

scheme. He has found that the Madras claim has practically no evidence to support it, and has also rejected the counter-claim by Orissa. The middle of the river is now established as the boundary between the two Provinces, and the Machkund scheme will, I presume, be able to go ahead.

The report submitted by B.N. Rau on the above boundary dispute has formed the basis of the Madras-Orissa Agreement, 1946 on the Machkund Hydel Project.

11. I.N.A. TRIAL (1946)

It is of interest to note that B.N. Rau was also one of the important persons who joined together in chalking out the line of defence in the famous Indian National Army Trial.¹⁷

B.N. Rau's deep knowledge of international law was of great assistance in evolving an interesting theory for the defence at the above trial. This theory was, at the trial, put forth with commendable clarity and force by Bhulabhai Desai as the counsel for the defence. The theory was that the accused were entitled, according to the established principles of international law, to take up arms under the aegis of a provisional government headed by Subhash Chandra Bose, in order to gain the freedom of the country and the acts done by them in their capacity as members of such an organised force could not be offences under the municipal law of India. It was urged that the accused were immune under international law from the offences charged against them under the Indian Penal Code. It was pointed out that an organised provisional government to which a substantial number of people (nearly two million in number) owed their allegiance had been established and the Indian National Army was working under the directions and control of this provisional government. The Indian National Army was not a set of rebels, a desultory sort of crowd of no consequence. No doubt, the military court which tried the case did not accept the theory for various reasons. But the defence put forward before it was certainly one deserving consideration. If strict principles of

17. B.N. Rau, *India's Constitution in the Making*, *supra* note 3 at p. xx.

international law governing a war had been applied, the decision of the military court would have been a different one altogether. The trial was over by December, 1945.

12. ADVISER TO THE CONSTITUENT ASSEMBLY (1946-49)

The most enduring contribution of B.N. Rau was in the Constituent Assembly. B.N. Rau was appointed as the Adviser to the Constituent Assembly in 1946. He also had a hand in moulding the foreign policy of independent India, even before India was formally declared as a Sovereign Republic. When Pandit Nehru was to reply to the debate on the 'Objectives Resolution' tabled before the Constituent Assembly on December 9, 1946, Rau suggested that Pandit Nehru might put forward the idea of remaining in the Commonwealth, even though India was to be a Republic. At that time, Rau sent a hand written note to Pandit Nehru, which read thus :

May I take the liberty of suggesting that in your reply on the 'Objectives Resolution' you might slightly amplify what you said in your opening speech about the future relations between India and England ? Something on the following lines occurs to me, but you would know best what to say :

This question has sometimes been asked, what will be the relations between the new Indian Republic and the British Community ? The answer is not difficult; in the world of today, the relations between States are not governed by labels. The U.S.A. has been a Republic for over 150 years; nevertheless, in two successive World Wars it fought on the same side as England to ward off a common peril. Ireland is treated by England as a Dominion and a member of the British Commonwealth; yet, in the last World War, Ireland remained neutral. And so these names have ceased to have much significance as regards mutual relations. The world has entered upon a new era and we have to think in new terms. We are now, all of us, part of a new World Organisation—the United Nations, units of a World Federation in the making.