

If Dr. B.R. Ambedkar was the skilful pilot of the Constitution through all its different stages, Sri B.N. Rau was the person who visualised the plan and laid its foundation. He was superb in draftsmanship, endowed with a style which was at once clear, illuminating and precise—qualities which are indispensable in any document of legal or constitutional importance. He was not only deeply learned but careful and circumspect in regard even to the minutest details, so that any problem that he handled received full consideration from every aspect, thus eliminating, as far as possible, mistakes through misunderstanding or misinterpretation. The opinions which he gave on any controversial point that arose in the course of the discussions in the Constituent Assembly were full and judicious and based on a deep study of the subject. His services to the Constituent Assembly were highly appreciated even outside India, and the credit for preparing the framework of the Constitution of Burma goes to him in a large measure.

### **13. ADVISER TO GOVERNMENT OF BURMA (1947)**

While B.N. Rau was still functioning as the Constitutional Adviser to the Indian Constituent Assembly, the Burmese Government sought his services in connection with the drafting of the Constitution of Burma in 1947. He gave his services unstintedly, even though, simultaneously, he had to bear the burden of the duties of the Adviser to the Constituent Assembly of India.

### **14. PERMANENT REPRESENTATIVE AT THE U.N.O. (1949-51)**

Later, B.N. Rau was the Permanent Representative of India at the United Nations Organisation. In that capacity, he had to handle many delicate matters, such as the Jammu and Kashmir dispute and Hyderabad dispute. When India was elected as a member of the Security Council, he represented India on it and participated in discussions on a variety of issues like the Kashmir problem, problem of Italian colonies in Africa, Korea, China etc. He also functioned then as

Chairman of the Atomic Commission into whose functioning he brought order and set it on correct lines.

There is an allusion to the work done by Sir B.N. Rau in the United Nations in a letter written by Sardar Vallabhbhai Patel, the Deputy Prime Minister of India to Pandit Jawaharlal Nehru, the Prime Minister of India:<sup>22</sup>

2. The affairs of the United Nations continue to give rise to apprehension. The forum of the UNO has become a platform for the exchange of abuses and bitter and hostile criticism between the two blocks in which the world is being sought to be divided (somewhat reminiscent of the old Papal Bull which divided the colonies of the world between Spain and Portugal in the Middle Ages). Whether it is the question of disarmament or the atom bomb or the Berlin issue, this cleavage manifests itself in its worst form. India has been trying to play the role of the Good Samaritan and trying to evolve order out of chaos and agreement out of differences. It has succeeded in resolving the deadlock over the revival of the Atomic Commission and Shri B.N. Rau, who has been elected Chairman of the sub-committee of eleven to examine the problem of international control of atomic energy, has been straining his best to bring the contending points of view of the Anglo-American block and the Soviet as near each other as possible. India has also been elected a member of the Economic and Social Council by an overwhelming majority.

A letter from B.N. Rau (as the Indian representative at the United Nations) to Girija Shankar Bajpai, Secretary-General, Ministry of External Affairs, gives an insight into the quiet but efficient diplomatic work carried out by B.N. Rau in connection with the Hyderabad issue at the U.N.:<sup>23</sup>

I have already telegraphed to you a brief summary

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22. See Durga Das (Ed.), *Sardar Patel's Correspondence* (1945-50), Sardar Patel's letter dated 1st October, 1948.

23. Durga Das (Ed.), *Sardar Patel's Correspondence* (1945-50), vol. VII, pp. 317-19, B.N. Rau's letter dated 27 May, 1949 to Girija Shankar Bajpai.

and the result of the discussion in the Security Council on the Hyderabad issue. Although we made an attempt to have the subject, once and for all, removed from the agenda, we did not at any time expect that the attempt would succeed, if only for the reason that such a thing has apparently never been done in the past. The Canadian and Chinese members of the Security Council were themselves in favour of our proposal, but after sounding their colleagues they came to the conclusion that it might not secure the seven votes necessary to get it adopted; and rather than make such a proposal, provoke a discussion, and ultimately lose, they preferred to let the Council simply adjourn after Zafrullah's statement.

At the conclusion of his address, Zafrullah made three proposals : (i) that the point of competence should be referred to the International Court of Justice; (ii) that in the meantime there should be a general amnesty for all political prisoners, and persecution and discrimination should be stopped; and (iii) that the future of Hyderabad should be decided by a plebiscite under the auspices of the United Nations. But he found no supporters for any of these proposals and the Council adjourned almost immediately after he had concluded his speech. This means that the Security Council, having heard all that there was to be said for and against India on the Hyderabad issue, considered that there was no justification for any kind of intervention by the United Nations. The issue may therefore be regarded now as dead for all practical purposes.

If I may say so, I am glad that we abandoned our original idea of not participating at all in the proceedings. There has been a persistent feeling here that India's action in Hyderabad was rather like Hitler's in Austria or of Mussolini's in Abyssinia and that we were fighting shy of any discussion because we had no case on the merits and hardly any in law. The USA, Norway, Canada and China advised us more than once that non-participation would be detrimental to India on this particular question, besides weakening her position all round. To

have kept aloof in these circumstances would have been not only fatal to our moral prestige but might also have led to some kind of intervention by the United Nations. We should then have been compelled to resist the intervention, which would have made our position still worse. I am, therefore, glad that we took the opportunity of explaining our position. Actually we had a good case both on the merits and in law; all that was necessary was to put it forward fairly and clearly. The result was apparent almost immediately. The USA and Canada were completely converted by the argument that to permit Hyderabad or any other Indian State to be independent would mean the disintegration of India, and they were particularly impressed by our reference to what is happening in Burma as a result of Karen State claiming independence. The Canadian member went so far as to say that after reading our statement in the Security Council he felt that India should have taken action in Hyderabad earlier than she did. Even Egypt felt the force of the argument about disintegration. At the end of the first day (Thursday, 19 May) there was a general feeling among the members that whatever might be said of the method used by India, she was right in her political objective of not permitting any independent islands in the very heart of her territory. Against this feeling Zafrullah could make no headway and I think the disclosures at the trial of Sydney Cotton, which proved that gun-running was going on in Hyderabad, with Pakistan as an accomplice, from the end of May, 1948, further weakened his position. Needless to say, he did all that he could, by extensive quotations, chiefly from the Dawn and in other ways, to discredit India. He even produced photographs of the Nizam, taken with the Prime Minister, and with the Deputy Prime Minister after the surrender, and asked members to judge for themselves whether the Ruler of a State as extensive as France could look like that, if he was really a free man! Probably none of the members knew what the Nizam looked like in private life even in his best days. Even so, I do not think they were very much impressed

by the photographs. Almost the only slip which Zafrullah made was his allusion to the fact that the Laik Ali Government had removed the State ban on Communists.

During the interval between Thursday and the following Tuesday, we met all the members of the Council except Dr. Arce (Argentine) and discussed the whole question in detail with each. When the debate was resumed on Tuesday (24 May), it was fairly clear that members had already made up their minds as to what they should do. While Zafrullah was speaking, a hint was conveyed to me by some of the members, including the President, that I need not trouble to reply. Since I had no intention of replying in any case, I had no difficulty in complying. The result, as I have already mentioned, was that there were no speeches at all after Zafrullah's, not even by Dr. Arce of the Argentine or by Fowzi of Egypt, and the Council adjourned. After the close of the meeting, Zafrullah came to me in the delegates' lounge and was more cordial than he had ever before been, either in Paris or here. He explained that he had to put the case of his Government, that there were now only two issues pending between the two countries, namely, that of Kashmir and that of certain irrigation canals and that if these could be got out of the way, there was no reason why the two countries should not come closer and closer together. Needless to say, I cordially reciprocated his wishes.

I should like to bring to your notice that the question of Kashmir is even now looming large in the minds of the members of the Security Council. The representatives of the USA, Canada and Norway referred to it pointedly when I went to discuss the Hyderabad issue with them, and they seemed very anxious that India should not put herself in the wrong. The representative of the USA was particularly concerned as to the awkward position in which Admiral Nimitz would be placed if, after he had been designated Plebiscite Administrator, the truce agreement fell through and there was to be no plebiscite. I have already telegraphed to you certain points (suggested

by discussions here) on which I should be grateful for any new material you can send.

### 15. INTERNATIONAL LAW COMMISSION (1948-51)

While he was representing India at the United Nations, B.N. Rau was elected as a member of the International Law Commission and he held the office of Vice-President of the International Law Commission for some time. A reference to an article in a Brazilian journal written by a Brazilian colleague of B.N. Rau at the United Nations is appropriate at this stage. That article said:<sup>24</sup>

In 1947, the Assembly 'in acknowledging the utility of creating a Commission composed of persons of acknowledged international legal competency and who jointly represent the first forms of civilisation and the principal systems of law', elected the 15 members of the Commission.

I shall never forget that first meeting (in 1949), that first contact with men so different, coming from such different latitudes, representing juridical systems and forms of civilisations so diversified, some even opposed to each other.

The meeting had been called in order to establish the activity programme of the Commission. After a long discussion during which all the members had talked with the exception of one member of the Commission, the second Vice-President, Sir Benegal Rau, who had been taking notes, started to speak; and with a very clear voice and melodious accent he read what he had written from the notes he had taken. His language was almost precious due to its perfection. The way of talking was elegant and somewhat remote—as if the speaker were not there... But he was there... And the solution he proposed was practical and under the circumstances the only one capable of satisfying everybody. Agreement was immediately reached. The Commission was able to start in the following session on its work, knowing what it was doing.

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24. B.N. Rau, *India's Constitution by the Making*, *supra* note 3 at p. xxv.