Chapter Three

THE CONSTITUTIONAL SETTING
The Constitution of India is based on a system of parliamentary democracy, broadly on the lines of the British Constitution. The new Indian Constitution came into force on 26 January 1950; but, during the intervening period also, between the transfer of power and the coming into force of the Constitution, i.e. from 15 August 1947 to 26 January 1950, the government of the country was carried on according to the principles of parliamentary democracy. (1)

Under this system the executive and administrative agencies initiate and execute policies. The executive branch in relation to the conduct of foreign affairs consists of the Chief of State, the Council of Ministers or the Cabinet and the Ministry of External Affairs. Democratic control of foreign affairs is sought to be realized through the

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responsibility of the Cabinet to Parliament. Parliament is, in turn, elected by the people, who thereby register their opinion on the foreign policy as well as other policies of the government. (2) This accords with what Harold Nicolson has defined as the theory of democratic diplomacy. According to Nicolson, the basic theory of democratic diplomacy is that

The diplomatist, being a civil servant is subject to the Foreign Secretary; the Foreign Secretary, being a member of the Cabinet is subject to the majority in Parliament; and Parliament being but a representative Assembly, is subject to the will of the sovereign people. (3)

(2) In making a scientific analysis of the powers within a modern state Dr. Herman Finer finds that there are "seven main centers of political activity, the cooperation of which is necessary to produce a complete act of Government." They are, the chief of state, the cabinet, the civil service, the courts of justice, the electorate, the political parties and legislature. They may be divided as the executive branch (chief of state, cabinet, civil service and courts of justice) and the resolving branch (electorate, political parties, legislature, cabinet and chief of state). / Herman Finer, Theory and Practice of Modern Government (New York, 1957) 107.7

(3) Harold Nicolson, Diplomacy (London, 1950) 82. The Minister of Foreign Affairs is known as the Secretary of State for Foreign Affairs, or simply the Foreign Secretary, in Britain. In India he is called the Minister for External Affairs.
The President

The executive powers of the Union Government are formally vested in the President. (4) They include the conduct of foreign affairs also. (5) But, in actual fact, "the President ... is essentially a constitutional monarch. The machinery of government is essentially British and the whole collection of British constitutional conventions has apparently been incorporated as conventions." (6) Under this system the powers of the President are exercised on his behalf by the Council of Ministers who 'aid and advise' the President in the exercise of his powers. (7) There is an apparent similarity in the wording of the Indian and American Constitutions regarding the vesting of the executive power in the President, but in the method of exercise of these powers the differences are fundamental. (8) Dr. B. R. Ambedkar, one of the main architects of the Indian Constitution, speaking in the Constituent Assembly, said

(4) Article 53(1), The Constitution of India (Delhi, 1960).
(5) See Articles 73 and 246 and the Seventh Schedule, Entries 10 to 21.
(7) Article 53(1).
(8) Article 53(1) of the Constitution of India says, "The executive power of the Union shall be vested in the President." Article 2, Section (1) of the U.S. Constitution says, "The executive power shall be vested in a President of the United States of America."
Under the Presidential system of America, the President is the Chief head of the Executive. The administration is vested in him. Under the Draft Constitution the President occupies the same position as the King under the English Constitution. He is the head of the State but not of the Executive. He represents the Nation but does not rule the Nation. (9)

The position of the American President is particularly significant in relation to foreign affairs. While the American President "shapes and voices the foreign policy of the United States to a degree that no other competing power can rival," (10) the President of India enjoys no such position at all.

It also seems doubtful if the President enjoys any special prerogative to act in his discretion, irrespective of the advice of his Council of Ministers, with a view to "preserve, protect and defend the constitution and the law." (11) No part of the Constitution specifically states that the President is bound to accept the advice of the Council of Ministers, as has been provided for under certain other constitutions. (12) But the experience of the functioning of the office during the last ten or more years has given little reason to think that

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(9) Constituent Assembly Debates, VII (1948) 32.
(11) From the oath or affirmation by the President on entering upon office, Article 60.
(12) For example, Article 13(9) and (11) of the Constitution of Eire, 1937.

Section 4(2) of the Ceylon (Constitution) Order in Council, 1941 Section 63 of the Constitution Act, 1900. (Australia) Section 13 of the Union of South Africa Act 1909.
such prerogatives exist. (13) This was, in fact, made clear at a recent press conference by the Prime Minister. (14) In relation to foreign affairs, the actual executive powers have been undoubtedly exercised by the minister concerned and the Cabinet. The powers of the President to influence the conduct of foreign affairs through the appointment and dismissal of the Prime Minister and the ministers, the allocation of portfolios to the ministers and the making of rules for the more convenient transaction of the business of government are also very negligible. (15) In all these respects, the Prime Minister has the decisive voice and the President's role is more often that of formally affixing his seal to the decisions of the Prime Minister.

(13) This was exemplified in the case of differences between the President and the Government on certain questions of domestic policy. The Hindu Code Bill and the policy of state co-operative farming were two such. On both these occasions the President's personal opinions were not in accord with government policies. But Dr. Rajendra Prasad had refrained from taking any step other than that of addressing a personal communication to the Prime Minister. These communications did not result in any major change of policy by government. See K. L. Panjabi, Rajendra Prasad (Madras, 1960) 188-91.

(14) The Hindu (Madras) 16 December 1960, 1.

(15) Article 86 and 111.
The powers and functions of the President of India and of the British monarch are essentially similar. (16) In both cases their role is one of 'some influence but no power.' (17) The power of the crown is "not a power behind the cabinet, but by and with the cabinet, and, of course, never against its determined will." (18) The position of the Indian President has been no different. But in a speech delivered at a public function recently, Dr. Rajendra Prasad, the then President of India, said that "in equating the powers of the President with the British Monarch the Constitution was being wrongly interpreted." He added that "there is no provision in the Constitution which in so many words lay (sic) down that the President shall be bound to act in accordance with the advice of his Council of Ministers." He suggested that "conditions


Queen Victoria was possibly the last of the British monarchs who exercised any substantial influence in the conduct of foreign affairs in the country. She had on certain occasions sought to exercise some influence in the appointment and dismissal of her foreign ministers but was "rarely successful." It has, however, been stated that the selection of Ernest Bevin to the Foreign Office in 1945 in preference to Hugh Dalton was on account of the wishes of King George VI. See, J. W. Wheeler-Bennet, King George VI, His Life and Reign (London, 1956) 638; Hugh Dalton, High Tide and After: Memoirs 1945-1960 (London, 1962) 8-13; Kingsley Martin, The Crown and the Establishment (London, 1962) 78-9; Sir Charles Petrie, The Modern British Monarchy (London, 1961) 190-1 etc.


(18) Finer, n. 2, 601.
and circumstances in India might seem to require a different interpretation." However, he hastened to add that his remarks were in no way an expression of dissatisfaction with existing conditions. (19) Soon after, at a press conference, the Prime Minister of India explained that "politically and constitutionally, the President's position conformed to that of the British Crown." He added that the President was a constitutional head and had always been a constitutional head. (20)

In actual fact, however, it might be noted that the position of the British monarch can be of greater influence than that of the Indian President. (21) Besides the numerous factors that go to strengthen monarchy as an institution in Britain, like the traditional loyalty to a hereditary monarchy and the longer terms in office of the monarch than the ministers, two special factors, in particular, strengthen the position of the Queen regarding foreign affairs. Firstly, there is the factor of the traditional association of monarchy with foreign affairs, it being regarded that foreign affairs has been "a peculiar province of the personal influence of the Crown." (22)

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(19) Speech by Dr. Rajendra Prasad at the Indian Law Institute, Statesman (New Delhi) 29 November 1960.

(20) The Hindu (Madras) 16 December 1960, 1.


Dr. Gosses has noted, "As in every other monarchy, in England too the sovereign has always been closely concerned with foreign policy, and there also the Crown had been able to maintain its authority in no single field and so firmly as in that of foreign affairs." (23) Secondly, the Queen's position as the Head of the Commonwealth has endowed her with a special role in Commonwealth relations. (24) In spite of these, there has been in recent times, little doubt about the actual powers of the Queen in the conduct of foreign affairs. Dr. Finer says, "... though today there is a lingering tincture of prerogative about the Crown and foreign affairs, diplomatic relationship, ambassadorships, the Foreign Office, the making of treaties of war and peace are far, far beyond the personal influence of the Sovereign. There ought to be no confusion about it, even if royal visits abroad win friendship. (25)

None of the factors which contribute to enhancing the influence of the British sovereign in foreign affairs can be claimed on behalf of the President of India. Moreover, his


(25) Finer, n. 17, 183.
re-election to the office is dependent on party politics. (26) He has not also the representative authority of the American President to strengthen his position. (27) Obviously, the position of the President of India is weaker, even with regard to influence, than that of the British Sovereign in the conduct of foreign affairs.

Like the British monarch, the President is also entitled to certain privileges which would enable him to exercise his influence on the government in an effective way. He has the right of information regarding all decisions of the Cabinet. (28) He may also submit for the consideration of the Council of Ministers any matter on which a decision has been taken by a minister, but which has not been considered by the Cabinet already. (29) In relation to foreign affairs this means that

(26) There are no restrictions, as there are in USA, on the number of times the same person might be re-elected as President. A non-official Bill was however moved once in the Rajya Sabha to restrict it to two terms as in USA. *Rajya Sabha Debates*, 34 (1961) col. 406-26; 35 (1961) col. 768-86. The Prime Minister stated on this occasion that this could be done by convention, rather than a formal constitutional amendment. The first President of India, Dr. Rajendra Prasad retired from office after two terms.

(27) The President of India is indirectly elected by an electoral college of the Members of Parliament and the Members of the lower houses of the Legislative Assemblies of the States (Article 54). In the USA, though the election of the President is formally indirect, in actual practice it has come to be equivalent to direct election.

(28) Article 73(a) and (b).

(29) Article 73(c).
the President is entitled to all information in the possession of the government, and that when he is in serious disagreement with a decision of his foreign minister he can have the matter brought before the Cabinet. These are similar to 'the right to be consulted, the right to encourage, and the right to warn,' which Walter Bagehot attributed to the British Sovereign. (30)

As in the case of the British monarch, the part which the President can hope to play by the exercise of these prerogatives would be largely determined by his own interest in the ministry and its work, his inclination for hard work, his personal abilities, experience in office, the nature of his advice etc. His function is, however, only advisory. The minister is not bound by the advice of the President. Nor would the acceptance of any such advice take away from the minister any part of his constitutional responsibility for the action. But in the hands of a wise and respected President, these rights, judiciously exercised, could still be significant, for it may act as a check on hasty decisions from being taken by the minister, being at the same time in no way a check on the operation of democratic principles.

The President's role in the conduct of foreign affairs is mainly in his capacity as Head of State and not as head of

the executive. As the Head of State, he symbolises the country in its international relations. The top diplomatic representatives to other countries, international organizations, international conferences etc. are accredited by the President. Similarly, diplomatic representatives from other countries appointed to this country are accredited to him. Treaties are signed on his behalf by his ministers and officials.

As Head of State he performs certain social and ceremonial functions in relation to foreign affairs. These include such functions as receiving distinguished foreign dignitaries on visit to the country, playing host to diplomats and others on important national occasions, attending receptions held by foreign missions on special occasions, receiving and accrediting diplomats to and from this country etc. State visits by the President to foreign countries help to develop and strengthen friendly relations with them. These social and ceremonial functions are attached to the office of the Head of State in all countries. The degree of their importance to the conduct of foreign relations is dependent on the personality of the individual. The striking success of the visit of Edward VII to Paris in 1903 and its contribution to building up strong bonds of alliance between Britain and France in the succeeding years was as much a success of
organized diplomacy as of the personality of the individual. (31) The present British monarch’s visits around the world, especially to the member-countries of the Commonwealth, are also instances of such friendly personal diplomacy in which the Head of the State comes to play some role in the conduct of foreign affairs.

Foreign affairs present a potential field where fundamental differences of opinion clash against each other in violent forms. The tensions of modern international relations might project big power conflicts into the national political life, sometimes taking the form of a struggle for power between different elements in the constitution. This happened in the Belgian Congo where the constitutional powers of the offices of the President and the Prime Minister became involved in the big-power conflicts outside. It would, therefore, seem necessary that no scope for doubt should exist in the matter of a proper definition of powers within the constitution. It was possibly this anxiety which caused a non-official resolution, seeking to amend certain provisions

*(31) The visit was arranged at a time when relations between France and Britain were very uneasy. In view of the worsening relations with Germany there was however strong desire in both the countries that these relations should be improved. The royal visit to Paris made an immense contribution in a psychological way to improve the relations. The visit is said to have been as much a personal triumph to the visiting monarch as it was to the excellent planning and organization behind the tour.*
of the Constitution regarding the constitutional character of the office of the President, was moved in Parliament. (32) In its actual working so far, the Indian Constitution has apparently maintained stability, but the persistent debates on the powers of the President indicate that parts of the Constitution still retain the need for further elucidation and clarification. And foreign affairs could be the field through which this imprecision of the constitutional provisions is exposed. And, then, it may rock the foundations of democracy on which the present constitution is intended to operate.

(32) The Constitution (Amendment) Bill, 1961 (to amend Article 57) and The Constitution (Amendment) Bill 1961 (to amend Articles 74, 123, 124, 217 and the Second Schedule) moved on 10 March 1961 by Bhupesh Gupta in the Rajya Sabha. The former bill sought to amend the Constitution to limit any one from holding the office of the President to more than two terms. The latter sought to provide that the advice of the Council of Ministers shall be binding on the President, "unless each House of Parliament by a resolution adopted by a majority of the total membership of the House and two-third majority of those present and voting, requests the President to disregard the advice." On both Government took the stand that no formal amendments were necessary in both respects as these were matters that could be settled by convention. See Rajya Sabha Debates 34 (1961) col. 406-26; 35 (1961) col. 768-86; 37 (1962) 1100-4; 38 (1962) 1805-1908 etc.
III

Council of Ministers and Cabinet

In the conduct of foreign affairs, the real centre of constitutional authority is the Council of Ministers, or more truly the Cabinet which is the most efficient part of the Council of Ministers. Within the Cabinet itself the Foreign Affairs Committee performs a large part of the work. The chief executive agent of the Cabinet directing the foreign policy of the government is the Minister for External Affairs. But in other countries where the India type of parliamentary executive is in existence as in Great Britain the office of the Prime Minister has also, in recent times, come to acquire special significance in the conduct of foreign affairs. This requires constant consultation between the Prime Minister and foreign minister. In India, however, the two offices of the Prime Minister and the Minister for External Affairs have remained in combination in the same person so far, so that the need for a division of functions between the Prime Minister and the foreign minister has not been felt. (33) With this exception, the pattern is, in general, similar to that in the United Kingdom. Regarding the management of British Foreign Policy before the First World War, Dr. Gosses has noted:

(33) Mr. Jawaharlal Nehru has been both Prime Minister and Minister for External Affairs of India ever since 1947. This point is further discussed in the succeeding chapter.
It was the task of the Cabinet Council to determine foreign policy in broad outline; the task of the Foreign Secretary to prepare and execute the decisions of his colleagues; the task of the Premier to check this preparation in behalf of the Cabinet. (34)

All the functions and powers of the Council of Ministers are exercised by a smaller group within the body called the Cabinet. As a body the Council of Ministers does not even meet together. It is too large a body for deliberation and to act as the chief policy-making and executive organization. The conventions of the British Constitution, rather than any specific provisions in the text of the Constitution, form the basis of the working of the Cabinet in India. In fact, the term 'cabinet' does not appear even once in the entire text of the Constitution. The existence of the Cabinet does not take away from the Council of Ministers its collective responsibility towards Parliament, even though in the actual determination of policy the Council of Ministers as a whole does not play any part. This means that if the policy, as formulated and executed by the Cabinet, fails to meet with the approval of Parliament it is not simply the Cabinet but the entire Council of Ministers that should resign. The Council of Ministers form the Government technically, but the Cabinet is its most efficient part. (35)

(34) Gosses, n. 23, 125.

(35) For more details on the working of the Indian Cabinet system see Asok Chanda, Indian Administration (London, 1958) Chapter III and Postscript. See also Appendix IV on the present organization of the Council of Ministers and the Cabinet.
The functions and powers of the Cabinet in India are similar to those of the British Cabinet. In its report on the Machinery of the Government, the Haldane Committee of 1918 of Britain, described the functions of the Cabinet as follows:

1. The final determination of policy to be submitted to the Parliament.

2. The supreme control of the national executive in accordance with the policy prescribed by Parliament.

3. The continuous co-ordination and delimitation of the activities of the several departments of state. (36)

This description of the functions of the British Cabinet is largely true of India also. As in other matters, in foreign affairs also, it is the chief policy-making and executing organ. Parliament has the final authority to approve policy and its execution, and this is ensured by making the executive responsible to Parliament. But on account of the party system and the effective power of initiative exercised by the executive the role of Parliament is relegated to that of giving formal approval to government policies and actions. In Britain, the Cabinet discusses foreign affairs almost every week, whether or not it is included in the agenda. The only other subject about which equally frequent discussions are held is parliamentary

business, but this is only when Parliament is in session. (37) In India also the Cabinet might concern itself with foreign policy matters equally frequently, but the frequency of such discussions is necessarily determined by the pressure of events. Such discussions are usually initiated by the Minister for External Affairs, but any other member of the Cabinet is equally entitled to raise some question and initiate a discussion. Urgent problems in foreign affairs call for urgent sessions of the Cabinet. Some unforeseen crisis of importance in some foreign country, some important debate in the United Nations, some immediate development in the relationship with a foreign country etc. might necessitate such meetings. However, a decision regarding the necessity to bring in or not the entire Cabinet for consultation on a particular matter is left more or less completely to the discretion of the foreign minister and the Prime Minister.


This has not however been the case always. Lloyd George has recorded in his War Memoirs that "during the eight years that preceded the War, the cabinet devoted a ridiculously small percentage of its time to a consideration of foreign affairs." He attributed it partly to the political conditions of the time arising from a series of bitter controversies on home affairs. David Lloyd George, War Memoirs, Vol. I, p.45, cited by R. Victor Langford, British Foreign Policy: Its formulation in recent years (Washington D. C. 1942) 134.
An important feature of the cabinet system in India, is that of Cabinet committees. (38) This practice has also been adopted from Britain. The smaller size and more compact organization of the cabinet committees enable better co-ordination and quicker decisions. (39) The committees are authorized to dispose of certain kinds of business on behalf of the Cabinet and to recommend decisions to the Cabinet on other specified types of matters. This saves the Cabinet of a good deal of time.

The cabinet committees in India are either standing or ad-hoc committees. They were reorganized at the time of the formation of the new government in 1957. Since then there have been ten Standing Committees of the Cabinet, including the Committee on Foreign Affairs. (40) The Standing Committees are of varying strength, ranging from twelve in the Committee on Heavy Industries to two in the Appointments Committee. The Foreign Affairs Committee has a strength of five. In Britain, besides the standing committees and ad-hoc committees, a third kind of informal committees is also in existence; the committee

(38) For discussion on the working of the Cabinet Committees in Britain and India, see Jennings, n. 16, 237-42; Morrison, n. 37, Chapter II and Chanda, n. 35, 68-9 and 89-91.

(39) The size of the Cabinet has not been very constant in India. It was 14 from 1947 to 1951; 13 from 1952 to 1958; 12 from 1958 to 1962 and 18 in 1962. See Appendix IV - (a0 and (b).

(40) The other Committees are on Defence, Economic Affairs, Appointments, Parliamentary and Legal Affairs, Heavy Industries, Relief and Rehabilitation, Manpower Utilization, Scientific matters, and Information and Broadcasting.
on foreign affairs is one such. (41) In other Standing Committees for Defence, Economic Affairs etc. the Ministry of External Affairs is also likely to be represented.

In India, these committees are in the main constituted of only members of the Cabinet, though in a few instances Ministers of State have also been included. At present, the Foreign Affairs Committee is constituted of five Cabinet Ministers, but at first, it had a strength of only three. (42) In India, under the present arrangements, the Prime Minister himself is the chairman of nine out of the ten Standing Committees and the Home Minister is the chairman of the tenth one. The Prime Minister and the Home Minister are members of all the committees, while the Finance Minister is in seven of them. In Britain, however, membership and chairmanship of the committees are more widely distributed. Even Parliamentary Secretaries have been appointed as chairmen of such committees. (43)


(42) The members of the committee in 1961 were J. Nehru (Prime Minister and Minister for External Affairs), Lal Bahadur Sastri (Commerce & Home), V. K. K. Menon (Defence), Morarji Desai (Finance) and P. Subbarayan (Communications). The reference here is about the Cabinet till April 1962.

(43) Morrison, n. 37, 24.
The Ministry of External Affairs and its Missions and Posts Abroad

The Ministry of External Affairs and its missions and posts abroad perform normally two important types of functions. Firstly, they provide the necessary data for the formulation of policy. The missions and posts abroad send periodic and ad hoc reports to the headquarters on all important matters concerning foreign affairs. The headquarters of the Ministry processes this information and might recommend courses of action to the Minister. The Minister and the Cabinet are dependent primarily on this information in formulating policies. Secondly, when once the policy has been formulated its execution is largely dependent on them.

In performing the two kinds of functions the Ministry is, in fact, a direct party to the policy-making process in an important way. In the collection, classification and presentation of data there is considerable scope to influence the final policy-makers in the government. Further, along with supplying information the officials also advise the Minister on what they consider to be the best courses of action. The Minister is not, of course, bound by the advice, but at the same time he is also in no position to disregard it completely because of its 'expert' character. Similarly, in the implementation of policy also there is scope for influencing policy. Negotiation is one method of implementing policy, but it is also the making
of policy. The goals of policy and their realization through negotiation are often fused in reality. As Professor C. J. Friedrich says, the actual negotiation generates a policy, and a given policy imposes certain and peculiar methods of negotiation. "The interrelation between objectives and techniques, between goals and the negotiations directed towards achieving them, constitutes the quintessence of what goes under the title of 'foreign policy.'" (44)

The role of the Ministry and its permanent officials as a factor in the foreign policy process is, therefore, one of great significance. The permanency of their position as different from the changing character of government and their 'expert' knowledge of the subject matter, the rules, the precedents and the like account for this importance. A large part of the necessary work in the whole process of foreign affairs is necessarily done patiently at the various desks and sections of the Ministry by its permanent officials serving at home and abroad.

This responsible work entails considerable organization and planning. The organization of the headquarters of the Ministry is one of the largest in the Government of India, employing about 1,600 persons. It is a complex mechanism which functions on the basis of division and delegation of work. It works under a system of unified chain of command, ensuring the flow of authority and responsibility in the whole

organization of the Ministry. The Secretariat is divided into smaller administrative units like divisions, branches and sections. In the same way, there are the large number of missions and posts abroad, situated in the various countries of the world. They are attached offices of the Ministry.

The Minister for External Affairs is at the head of the Ministry. Below him there are junior ministers whose responsibilities are dependent on the delegation of work to them by the Minister. There are, then, the large number of permanent officials manning the different posts at home and abroad. They perform political, consular, commercial, economic, information, intelligence and other types of work. The permanent officials manning the different offices at home and abroad are organized into the permanent services in the Ministry - the Indian Foreign Service (A) and (B). They are recruited to the service through regular competitive examinations and are then given training for their work. Much of the real technical work of the Ministry, such as representation, negotiation, information etc. are performed by them. Besides, there are also a large number of personnel who serve the overseas establishments of the Ministry on short-term assignments ranging from Ambassadors to clerical assistants and messenger boys.

In modern times, the area of foreign relations has grown beyond the scope of any single Ministry/Department within a government. It is, therefore, no longer the exclusive concern of the foreign minister and the professional diplomat. It is
the concern of whole governments and increasingly involves relations between whole states. This is in consequence of the increasing interpenetration of nations into each other's life, and the consequent expansion of the scope of 'foreign affairs.' Foreign relations are no longer confined to political or diplomatic matters, "the distinction between foreign and domestic affairs having become nothing but a fiction." (45)

In consequence, as Professor Quincy Wright says, "the probability that decisions of national agencies will have international repercussions has increased at an accelerating rate." (46)

The relationship between foreign affairs and the internal political conditions, problems of defence etc. are obvious. The problems of economic development of the country requiring considerable international assistance have made the interaction between domestic economic factors and foreign affairs particularly important in the present Indian context. In the same way, there are also the social, cultural, educational, scientific or other similar forms of international relations of the country which come to bear upon its foreign policy.

The various Ministries in the Government of India that deal

(45) Ibid., 76. This has been discussed further in C. J. Frederich, Foreign Policy in the Making (Boston, 1938).

with these various fields of activity are also thus closely related to the conduct of foreign affairs.

Particularly important in this context has been the impact of the increasing participation by the country in international organizations and conferences. India is a member of a number of international organizations and takes part in various international conferences. They deal with a variety of matters of a political, economic, cultural, scientific, educational, agricultural, industrial or some other character. (47) For such relations with foreign governments or international bodies and conferences some Ministry in the Government of India is made primarily responsible. In this way, nearly all Ministries/Departments in the Government of India have come to be responsible for India's participation in some international organization or conference. The Ministry of External Affairs is directly responsible for all work connected with the United Nations, but keeps itself in touch with other Ministries and State Governments when issues concerning them come up within this world body. Even when other technical Ministries are made responsible for work connected with a world organization or conference, as for example the Labour Ministry, and the ILO or the Education Ministry and the UNESCO,

(47) A list of the international organizations of which India was a member in 1961-62 is given in Appendix
the External Affairs Ministry should keep itself in touch with the concerned Ministries to give them the necessary advice on the political implications of their policies and actions. For example, in the selection and briefing of delegations to such conferences and in the policy that is pursued at them, the External Affairs Ministry plays an important role of co-ordination.

Foreign affairs is thus in a larger sense the responsibility of the whole government and cannot be the exclusive responsibility of any one Ministry. The Ministry of External Affairs bears specific responsibility for the conduct of foreign affairs within the government, and this means that it becomes one of the primary responsibilities of this Ministry to co-ordinate the interests and views of the different branches of the government and the innumerable forms of international relations which, in the wider sense, constitute the 'foreign relations' of the country. Certain administrative devices have been evolved in order to ensure this vital co-ordination within the government.
Under the Indian Constitution, foreign affairs comes within the legislative competence of the Union Parliament. This includes all matters which bring the Union into relations with a foreign country, international organization or conference. It includes diplomatic and other representation, making of war and peace, and entering into treaties and agreements with foreign countries and their implementation. (48) The executive is responsible to Parliament and is dependent on it for allocation of funds so that Parliament can exercise control over the executive. But the power of the executive to originate policies and the operation of the party system have relegated Parliament to a position of only formal and secondary importance. For example, "Entering into treaties and agreements with foreign countries" falls within the legislative competence of the Union Parliament, but, as in Britain, treaties are negotiated and conducted by the executive without reference to the legislature. No ratification by Parliament is necessary for their international validity. (49)

(48) Article 246 makes provision for the division of subjects between Union and States. They are enumerated in detail in the Seventh Schedule of the Constitution. List I - Union List, entries 10 to 21 may be said to relate to foreign affairs. See footnote 73 below.

is, however, brought into the picture in implementing the
treaty for "no treaty has any statutory authority in India
unless Parliament has made a law for implementing it." (50)
The position is substantially the same as in Britain, where
treaty-making is the prerogative of the Crown. (51)

At the same time, there has been in all constitutional
democracies, as Quincy Wright points out, "a continual conflict
between the demand of the executive for almost unlimited
discretion in the conduct of foreign policy and the demand of
nationalistic public opinion, often reflected in legislative
bodies, for greater restrictions of law upon executive
discretion." (52) This conflict has expressed itself in
British history through the conflict between the claims of the
prerogatives of the Crown to exercise the powers to recognize
foreign governments, formulate policies, instruct diplomats,
make treaties and declare war and the power of Parliament over
appropriations and legislation, and the independence of the
courts. (53) In the case of India this conflict has not

(50) Durga Das Basu, *Annotated Constitution of India*
(Calcutta, 1953) 309.

(51) Ratification by Parliament is necessary in Britain
only in the case of (a) Treaties which alter or add to the
existing law of Great Britain and require to be enforced by
courts, (b) Treaties imposing monetary liability on Great
Britain, since under the English Constitution, no money may be
raised or expended without legislation, (c) Treaties which
attempt to increase the power of the Crown, (d) Treaties
involving the cession of British territory, (e) Treaties made
expressly subject to the approval of Parliament.

(52) Quincy Wright, n. 46, 7.

expressed itself in any basic form so far, primarily because of the strong executive leadership in foreign affairs.

The problem of the executive - legislative conflict assumes a more complicated form under a federal system. K. C. Wheare has pointed out that it is the "intrusion of the numerous and representative assembly into the conduct of foreign relations which seems to mark off federal representative government from unitary representative government." In his opinion, effective parliamentary control of foreign relations seems an essential prerequisite of good federal government in this sphere. (54) In the United States, besides the power of the Congress over appropriations there are also other means to ensure this legislative control of foreign affairs such as the senatorial ratification of treaties and diplomatic appointments, the working of the congressional committees etc. In Canada, a constitutional convention has seemed to develop since 1918, when she began to exercise her treaty-making power independently, that the Dominion executive would not incur obligations in foreign affairs without the consent of the Dominion Parliament. (55) The Dominion Government of Canada is based on a system of parliamentary democracy but its executive does not enjoy in this respect the prerogative which


(55) Ibid., 195.
the United Kingdom executive does. In Australia, Parliamentary participation in the conduct of foreign relations has not developed so fully as in Canada. The prerogative of the executive is also less than in the United Kingdom. This is primarily because, Prof. Wheare says, with a House of Representatives of only 123, members of Cabinet can have a large majority, and the vote of each individual member is more important than in a more numerous assembly. (56)

The Indian provisions in this context seem to run closer to the British than the Canadian. "In the United Kingdom, the freedom of the executive in the conduct of foreign relations has always been asserted and it is rare that the House of Commons is required to do more than express its approval of a fait accompli." (57) In India too, parliamentary control of the executive is ensured by the principle of the responsibility of the executive to Parliament. The Council of Ministers are made collectively responsible to the Lok Sabha or the Lower House of Parliament. (58) The system is defended on the ground that the executive is chosen from and is responsible to the Lok Sabha and may, therefore, be trusted to act in accordance with the views of the House. At the same time, the quasi-federal


(57) Wheare, n. 55, 194.

(58) The Union Parliament consists of two Houses, the Lok Sabha (House of People) which is the Lower House and the Rajya Sabha (Council of States), the Upper House.
character of its constitution has not been permitted to put too many restrictions on the power of initiative of the executive as has happened under federal constitutions.

The principle of the responsibility of the Cabinet to Parliament operates in two ways—collective and individual. Under the former principle, all members of government are collectively responsible for the policies and actions of the entire government. The whole government is responsible for the foreign policy of the government and the foreign minister is responsible for all the policies of government. Under the latter principle, "the minister at the head of the department is responsible, subject to the Cabinet and Parliament, for that department." (59) For all acts of the Ministry, the Foreign Minister bears individual responsibility. Governmental process requires a certain delegation of authority and the entire government cannot take responsibility for an error of judgement or bad administration by one of its members. Under the principle of ministerial responsibility the individual responsibility of the Minister also extends to all actions of his Ministry, even if it is a civil servant or junior minister and not himself who has been personally responsible for the error. (60)

(59) Jennings, n. 16, 102.

(60) The resignations of Mr. R. S. Shanmukham Chetty in 1948, Mr. Lal Bahadur Shastri in 1956 and Mr. T. T. Krishnamachari in 1958 were instances of this kind. But such a situation has not arisen so far in relation to foreign affairs.
There are also other means by which Parliament can exact this responsibility from the government and the Ministers. The question hour, the debates in Parliament on the President's address and demands for grants of the Ministry, adjournment motions, no-confidence motions, debates under the half-an-hour discussion rules etc. afford ample opportunities for a vigilant Parliament to exercise its general control on the working of the Ministry. (61) Discussions on External Affairs may be seen to have taken up much more time in Parliament than on most other branches of government. (62) The Minister has the formidable task of defending the policy of his government and the actions of the Ministry before Parliament. In this he is aided by the Prime Minister. What often helps him is, however, the stable support of his party members in Parliament.

Active parliamentary participation in foreign affairs is made difficult on account of a number of reasons. As was noted earlier, the power of initiative of the executive organs gives Parliament only a rubber-stamping authority. Its opportunities are mostly for a post-mortem examination of the actions and policies of government. The presence of various parties and groups within it might make it a good deliberative


(62) See Appendix V - Statements showing approximate time taken on various discussions in Lok Sabha and Rajya Sabha (Ministry-wise.)
body, but cannot give it the necessary coherence and unity to originate policies. Parliament also suffers from the fact that its sessions are periodical while the government is in continuous session, that discussions in Parliament cannot be full, free and frank because they are open, and that it lacks complete information and expert knowledge for which it is dependent on the government itself. The Government and foreign minister cannot be compelled to part with information if they feel it is not in the interests of the state to do so. Lord Bryce referred to the weakness of legislatures in this respect by saying, "Means used for attaining the Ends sought cannot be safely determined by legislatures so long as our international relations continue to be what they have hitherto been, because secrecy is sometimes, and expert knowledge is always required." (63)

A general factor leading to the diminishing effectiveness of Parliament in India is inherent in the traditions and nature of the Indian politics itself. While in countries with longer parliamentary traditions Parliament has come to be the centre and focus of party politics, in India this has yet to be. During the days of the nationalist movement, the major national organizations had mostly boycotted the legislative bodies and the agitational and extra-parliamentary activities had greater significance than parliamentary work. Further, foreign affairs had been completely excluded from the purview of its discussions till the transfer of power. All these have weakened the

(63) Lord Bryce, Modern Democracies (London, 1921) II, 420.
traditions of parliamentary participation in foreign affairs in the country. Moreover, on account of the extra-parliamentary origin and past of most parties, faith in parliamentary processes is not very deep among them. Due to the low percentage of literacy, reports of parliamentary discussions are followed only by a small section of people and this makes it more worthwhile for the smaller political parties to indulge in extra-parliamentary and agitationist activities. The traditions of a strong executive in relation to the legislative have also persisted to some extent. This position has been aggravated in the case of foreign affairs because of the strong executive leadership of Prime Minister Nehru. A further factor leading to the weakness of Indian Parliament is related to the weakness of the Opposition in Parliament. The ruling party has had a preponderant majority in Parliament so far. Moreover, the Opposition is itself divided into numerous parties and groups, which are more often more antagonistic to each other than to the ruling party. Besides, certain leftist parties in Parliament like the Communist Party (since 1954) have expressed themselves to be in support of the principles of the foreign policy of the government. Opposition in principle to the foreign policy has come only from the rightist parties, but their organized emergence as political parties is a very
recent phenomenon. (64) But even those parties which are
critical do not have an appealing alternative in foreign
policy to place before the people.

The weakness of the opposition in Parliament has resulted
in weakening the role of Parliament as a whole in relation to
the executive. On account of their party loyalties, members
of the ruling party are always at a disadvantage to exact due
respect from Government towards Parliament. The weakness of the
opposition has not enabled it to play this role effectively.
Frequent criticisms have been made that sufficient respect for
Parliament has not always been shown by Government in its
relations with Parliament. Such criticisms have come from both
sides of the House. For example, it was alleged that Government

(64) The strength of the major parties in the three
Parliaments have been as follows:

<table>
<thead>
<tr>
<th>Party</th>
<th>1952</th>
<th>1957</th>
<th>1962</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Congress</td>
<td>364 (45.0)</td>
<td>371 (47.5)</td>
<td>361 (45.1)</td>
</tr>
<tr>
<td>2. Praja Socialist Party</td>
<td>21 (16.4)</td>
<td>19 (10.4)</td>
<td>12 (6.7)</td>
</tr>
<tr>
<td>3. Communist Party</td>
<td>27 (4.0)</td>
<td>29 (8.9)</td>
<td>29 (10.0)</td>
</tr>
<tr>
<td>4. Jan Sangh</td>
<td>3 (3.1)</td>
<td>4 (5.9)</td>
<td>14 (6.4)</td>
</tr>
<tr>
<td>5. Swatantra Party</td>
<td>-</td>
<td>-</td>
<td>22 (7.6)</td>
</tr>
<tr>
<td>6. Others</td>
<td>85 (32.2)</td>
<td>73 (27.0)</td>
<td>56 (24.1)</td>
</tr>
</tbody>
</table>

*Figures in the brackets indicate percentage of votes.
2. The votes and seats of the Communist Party in 1952 include
those of kindred groups supported by them.*

There has been no officially recognized opposition in the
Indian Parliament so far. In the Second Parliament (1957-62) the
speaker had not even recognized any opposition 'party' in
Parliament. The Communist bloc was recognized as a 'Group'
though the Leader of the Group was not recognized as the Leader
of Opposition. For details see, Mukherjea, n. 61, 19-20.
had withheld very important information from Parliament regarding the security of the country on the Sino-Indian border dispute. (65)
The Prime Minister himself conceded that there was "some justification" in the charge. (66) It was also reported at the time that Members of Parliament had the feeling that the Prime Minister had often entered into international agreements of a serious nature like the Sino-Indian Agreement on Tibet of 1954 or the Nehru-Noon Agreement of 1958 without consulting Parliament. (67) It was even urged by a member of the opposition that the Constitution should be amended in order to restrict the

(65) For example, see Lok Sabha Debates 34 (1959) cols. 7990-1, 8012-3. The charge has been repeatedly made on later occasions also.

(66) Ibid., col. 8115. In one of his communications in 1959 to the Prime Minister of China the Indian Prime Minister wrote:

"We did not release to the public the information we had about various border intrusions into our territory by Chinese personnel since 1954, the construction of the road across Indian territory in Ladakh, and the arrest of our personnel in the Aksai Chin area in 1958 and their detention. We did not give publicity to this in the hope that peaceful solutions of the disputes could be found by agreement between the two countries without public excitement on both sides. In fact our failure to do has resulted in sharp but legitimate criticism of the Government both in Parliament and in the Press in our country."

Letter from the Prime Minister of India to the Prime Minister of China, 26 September 1959, Notes, memoranda and letters exchanged between the Governments of India and China September-November 1959 and a note on the historical background of the Himalayan frontier of India: White Paper No. II (Ministry of External Affairs, Government of India, New Delhi, 1959) 34-5. /

powers of the executive from entering into international commitments without the prior approval of Parliament. (68)

One of the means why which Members of Parliament may associate themselves more closely with and develop a closer understanding of the functioning of the Government is the Informal Consultative Committee. Such committees have been constituted since 1954 for the various Ministries/Departments in the Government. (69) The original Committees proposed were expected to consist of not more than 30 members made up mostly of Members proposed by the different groups and parties in Parliament. But with the growing interest of members in these Committees their membership was enlarged, and thrown open to all Members of Parliament on the basis of preferences indicated by them. The meetings of the Committees are arranged by the Department of Parliamentary Affairs.

(68) A. B. Vajpayee, Lok Sabha Debates, 49 (1960) col. 6482-3.

(69) The Informal Consultative Committees replace the former Standing Committees, constituted first in 1922 under the Montague-Chelmsford Reforms. They performed only advisory functions and were intended to "familiarise the elected members with the process of administration" and "assist in the political education of India." They were elected annually by the House. After 1947 they continued to function under prescribed rules. It was however felt that such Committees were "out of date and did not fit in with the constitutional changes that had taken place and the democratic pattern under which the formulation of policies and its execution became the responsibility of the Council of Ministers responsible to the Parliament." Therefore in consultation with the Speaker of the Lok Sabha and the Chairman of the Rajya Sabha the Standing Committees were abolished in 1952. In 1954 the Informal Consultative Committees were constituted.

For more details see, Report of the Department of Parliamentary Affairs 1961-62, 6-8; Morris-Jones, n. 61, 309-11.
In terms of membership the Consultative Committee for External Affairs is one of the more popular among the Committees. (70) The Committees are considered to be forums for something of an informal get-together for Ministers, members and senior officials and there are, therefore no formal rules to guide them in their work. The meetings of the Committee are required to be held twice during a session but in actual fact it may be seen that only fewer meetings of the Committee have been held. (71) The agenda for the meetings is fixed on the basis of suggestions made by members, invited in advance from them. The usual procedure is for the Prime Minister to address the members on the various questions raised by them and, then, to give such clarifications and explanations as are asked for by the members. It cannot, however, be said from the actual working of the Committee that it has been very effective in forging strong links between Parliament and the Ministry. The membership of the Committee is very unwieldy, for example, it was 65 in 1959. (72) It has no powers assigned to it under any formal rules or statutes. The Committee is at best something like a study group of Members of Parliament

(70) Appendix VI gives the strength of the various committees for 1957 and 1959.

(71) Appendix VII gives a table on the meetings of the various Informal Consultative Committees held during the 2nd Lok Sabha.

(72) See Appendix VI.
who are interested in foreign affairs. The kinds of discussions in the Committee are more of a post-mortem type, the Government being bound in no way to place before the Committee questions in advance. The extent of discussions in the Committee is always determined by the Minister who takes the chair. In other words, the function of the Committee is limited by the amount of consultation the Ministry is prepared to have with it. Similar committees are also functioning in other countries like United Kingdom, Australia and Canada. In U.K. and Canada the committee is authorised to discuss only the estimates and not policy matters. (73) As even this right was denied to the Committee in Australia, the Labour Opposition has boycotted its working. (74)

Some of the other committees of Parliament like the Estimates Committee and the Public Accounts Committee are also in a position to influence the working of the Ministry. The Estimates Committee of the Second Lok Sabha brought out a report on the Ministry of External Affairs in 1960-61, on the basis of which certain reorganization measures of the Ministry, its missions and posts abroad and the foreign service have been undertaken. (75) But the influence of such committees can be felt on the administrative side and not on policy matters.

(74) Ibid., 353.
The Federal System

As under all federal constitutions, the Indian Constitution also assigns foreign affairs to the legislative and executive competence of the Union. (76) Foreign affairs include "all matters which bring the Union into relation with any foreign country." (77) They include diplomatic and other forms of representation, participation in international organizations and

(76) Article 246(1), Seventh Schedule, List I - Union List Entry 10. The Seventh Schedule consists of three Lists - Union List, State List and Concurrent List.

(77) Ibid., Entries 11-21 are practically enumerations of the more important forms of foreign relations. They are:

10. Foreign affairs; all matters which bring the Union into relation with any foreign country.

11. Diplomatic, consular and trade representation.


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

14. Entering into treaties and agreements with foreign countries and implementing of treaties, agreements and conventions with foreign countries.

15. War and peace.

16. Foreign Jurisdiction.

17. Citizenship, naturalisation and aliens.

18. Extradition.

19. Admission into and emigration and expulsion from India; passports and visas.

20. Pilgrimages to places outside India.

21. Piracies and crimes committed on the high seas or in the air, offences against the law of nations committed on land or the high seas or in the air.
conferences, treaty-making and implementation, making of war and peace etc. (78) It also comes in for specific reference in the Constitution that irrespective of the federal division of powers between the Union and the States, "Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body." (79) Similarly, the Union has also the full executive powers necessary for the implementation of its laws and the treaties and agreements it might make. (80) The executive power of the States is to be so exercised as to ensure compliance with the laws made by Parliament and as not to impede or prejudice the exercise of the executive power of the Union. The executive power of the Union also extends to 'the giving of such directions to a State as may appear to be necessary for that purpose. (81) On the failure of a State to comply with such directions the President is empowered to hold that 'a situation has arisen in which the

(78) For the practice in other federal constitutions see Wheare, n. 54, 178.
(79) Article 253.
(80) Article 73(a) and (b).
(81) Articles 256 and 257.
government of the State cannot be carried on in accordance with the provisions of the Constitution." (82) This might call for the exercise of the Emergency Powers of the President. (83) The Union is thus vested with comprehensive legislative and executive power to conduct foreign affairs. The central government in India is, in this respect, in a stronger position than that of Canada or of Australia. (84)

After making a study of the problem of federal government and the control of foreign relations with special reference to Australia, Canada, Switzerland and the United States, Professor K. C. Wheare states that "federalism and a spirited foreign policy go ill together." (85) During the course of the last few years India has been seeking to pursue a spirited foreign policy and this has naturally brought the Union and the States into defining their mutual relationship in such a way as to strengthen further the position of the Union. This has primarily been in consequence of the treaty-making and performing power of the Union. The fact that the same party has mostly remained in power at the centre and in the states has been still another factor strengthening the Union vis-a-vis the states in the

(82) Article 365.
(83) Article 356.
(84) For a detailed discussion on the Canadian and Australian provisions see, Wheare, n. 54, Chapter IX.
(85) Wheare, n. 54, 196.
conduct of its foreign relations. (86) The strong Union leadership in foreign affairs is also partly accountable to the fact that this leadership has been of Jawaharlal Nehru as Prime Minister and Minister for External Affairs.

But in carrying out its responsibilities in relation to foreign affairs the Union cannot entirely depend upon the exercise of its powers. More important is the willing co-operation which it can elicit from the states. With the increasing interaction between domestic and foreign affairs, the States cannot remain indifferent to foreign relations even if they are a central responsibility. Legislation entered into by the Union Parliament in pursuance of a treaty or agreement or convention might make inroads into the legislative spheres of States. The Union has, therefore, the duty of finding out what the interests and attitudes of the States are before it commits the whole country to some treaty or agreement. It should also seek the co-operation of the States in implementing them. A system of active consultation and co-operation between Union and States therefore becomes necessary in the conduct of foreign relations.

(86) There has been only one instance so far of a non-Congress Ministry functioning in the States. This was in Kerala between 1957-60, when the Communist Party was in power. For a few months after a mid-term elections in 1954, the Praja Socialist Party formed a minority government in Travancore-Cochin (re-organized as Kerala since 1956) with Congress support. A Congress-Ganatantra Parishad coalition was in power in Orissa between 1957-61 and a Congress-P.S.P. coalition in Kerala between 1960-'62.
Quite naturally, this consultation and co-operation will be more with regard to the non-political forms of foreign relations than the political. Regarding matters which come under the State List or the Concurrent List, the Union Government has devised various means of consulting the States. This is, for example, seen in the case of participation by Union Government in an international organization like the ILO. In the selection of personnel of the Indian delegation to the ILO Conferences, in formulating the policy to be followed on the various questions, in arriving at decisions regarding the ratification and implementation of the ILO Conventions etc. the state governments are given opportunities for active participation. (87) There have been, in other words, attempts at fostering a wide area of Union-State consultation and co-operation with regard to the conduct of foreign relations relating to the non-political matters affecting the states.

On political matters the Union Government has, under normal circumstances, absolute discretion. It does not enter into any official consultation at all with State Governments on such matters, even though there might be consultations on a personal level between the Prime Minister and important leaders from the States at party conferences or on other occasions. It is not, however, impossible that there might come situations when, even on political matters, it might be advisable to have consultations with States before final decisions are taken.

(87) For details regarding the procedure adopted see, A. Appadorai "India's participation in International Organizations - Administrative aspects," India Quarterly (New Delhi) 16 (July-September 1960) 255-60.
An instance of this kind was the Indo-Pakistan Agreement of 1958 concluded between the Prime Ministers of India and Pakistan. Under this agreement India was to transfer control of half the area of the disputed Berubari Union No. 12 to Pakistan with the other half to be retained by India. (88) In order to give effect to this as well as similar later agreements regarding the transfer of the territory the Constitution (Ninth Amendment) Bill and the Acquired Territories (Merger) Bill were moved in Parliament. (89) There was considerable public feeling against the Agreement in West Bengal, of which the Berubari Union had remained a part. On 29 December 1958 and again, on 1 December 1960, the West Bengal Legislative Assembly unanimously adopted resolutions moved by the Congress Chief Minister B. C. Roy, known to be personally and politically very close to Prime Minister Nehru, criticising the agreements entered into by the Union Prime Minister. The latter resolution described the Acquired Territories Bill, 1960 as "unconstitutional and invalid" on six grounds, one of which referred to the 'objectionable' method adopted by the Union in depriving the State Legislature to express its opinion in respect

(88) Agreement between the Governments of India-Pakistan dated 10 September 1958 settled certain boundary disputes between the Governments of India and Pakistan relating to the common borders between the State of West Bengal in India and East Bengal in Pakistan. This agreement was signed by Mr. Nehru and the then Prime Minister of Pakistan Mr. Feroz Khan Noon. The total area of the Berubari Union No. 12 was 8.75 square miles, half of which was to be transferred to Pakistan. It had a total population of about 12,000 to 13,000.

of the cession of a part of the territory." (90) Regarding the Prime Minister's claim that the maximum possible consultation had been maintained at the official level with the States concerned, the Chief Minister of West Bengal pointed out that the final decision in respect of the transfer of the territory was taken by the Prime Minister himself and not on the advice or the concurrence of the West Bengal Government revenue officials. (91) In consequence of the strong public feelings in the matter, the Prime Minister even went to the extent or approaching the Pakistan Government to find out if anything could be varied in the agreement, but the Pakistan Government was not willing to make any change. (92) The incident shows that there can, therefore, be situations where Union-State consultations are necessary in respect of foreign relations, even on political matters.

With the firm unitary tenor of the Indian Constitution, particularly in respect of foreign relations and the making and performing of treaties, the only real check upon the Union

(90) In a special resolution passed on 29 December 1958 the West Bengal Legislative Assembly expressed its opinion that the Berubari Union "should remain a part of the territory of the Union of India." On 1 December 1960 the Assembly passed a further resolution expressing its views on the Acquired Territories Merger Bill 1960 in accordance with the reference by the President through the State Government to the Legislature of the State. The resolution pointed out that the Bill should have been referred by the President to the State Legislature directly and not through the State Government as was done.

(91) Statement by B. C. Roy in the West Bengal Legislative Assembly, The Hindu (Madras) 2 December 1960. For statements referred to of Prime Minister see, Lok Sabha Debates, 49 (1960) col. 5990-3, 6245-66, 6547-63 etc.

that its plenitude of power in this sphere will not be used arbitrarily against the state rights is political - the hope that the Union would not embark upon steps which have no general support in the country. The very strong position enjoyed by the Union in the conduct of foreign affairs has been largely due to the provisions of the Constitution, but partly they have also been due to certain existing political factors relating to a centralisation of political forces in the country. (93) As these latter factors tend to weaken, the importance of the states in Union politics might also tend to increase. For example, with a greater decentralisation of leadership to State levels in the ruling party or even in a situation under which a few State Governments are formed by parties other than that at the centre, the Union might find it necessary to have greater consultations with the States on foreign policy matters indirectly affecting state rights and interests.

The importance of the judiciary in a federal constitution is obvious. It might play some role in the foreign policy process, when it acts as the guardian of the constitution. The Supreme Court of India has original jurisdiction in matters relating to the Union Government. (94) The Court is entitled to examine complaints before it regarding the constitutionality of the acts of the Union. These include the conduct of foreign affairs also. But the very clear enunciation in the Constitution about the more or less unrestricted treaty-making and performing power of the Union has reduced the possibility of intervention by the Court on such

(93) This was briefly noted above.
(94) Article 131.
matters, as has happened in other countries. (95)

The Supreme Court of India has also advisory jurisdiction in relation to the Union Government. (96) So far, in regard to the conduct of foreign relations, there has only been one occasion when the Supreme Court exercised this jurisdiction. (97) This related to the Indo-Pakistan Agreement of 1958. (98) The President of India sought the advice of the Court regarding the constitutional procedure to be adopted in the case of implementing these agreements. It was on the advice of the Supreme Court that the Union Government introduced the Constitution (Ninth Amendment) Bill instead of a simple legislation for the purpose. (99) There have not, however, been any occasion so far when Court decisions have forced the Government to make important changes in foreign policy. But in other countries decisions of courts have often come to affect the nature and conduct of foreign relations in a very important way. (100)

(95) For example the Privy Council denied the right of the Dominion Government of Canada to enter into treaties and agreements which refer to matters coming under the State List. Wheare, n. 54, 184-6.

(96) Article 143.

(97) Under Article 143 of the Indian Constitution the Supreme Court is vested with the power to deliver advisory opinion on any question of fact or law that may be referred to it by the President.

(98) See above, footnote 83.

(99) Statement by Prime Minister, Lok Sabha Debates 49 (1960) col. 6256-8.

(100) Wheare, n. 54, 181-4.
VII

Public Opinion

Democratic governments function as the expression of the will of the people, but no ready methods are available to assess accurately the nature and extent to which this will actually exercises itself on government policies and actions. This is as much true of foreign affairs as of other matters of state politics.

Direct participation by the people in the conduct of foreign policies is not practised in any country in the world, with the possible exception of Switzerland in certain respects. (101) The reasons are obvious. Two masses of people have no way of dealing directly with each other. They can act only through governments, in the same way as governments act through individuals as their agents. People's participation in foreign affairs is, therefore, related to the nature and extent of control which they can exercise on their governments and its agents.

It has, often, been pointed out that there are certain dangers inherent in people's participation in foreign affairs.

(101) In 1920, the question of Switzerland's accession to the League of Nations had been submitted to the people in referendum and approved. By an amendment to the Swiss Constitution in 1921 (Article 89) it was provided that, if 30,000 voters or eight cantons demand it, treaties which bind the state to any period more than 15 years must be submitted to the people for approval in referendum. In 1923, a treaty was submitted to the electorate and rejected. For more details see, Wheare, n. 54, 195-6.
The difficulties of determining what constitutes the 'public' and the 'opinion' are not merely of semantics, but are related to the basic theories of democracy. (102) According to Harold Nicolson, "the most potent source of danger in democratic diplomacy is the irresponsibility of the sovereign people." (103) A second danger is of popular ignorance and of certain forms of popular knowledge, which lead to the consequence that "in their approach to foreign affairs the democracies of the world do not all of them manifest that balance and good sense which they apply to domestic problems." (104) Walter Lippmann has stated "... the very qualities which are needed for negotiation - quickness of mind, adaptiveness, invention, the right proportion of give and take - are the very qualities which masses of people do not possess. (105) As a result of his observation of the American scene more than a century back, Tocqueville suggested in the form of a hypothesis that "foreign politics demand scarcely any of those qualities which a democracy possesses; and they require, on the contrary the perfect use of almost all those faculties in which it is deficient." (106) He had no hesitation

(102) For example, see Gabriel Almond, The American People and Foreign Policy (New York, 1950).

(103) Nicolson, n. 3, 90.

(104) Ibid., 92.


in avowing his conviction that it was especially in the conduct of foreign relations that democratic governments appeared to be decidedly inferior to governments carried upon different principles. (107) This hypothesis has been subsequently subjected to further studies and analyses. (108)

At the same time, it is obvious that in modern times no government can afford to ignore the trends of public opinion in the conduct of its domestic or foreign policies. This is all the more true of governments functioning under a democratic system. This is why elaborate and costly efforts are made by them to cultivate public opinion. The essential question that arises in this context is to determine the nature of situations and the extent to which public opinion should be permitted to control the conduct of foreign relations. Quincy Wright has sought to draw a distinction between the extent of control which public opinion might exercise on the executive in relation to domestic affairs and foreign affairs. He says,

In domestic affairs what the public wants can, in large measure, be realized by legislation and administration, so the problem of democratic government is to ascertain public opinion and when a demand is clear, to implement it. But in foreign affairs, what can be obtained depends upon the policies of foreign governments and upon the power

(107) Ibid.

(108) A number of other studies arriving at same or different conclusions can be cited. For example, see Henry M. Wriston, Diplomacy in a Democracy (New York, 1956); Max Beloff, Foreign Policy and Democratic Process (Baltimore, 1955); De Witt C. Poole, The Conduct of Foreign Relations under Modern Conditions (New Haven, 1924) etc.
situation. Public opinion can guide only the broad goals of foreign policy. Short-run policies and their detailed applications must be left to the discretion of the executive. (109)

A related problem is that of finding out proper means of assessing public opinion. In spite of the recent developments in public opinion research carried out in Western countries, the different techniques or instruments for conducting public opinion research like public opinion surveys and polls have not yet reached the level of absolute accuracy in evaluation.

Under the democratic system an educated public opinion is essential for a healthy conduct of foreign policy. A distinguished member of the U.S. Foreign Service pointed out, nearly four decades back, that "the popular sense of responsibility and restraint ... will grow as foreign affairs come increasingly within popular knowledge, and the wisdom of popular judgement, when it is deliberately expressed, is a foundation upon which a lasting edifice may be built." (110)

Problems of relating public opinion to governmental policies and actions have been made more complex in India on account of the backwardness of the country in its social organization, literacy and education, nature of the organs of public opinion etc. Such problems are all the greater in the

(109) Quincy Wright, n. 46, 14.
(110) Poole, n. 103, 196-7.
case of foreign affairs in which the issues involved are more complex and the public ignorance is likely to be greater.

So far, public opinion in India has, on the whole, tended to support the broad lines of the foreign policy of the government. Criticisms have been confined mostly to details of application rather than to the basic principles of foreign policy. The debates in Parliament and press, discussions among the political parties, reports and comments in newspapers, the information and publicity activities of the government etc. have remained the main sources and bases of public opinion in India. These have been broadly favourable to the government. As an individual, the contribution made by Prime Minister Nehru to evoke public interest in international relations and to divert it in favour of government policy has been considerable.

The period elections to Parliament are one of the occasions when public opinion may seek to express itself and to exercise control over the government in the conduct of foreign relations. It gives the people an opportunity to express their judgement on the record of the government in power and on the criticisms made on government policies and actions. But elections are rarely fought on foreign policy. Domestic affairs which are nearer home to the electorate and are much more easily intelligible to them have more often come to dominate election politics. Even in Britain, which may be supposed to have a better educated and better

informed electorate than in India and where foreign policy has sometimes been a matter for acrimonious debate between parties, it is only rarely, as in 1880 or 1935, that foreign affairs became directly involved in election politics. The Indian Constitution has provided for periodic elections to the Parliament, the maximum life of a Parliament being limited to five years. (112) There have, so far, been three general elections after the new Constitution came into force in 1950 - in 1952, 1957 and 1962 - but on none of these occasions did foreign affairs feature as a key issue. This was, in part, due to the general acceptance of the principle of the foreign policy of the government by the main opposition parties, and the general support to the policy within the country. But it was also due in part to the general ignorance about foreign affairs in the electorate, and the difficulties of educating them on its intricacies. The exercise of public opinion on foreign affairs through periodic elections has not, therefore, been very significant.

People's participation in foreign affairs has, however, been demonstrated in another form. This is by the formation of strong public opinion on particular issues. Instances are available in the United Kingdom of the incidence of such strong public opinion on the policies and actions of governments on particular occasions, a very recent instance being the retirement of Sir Anthony Eden from Prime Ministership following the

(112) Article 83 (2).
British action in Suez in 1956. (113) In this sense public opinion has often been an important element of Indian foreign policy also. Mr. Nehru has stated, often, that the foreign policy of the country has derived its strength from the strong expressions of public opinion in its favour and that, therefore, any departure from it is not possible as long as public opinion continues to be behind it. In his own words, "Any attempt on our part i.e., the Government of the day here, to go too far in one direction would create difficulties in our own country. It would be resented and would produce conflicts in our own country which would not be helpful to us or to any other country." (114) It cannot be doubted that on particular issues, like the Indonesian question from 1947 to 1950, the formation of a strong public opinion strengthened the government considerably in pursuing its policy. At the same time, there have also been instances when unfavourable public opinion forced the government to revise or even retreat from its earlier policy. The Hungarian crisis in 1956 was one such instance. The voting of the Indian delegation on the resolution of 9 November 1956

(113) The resignation of Sir Samuel Hoare from Government in 1933, following the leakage of the details of the Hoare-Laval Plan and the storm of public opinion within Britain against it, is possibly the most obvious instance. After a preliminary hesitation, Government was forced to sacrifice its Foreign Secretary and repudiate the proposals. For more details see G. M. Gawthorne Hardy, A Short History of International Affairs 1920-1938 (London, 1952) 414-9.

(114) Nehru: Speech delivered at the Indian Council of World Affairs, 22 March 1949, Independence and After, A Collection of the more Important Speeches of Jawaharlal Nehru from September 1946 to May 1949 (The Publications Division, New Delhi, August 1949) 257.
in the General Assembly led to a great controversy in the country, in the press and in Parliament. (115) Even though the Prime Minister latter upheld the action of the delegation, (116) a subtle change in emphasis in Indian policy was discernible afterwards. Similarly, India's failure to sponsor the resolution on the admission of China to the United Nations at the 15th session of the General Assembly was, as the Prime Minister stated later, out of consideration for the strong public opinion in India against China on account of the border disputes. (117)

Since 1959, the responsibility for internal publicity relating to foreign affairs has been with the External Affairs Ministry. Such activities are mostly concerned with distribution of the departmental hand-outs to and the occasional 'briefing' of the press. The Ministry has its 'official spokesmen' and

(115) This resolution was submitted by Italy, Cuba, Ireland, Pakistan and Peru (Resolution 1005(ES-II)) and amended by sponsors (A/3316). It was adopted by the General Assembly on 9 November 1956, meeting 571, by roll-call vote of 48 to 11 with 16 abstentions. India was the only non-communist country to vote against the resolution with the communist countries. For a summary of the debates and text of resolution see Year Book of the United Nations 1956 (New York, Department of Public Information, United Nations, 1957) 71-2 and 85.

There was considerable opposition in the country with regard to the stand taken by the Indian delegation. This was reflected in the press and Parliament. It was alleged that the delegation had gone beyond its mandate. The action was however upheld by the Prime Minister. (For example see, Lok Sabha Debates 9 (1959) col. 371-604; The Statesman (Calcutta), The Hindu (Madras) and The Times of India (Bombay) and The Hindustan Times (Delhi) dated 11 and 12 November 1957/.


'reliable sources' who keep themselves in touch with the press. The press in India is independent and the press regulations are liberal. It has, in general tended to support the broad lines of the foreign policy of the government. (118) Coverage of international news is comparatively high in the Indian press though interest tends to centre around certain areas and countries. The national press has, however, shown a tendency to develop into monopolies in recent times and this might develop into a major factor in the formation of public opinion in the country. To an extent, government have means of exercising some pressure on the press through distribution of advertisements, allocation of newsprint quotas etc., but a very self-conscious press and a vigilant, though weak, opposition have prevented any serious misuse of such opportunities by government. (119)

In short, there has existed, possibly in an intangible form, a close relationship between government and public opinion in relation to foreign policy. It might be too sweeping a generalisation to state, as certain writers have done, that "public opinion followed rather than led the Government in the formulation of its foreign policy." (120) Nor has public opinion

(118) See V. K. Narasimhan, "The role of the Indian Press in the shaping of foreign policy," The Indian Year Book of International Affairs (Madras, 1956) V, 335-42.

(119) These conclusions were arrived at in the Report of the Press Commission (Delhi, 1954) and, International Press Institute, Flow of the News (Zurich, 1953) Chapter IV, Appendix IV.

remained very indifferent to foreign affairs, as certain other writers seem to think. (121) The social basis of 'public opinion' in relation to foreign affairs has been relatively narrow in India, but within this narrow basis it has remained relatively dynamic and active. While supporting the government on its broad formulations of policy, it has also occasionally been critical of the government whenever it had felt that there were departures from these general principles on specific questions. With the spread of education and knowledge on questions of international relations, public opinion is certainly liable to assume a larger and larger role in the conduct of foreign policy of the country.

(122) A. D. Gorwala, Not in Our Stars. (Bombay, 1958) 264.