extinguish His Majesty's sovereignty in India, which would no longer be a part of His Majesty's dominions either under Indian law or under United Kingdom law. If it were thereafter desired to continue to treat India for all purposes as a member of the Commonwealth, claims by foreign countries under the most-favoured-nation clauses of existing commercial treaties could only be resisted before an international court with any hope of success if it was possible to point to a continuous and substantial tie between members of the Commonwealth after, as well as before, the repudiation of allegiance to The King. In his view, the only matters of substance capable of creating such a tie were a de facto general acceptance by all civilised nations of the existence of the Commonwealth as a unit composed of nations bound together by a factual association of long standing, based up till now on the common sovereignty of the Crown, and still continuing; and declarations by Commonwealth Governments that they wished to be regarded thus as "bound in a special form of association". These ties would not, however, be sufficient in themselves unless they were reinforced by a true common citizenship throughout the Commonwealth; and, on examination of the actual position, it was clear that this condition was not satisfied. He therefore thought that, on a strictly legal view, it would not be safe to say more than that, if preferential treatment were continued to India after the enactment of a constitution on the lines at present contemplated, more or less plausible arguments could be put forward in opposition to a claim by some foreign country that it was entitled to the same treatment under a most-favoured-nation clause. The Attorney-General was in general agreement with this Opinion, though he was more doubtful whether even a plausible case could be put forward. It was, however, difficult to estimate what view would be taken by an international court in considering a wholly new set of constitutional issues.
In discussion, emphasis was laid on the fundamental difference between the attitude of India and Eire respectively towards their future relationship with the Commonwealth. Eire Ministers were determined to put Eire's secession from the Commonwealth beyond question; the Government of India, on the other hand, were anxious to devise means, compatible with the form of her constitution, by which India could continue to be a member of the Commonwealth, and paragraph 10 of Annex A of C.P. 48 (5) gave hope that in time a closer form of association could be achieved. The problem was how to secure the recognition, under international law, of a Commonwealth group which might include States no longer subject to The King's sovereignty. The difficulty arose from the fact that, at present, international law recognised only "His Majesty's dominions" or "foreign countries", and the question therefore was whether the International Court could be brought to admit the existence of a third form of association intermediate between these. If the Indian constitution was enacted in its present form, it would no longer be possible to support the case for India's continued membership of the Commonwealth by reference to The King's sovereignty; a solution would have to be sought by creating and establishing a conception of customary association which would recognisably distinguish her from a foreign State. The Commonwealth was not a clearly defined international entity; and it might be possible in this way to persuade the International Court to accept the idea of its changed constitutional structure. As a practical issue, the United Kingdom Government would be faced in due course with the necessity of deciding whether to take the risk of continuing to treat India as a member of the Commonwealth; some time would no doubt elapse before any foreign country pressed a claim for most-favoured-nation treatment before the International Court, and there would be time to elaborate the conception of a new form of constitutional relationship.

The point was made that, before any final decisions were reached on this question, it would be necessary to consider carefully their possible repercussions within the Commonwealth. A decision to continue to treat India as a Commonwealth country, after her repudiation of allegiance to the Crown, would no doubt be strongly criticised both here and in other Commonwealth countries, and there was some risk that India's example might be followed elsewhere in the Commonwealth. Before any decision was taken, therefore, it would be necessary to consult other Commonwealth Governments and to discuss the whole question with the Opposition. The immediate question was whether anything further ought to be said to the Prime Minister of India at this stage. While no advantage would be gained by legal controversy with Indian lawyers on this issue, the wording of paragraph 10 of Annex A of C.P. (48) 254 suggested that Pandit Nehru should in fairness be informed of the legal advice which the United Kingdom Government had received in this matter. It was agreed, therefore, that the Lord Chancellor's Opinion should be sent to the United Kingdom High Commissioner in India, who should be instructed to convey its substance personally to Pandit Nehru. General Nye should make it plain that this Opinion dealt solely with the legal issues involved, and that the United Kingdom Government had reached no
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conclusions on the wider issues involved. He should take the opportunity of emphasising the United Kingdom Government's desire to find a mutually satisfactory solution of this problem.

The Cabinet —

(1) Invited the Secretary of State for Commonwealth Relations to instruct the United Kingdom High Commissioner in India to convey to the Prime Minister of India the substance of the Opinion annexed to C.P.(48) 254.

(2) Invited the Secretary of State for Commonwealth Relations to arrange for the documents annexed to C.P.(48) 254 to be communicated to the Prime Ministers of Canada, Australia and New Zealand, drawing special attention to the fact that the Lord Chancellor's Opinion related solely to the legal issues involved.

Cabinet Office, S.W. 1.

13TH NOVEMBER, 1948.
LYNSKEY TRIBUNAL: EVIDENCE BY MINISTERS
(Previous Reference: C.M.(48) 58th Conclusions, Minute 2)

The Prime Minister said that Mr. Stanley would shortly be giving his evidence before the Tribunal under the Chairmanship of Mr. Justice Lynskey which was enquiring into certain allegations against Ministers and officials of the Board of Trade and other Departments. It was likely that in his evidence Mr. Stanley would mention a number of Ministers, apart from those who, like Mr. Belcher and Mr. Key, had substantial evidence to give to the Tribunal. Was it necessary that every Minister whom Mr. Stanley might seek to involve in these matters should give evidence before the Tribunal to rebut any insinuations which Mr. Stanley might make? An unfortunate impression might be created if numbers of Ministers appeared as witnesses before the Tribunal. On the other hand, it was most undesirable that any impression should be created that Ministers whose names were mentioned in the course of the evidence were reluctant to come forward to clear themselves of any imputation which might have been brought against them.

The Lord Chancellor said that he had considered this point and had already suggested to the Attorney-General that it might be handled in the following way. In his closing speech to the Tribunal, when the hearing of evidence had been completed, the Attorney-General should say that, in addition to the Ministers who had attended to give evidence, various other Ministers had been mentioned incidentally in the course of the evidence. All of these
Ministers were perfectly ready to come before the Tribunal and answer any questions which might be put to them; but the Tribunal might feel that it was unnecessary to trouble them to do so. These Ministers placed themselves at the disposal of the Tribunal; and it was for the Tribunal to decide. The Chairman might then say, in reply, that there was nothing in the evidence which called for any denial by these Ministers and that it was unnecessary for the Tribunal to trouble them to appear in person.

The Cabinet agreed that this aspect of the matter should be handled on the lines proposed by the Lord Chancellor.

Cabinet Office, S.W.1.