APPENDICES

Declaration Adopted At The UN Conference On Environment And Development
(Rio de Janeiro, June 3-14, 1992)

The following is the Rio Declaration on principles on general rights and obligations on environment protection initiated by Heads of Governments at the United Nations Conference on Environment and Development.

Recognising the integral and interdependent nature of the earth, our home, we proclaim that:

Principal 1: Human beings are at the centre or concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature.

2. States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or areas beyond the limits of national jurisdiction.

3. The right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations.

4. In order to achieve sustainable development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it.

5. All States and all people shall cooperate in the essential task of eradicating poverty as an indispensable requirement for sustainable development.

6. The special situation and needs of developing countries, particularly the least developed and those most environmentally vulnerable, shall be given special priority. International actions in

the field of environment and development should also address the interests and needs of all countries.

7. States shall cooperate in a spirit of global partnership to conserve, protect and restore the health and integrity of the earth's eco-systems. In view of the different contributions to global environmental degradation, States have common but differentiated responsibilities. The developed countries acknowledge the responsibility that they bear in the international pursuit of sustainable development in view of the pressures their societies place on the global environment and of the technologies and financial resources they command.

8. To achieve sustainable development and a higher quality of life for all people, States should reduce and eliminate unsustainable patterns of production and consumption and promote appropriate demographic policies.

9. States should cooperate to strengthen indigenous capacity building for sustainable development by improving scientific understanding through exchanges of scientific and technological knowledge, and by enhancing the development, adaptation, diffusion and transfer of technologies, including new and innovative technologies.

10. Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision making processes. State shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.

11. States shall enact effective environmental legislation. Environmental standards, management objectives and priorities should reflect the environmental and developmental context to which they apply. Standards applied by some countries may be inappropriate and of unwarranted economic and social cost to other countries, in particular developing countries.

12. States should cooperate to promote a supportive and open international economic system that would lead to economic growth and sustainable development in all countries, to better address the problems of environmental degradation.

Trade policy measures for environmental purposes should not constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade. Unilateral actions to deal with environmental challenge outside the jurisdiction of the importing country should be avoided. Environmental measures addressing trans-boundary or global environmental problems should, as far as possible, be based on an international consensus.

13. States shall develop national law regarding liability and compensation for the victims of pollution and other environmental damage. States shall also cooperate in an expeditious and more determined manner to develop further international law regarding liability and compensation for adverse effects of environmental damage caused by activities within their jurisdiction or control to areas beyond their jurisdiction.

14. States should effectively cooperate to discourage or prevent the relocation and transfer to other States of any activities and substances that cause several environmental degradation or are found to be harmful to human health.

15. In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost effective measure to prevent environmental degradation.

16. National authorities should endeavour to promote the internationalisation of environmental costs and the use of economic instruments, taking into account the approach that the polluter should, in principle, bear the cost of pollution, with due regard to the public interest and without distorting international trade and investment.

17. Environmental impact assessment, as a national instrument, shall be undertaken for proposed activities that are likely to have a significant adverse impact on the environment and are subject to a decision of a competent national authority.

18. States shall immediately notify other States of any natural disasters or other emergencies that are likely to produce sudden harmful effects on the environment of those States. Every effort shall be made by the international community to help States so afflicted.

19. States shall provide prior and timely notification and relevant information to potentially affected States on activities

that may have a significant adverse trans-boundary environmental effect and shall consult with those States at an early stage and in good faith.

20. Women have a vital role in environmental management and development. Their full participation is therefore essential to achieve sustainable development.

21. The creativity, ideals and courage of the youth of the world should be mobilised to forge a global partnership in order to achieve sustainable development and ensure a better future for all.

22. Indigenous people and their communities, and other local communities, have a vital role in environmental management and development because of their knowledge and traditional practices. States should recognise and duly support their identity, culture and interests and enable their effective participation in the achievement of sustainable development.

23. The environment and natural resources of people under oppression, domination and occupation shall be protected.

24. Warfare is inherently destructive of sustainable development.

States shall therefore respect international law providing protection for the environment in times of armed conflict and cooperate in its further development as necessary.

25. Peace, development and environmental protection are interdependent and indivisible.

26. States shall resolve all their environmental disputes peacefully and by appropriate means in accordance with the Charter of the United Nations.

27. States and people shall cooperate in good faith and in a spirit of partnership in the fulfillment of the principles embodied in this declaration and in the further development of international law.

Universal Declaration Of Human Rights

(This is the final authorised text adopted and proclaimed by the General Assembly of the United Nations on December 10, 1948)

Preamble

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,

Whereas it is essential to promote the development of friendly relations between nations,

Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,

Whereas Member States have pledged themselves to achieve, in cooperation with the United Nations, the promotion of universal respect for observance of human rights and fundamental freedoms,

Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realisation of this pledge,

Now, therefore, the General Assembly proclaims this **Universal Declaration of Human Rights** as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

Article 1: All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 2: Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non self-governing or under any other limitation of sovereignty.

Article 3: Everyone has the right to life, liberty and security of person.

Article 4: No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

Article 5: No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 6: Everyone has the right to recognition everywhere as a person before the law.

Article 7: All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Article 8: Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

Article 9: No one shall be subjected to arbitrary arrest, detention or exile.

Article 10: Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal

charge against him.

Article 11: (1) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

(2) No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

Article 12: No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks up on his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Article 13: (1) Everyone has the right to freedom of movement and residence within the border of each state.

(2) Everyone has the right to leave any country, including his own and to return to his country.

Article 14: (1) Everyone has the right to seek and to enjoy in other countries asylum from persecution.

(2) This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

Article 15: (1) Everyone has the right to a nationality.

(2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

Article 16: (1) Men and women of full age, without any limitation due to race, nationality or religion, have right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.

(2) Marriage shall be entered into only with free and full consent of the intending spouses.

(3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

Article 17: (1) Everyone has the right to own property alone as well as in association with others.

(2) No one shall be arbitrarily deprived of his property.

Article 18: Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

Article 19: Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 20: (1) Everyone has the right to freedom of peaceful assembly and association.

(2) No one may be compelled to belong to an association.

Article 21: (1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.

(2) Everyone has the right of equal access to public service in his country.

(3) The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

Article 22: Everyone, as a member of society, has the right to social security and is entitled to realisation, through national effort and international cooperation and in accordance with the organisation and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

Article 23: (1) Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.

(2) Everyone, without any discrimination, has the right to equal pay for equal work.

(3) Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.

(4) Everyone has the right to form and to join trade unions for the protection of his interests.

Article 24: Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

Article 25: (1) Everyone has the right to a standard of living adequate for the health and well being of himself and of his family including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

(2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

Article 26: (1) Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

(2) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

(3) Parents have a prior right to choose the kind of education that shall be given to their children.

Article 27: (1) Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

(2) Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

Article 28: Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realised.

Article 29: (1) Everyone has duties to the community in which alone the free and full development of his personality is possible.

(2) In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

(3) These rights and freedoms may in no case be exercised contrary to the purposes and principles at the United Nations.

Article 30: Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

Appendix 3

Dunkel Draft

by A. V. Ganesan (Union Commerce Secretary)

AGRICULTURE

Does the Dunkel text require the reduction of subsidies given to Indian farmers?

No....There are two types of subsidies covered by the Dunkel text: non-product-specific and product-specific.

Non-product-specific subsidies are given for fertilisers, water, seeds, cost of credit, etc., which are available generally for all crops. In the case of developing countries, the Dunkel text does not require any reduction of such subsidies if their value is below 10 percent of the total value of agricultural output in the base years 1986 to 1988. In such calculation, the subsidies given to low income and resource poor farmers...are to be excluded.

In India, non-product-specific subsidies given in the years 1986-87 to 1988-89 did not exceed 5.2 percent, even if the subsidies given to small and marginal farmers are not excluded.

As regards product-specific subsidies, there are 20 agricultural products for which India provides minimum support price. Here again the Dunkel text requires a reduction in subsidies only if the subsidies exceed 10 percent of the value of the particular product.

Does the Dunkel text require India to give minimum market access commitment for import of agricultural products to the extent of three percent of the Indian Market?

No. This obligation will not apply to India because India is under a balance of payments cover in GATT by virtue of which India can have quantitative or other restrictions to prohihit or regulate imports. The Agreement on Agriculture is for a period of six years only, after which it is to be reviewed. It is exceedingly unlikely that the balance of payments cover of India will be lifted in the near future, even allowing for improvement in our balance of payments position.

Will the Dunkel text interfere in India following its policies on public procurement operations/public distribution system?

The Dunkel text will not in any way interfere in our freedom to pursue our public procurement operations or to carry on with our public distribution system. There is no basis to the apprehension that the system will have to be altered or that the scale of our public procurement operations will have to be altered or that the scale of our public procurement operations will have to be curtailed. The public distribution system in India is essentially meant for subsidising the poor consumer and it is not a subsidy for the farmer.

Does the Dunkel text require the patenting of seeds, which will mean that the farmers will not be able to retain seeds for their own use and will have to buy it from multinational companies every year ?

No. The Dunkel text does not compel any country to patent seeds (i.e., varieties). According to the Dunkel text, countries are free either to give patents or adopt an effective sui generis system of protection or a mixture of both for the protection of plant varieties. It is for each country to adopt its own system for the protection of plant varieties

TRIPs

What are the areas of intellectual property rights covered by the Trade Related Intellectual Property Rights Agreement (TRIPs), and how does India generally stand in respect of such areas?

There are seven areas of intellectual property rights covered by the TRIPs agreement, namely copyright, trademarks, trade secrets, industrial designs, integrated circuits, geographical indications and patents. In six of these areas (except patents), our policies, laws and regulations as well as our administrative and judicial system, are on a par with those obtaining in the world. It is only in the area of patents, and that too in the area of pharmaceutical patents, that there is sharp divergence between the norms and standards advocated in the Dunkel text and the Indian Patents Act, 1970.

In the area of petents, what are the major areas of divergence between the Dunkel text and the Indian Patents Act, 1970?

The Indian patent law does not provide 'product' patents in food, pharmaceutical and chemical sectors; in these areas, the

law provides only 'process' patents.

Dunkel text requires product patents to be provided in all branches of techonology.

The duration of a patent in India is seven years in the case of food and pharmaceuticals and 14 years in the case of all other sectors. Dunkel text provides for a uniform duration of 20 years for all patents.

The Indian law provides for automatic compulsory licensing in the case of food, pharmaceutical and chemical sectors.

Dunkel text permits compulsory licensing on the merits of each case, but the patent holder will have to be heard.

Indian law does not allow patenting of life forms. Dunkel text requires micro-organisms to be patented.

In the case of process patents, there is a view that under the Indian law, the burden of proof is on the plaintiff. Dunkel text, in the case of process patents, places the burden of proof on the alleged infringer.

What are the changes India is seeking in the TRIPs agreement?

The provisions of compulsory licensing incorporated in the Paris convention are not restricted by the TRIPs agreement. This is to ensure that importation is not regarded as working of the patent in all circumstances. Farmers' rights and researchers' rights are duly recognised by sui generis system of protection for plant varieties.

Will drug prices in India shoot up because of product patents in the pharmaceutical sector?

First, of the total drugs and medicines available in the market, only about 10 to 15 percent may at best be covered by patents at any time. Secondly, non-patented medicines are generally available as alternatives, and the extent of such availability will act as a check on the price of patented medicines. Thirdly, if technology is not highly sophisticated, there will be pressure for the licensing of the product and multiple sources may become available. In the case of any abuse of the patent or where vital interest needs are to be served, the government can intervene to remedy the situation.

What will be the likely impact of the TRIPs agreement on domestic industry?

A strong intellectual property protection system will enhance the prospects of joint ventures and licensing agreements between Indian companies and foreign firms, particularly in technology-

intensive sector...both from the point of view cf production for the domestic market as well as for exports, it may be advisable to adopt in the long run internationally accepted norms and standards for the protection of intellectual property rights.

Textiles and TRIMs

Textiles is a major area of India's exports accounting for nearly 30 percent of our total exports. What is the proposal in the Dunkel text relating to textiles?

The Uruguay round seeks to integrate the textile and clothing sector into GATT so that the rules of GATT apply to this sector also. The Dunkel text provides for a transition period of 10 years for the abolition of the MFA, and the rate of abolition in the early years of transition is slow. India's stand is that the rate of abolition during the transition period should be more evenly balanced.

Is it true that, according to the Dunkel text, there can be no restriction on foreign investment and multinational companies will be able to enter India freely?

The agreement on Trade Related Investment Measures (TRIMs) does not compel or require any country to allow foreign investment freely without any restriction. Each country is free to follow its own foreign investment policy.

The agreement on TRIMs only requires that in the matter of import of goods, it shall not be made a condition that a venture with foreign investment would not be allowed to import goods that are otherwise allowed to be imported by others. There is no provision in the TRIMs agreement that is inconsistent with our own foreign investment policies.

The Uruguay round agreement brings services into multilateral trade negotiations for the first time. What is the benefit that India is seeking in the service sector ?

In services, while industrialised countries are seeking access to our market for capital intensive service industries like banking, life insurance, telecommunications, etc., we are seeking greater access for the movement of skilled and professional people to render services in industrialised countries. Greater access...will enable us to increase our export earnings from the service sector...

(Courtesy Times of India*, 13-6-93, Page 20)*

Appendix 4

Some GATT Related Concepts

GATT: Acronym for General Agreement on Tariffs and Trade, concluded in 1977. It is a treaty, not an institution like the IMF or the World Bank. Signatories to GATT are contracting parties.

MFN: Acronym for most favoured nation. When GATT came into being, each contracting party was obliged to extend to every other contracting party the same treatment that it gave to the nation it favoured the most. The MFN obligation thus enjoins contracting parties to treat all other contracting parties equally. It is one of the fundamental principles of GATT. Some GATT rules permit departures such as the provisions allowing formation of free trade area or customs unions as well as those permitting preferences to developing countries.

National Treatment: This is another principle of GATT. Once goods have been cleared from customs and have entered the domestic market, they should be treated exactly like goods produced domestically.

Restrictions: These are generally prohibited by GATT for regulating international trade, GATT preference is for price based measures. In certain circumstances (the most important of which is balance of payments difficulties) quantitative restrictions are permitted.

Tariffs: Customs duties and associated charges which are imposed only on imported goods. Seven rounds of negotiations since 1947 have brought tariffs to an average trade weighted level of 5 percent in industrialised countries.

Dumping: Export of goods by a company at less than the price charged in the home market or in other markets. GATT does not condemn dumping. It only condemns dumping which causes material injury to the domestic industry. If dumping is proved, plus if injury is proved, plus if a causal link between the two is proved, anti-dumping duties may be imposed. Anti-dumping proceedings have emerged as a major protectionist device.

Export Subsidies: GATT prohibits the use of export subsidies on manufactured products. In respect of primary products the discipline is much less rigorous.

Uruguay Round: The 8th round of global negotiations. It was kicked off at Punta del Este in Uruguay in 1986. The most ambitious round so far, because apart from traditional subjects it includes new subjects (services and TRIPs) and has tackled agriculture. The US-EC problems over agriculture and some other areas are the main reason for the round dragging on. Its fate is still uncertain. Its failure would weaken GATT and bring about further disarray in the world trading system.

Dunkel Proposals: Participants could not reach agreement in negotiations on certain critical issues mainly in the areas of textiles, TRIPs and agriculture. The proposals also contain the results of the negotiations in areas in which agreement had been reached.

Textiles: Under the current MFA regime, US, Canada, EC, Austria, Finland and Norway impose discriminatory quotas on imports of textiles from developing countries. The Dunkel proposal envisages that the quota regime would come to an end in ten years through gradual liberalisation.

Services: The basic obligations under the agreement are first MFN treatment, and secondly transparency. (Transparency means that all relevant laws and regulations should be published and the powers conferred should not be discretionary).

Agriculture: World trade in agriculture is distorted by the industrialised countries, first, by subsidising production and secondly by subsidising exports. This makes it difficult for efficient producers, who may not have the means to subsidise, to enter into export market.

TRIPs: Covers copyrights, trademarks, geographical indications, industrial design, patents, layout designs of integrated circuits and trade secrets. The proposals are in conformity with Indian laws, practices or intents in all areas except patents. As the text stands, plants, animals and seeds may be excluded from patentability.

(*Courtesy:* Times of India*, 13-06-1993, P 20)*

Appendix 5

Referendum And Sovereign Kashmir Not Feasible: US

The United States thinks that neither a referendum on Kashmir's accession to India or Pakistan nor the establishment of a sovereign state of Jamrnu and Kashmir is any longer feasible.

This has reportedly been conveyed to the separatist Kashmiri leaders by Ms Robin Lynn Raphel, counsellor for political affairs in the US embassy in India, who is on a three day (May 25 to 27, 1993) visit to the valley.

Ms Raphel, who arrived here on Tuesday, told the leaders concerned that the US was keen on a settlement of the Kashmir problem to the satisfaction of all parties concerned.

She said the US was concerned about the prospect of a nuclear war in the region which, she reportedly said, could not be ruled out despite assurances by both countries that they would avoid the military confrontation. Another reason for the US concern was the Clinton administration's commitment to human rights, she said.

However, according to sources, Ms Raphel, who is expected to take over as Assistant Secretary incharge of South Asian affairs in the US state department next month, told the leaders that while India would not allow the state to become a part of Pakistan, the latter would not countenance the idea of an independent Jammu-Kashmir, comprising all areas including POK.

She asked the leaders to be 'realistic' and to come up with alternative proposals. She, however, clarified that the restoration of greater autonomy to the troubled state within the Indian Union was not a possible solution. She argued that a solution could be found only through tripartite talks, it is learnt.

Plan Mooted: While emphasising that the US had not decided to push forward any particular proposal, she reportedly mentioned a joint control of the state by both India and Pakistan as a possible solution.

Among those she met were Syed Ali Shah Geelani of the Jamat-i-Islami, Prof. Abdul Gani of the Muslim Conference and Moulvi Mohammad Abbas Ansari of the Kashmir Liberation Council. She also met some government officials. According to sources, officials told her that the security forces had an upper hand over the militants. They said that the common people were fed up with militancy and that the militants were getting isolated.

(Courtesy Times of India*, 28-5-1993, P 1)*

Appendix 6

(The following are the historical documents regarding Jammu-Kashmir's accession to India, reproduced from the archives)

Kashmir-Pakistan Standstill Agreement

(Telegram from Prime Minister, Kashmir State, to Sardar Abdur Rob Nishtor, States Relations Department, Karachi, Dated 12th August, 1947)

Jammu and Kashmir Government would welcome Standstill Agreement with Pakistan on all matters on which there exist at present moment with outgoing British Indian Government. It is suggested that existing arrangements should continue pending settlement of details and formal execution of fresh agreement.

(Telegram from Foreign Secretary, Government of Pakistan, Karachi, to Prime Minister of Jammu and Kashmir, Srinagar, dated 15th August, 1947)

Your telegram of the 12th. The Government of Pakistan agree to have a Standstill Agreement of Jammu and Kashmir for the continuance of the existing arrangements pending settlement of details and formal execution of fresh agreements.

Maharaja's Accession Offer To India

My dear Lord Mountbatten,

I have to inform your Excellency that a grave emergency has arisen in my State and request immediate assistance of your Government.

As your Excellency is aware the State of Jammu and Kashmir has not acceded to the Dominion of India or to Pakistan.

Geographically my State is contiguous to both the Dominions. It has vital economical and cultural links with both of them. Besides my State has a common boundary with the Soviet Republic and China. In their external relations and Dominions of India and Pakistan cannot ignore this fact.

I wanted to take time to decide to which Dominion I should accede, or whether it is not in the best interests of both the Dominions and my State to stand independent, of course with friendly and cordial relations with both.

I accordingly approached the Dominions of India and Pakistan to enter into Standstill Agreement with my State. The Pakistan Government accepted this Agreement. The Dominion of India desired further discussions with representatives of my Government. I could not arrange this in view of the developments indicated below. In fact the Pakistan Government are operating Post and Telegraph system inside the State.

Though we have got a Standstill Agreement with the Pakistan Government permitted steady and increasing strangulation of supplies like food, salt and petrol to my State.

Afridis, soldiers in plain clothes, and desperadoes with modern weapons have been allowed to infilter into the State at first in Poonch and then in Sialkot and finally in mass area adjoining Hazara District on the Ramkot side. The result has been that the limited number of troops at the disposal of the State had to be dispersed and thus had to face the enemy at the several points simultaneously, that it has become difficult to stop the wanton destruction of life and property and looting. The Mahora power house which supplies the electric current to the whole of Srinagar has been burnt. The number of women who have been kidnapped and raped makes my heart bleed. The wild forces thus let loose on the State are marching on with the aim of capturing Srinagar, the summer capital of my Government, as first step to over running the whole State.

The mass infiltration of tribesmen drawn from the distant areas of the North-West Frontier coming regularly in motor trucks using Mansehra-Muzaffarabad Road and fully armed with up-to-date weapons cannot possible be done without the knowing of the Provincial Government of the North-West Frontier Province and the Government of Pakistan. In spite of repeated requests made by my Government no attempt has been made to check these raiders or stop them from coming to my State. The Pakistan Radio even put out a story that a Provisional Government has

been set up in Kashmir. The people of my State both the Hindus and Muslims generally have taken no part at all.

With the conditions obtaining at present in my State and the great emergency of the situation as it exists, I have no option but to ask for help from the Indian Dominion. Naturally, they cannot send the help asked for by me without my State acceding to the Dominion of India. I have accordingly, decided to do so and I attach the Instrument of Accession for acceptance by your Government. The other alternative is to leave my State and my people to fee-booters. On this basis no civilized government can exist or be maintained. The alternative I will never allow to happen as long as I am Ruler of the State and I have life to defend my country.

I may also inform your Excellency's Government that it is my intention at once to set up an interim government and ask Sheikh Abdullah to carry the responsibilities in this emergency with my Prime Minister.

If my State has to be saved immediate assistance must be available at Srinagar. Mr. Menon is fully aware of the situation and he will explain to you, if further explanation is needed.

In haste and with kindest regards.

The Palace, Jammu
26th October, 1947

Yours Sincerely
Hari Singh

Instrument Of Accession
(Dated 26 October, 1947)

Whereas, the Indian Independence Act, 1947, provides that as from the fifteenth day of August 1947, there shall be set up an independent Dominion known as India, and that the Government of India Act, 1935, shall, with such omissions additions, adaptations and modifications as the Governor-General may by order specify, be applicable to the Dominion of India;

And whereas the Government of India Act, 1935 as so adopted by the Governor-General provides that an Indian State may accede to the Dominion of India by an Instrument of Accession executed by the Ruler thereof;

Now, therefore, I, Shriman Inder-Mahinder Rajeshwar Maharajadhiraj Shri Hari Singhji, Jammu and Kashmir, Naresh Tatha Tibbet adi Deshadipathi, Ruler of Jammu and Kashmir State, in the exercise of my sovereignty in and over my said State

do hereby execute this my Instrument of Accession and;

1. I hereby declare that I accede to the Dominion of India, with the intent that the Governor-General of India, the Dominion Legislature, the Federal Court and any other Dominion authority established for the purpose of the Dominion shall by virtue of this my Instrument of Accession but subject always to the terms thereof, and for the purposes only of the Dominion, exercise in relation to the State of Jammu and Kashmir (hereinafter referred to as "this State") such functions as may be vested in them by or under the Government of India Act, 1935, as in force in the Dominion of India, on 15th day of August 1947 (which Act as in force is hereafter referred to as "the Act").

2. I hereby assume the obligation of ensuring that due effect is given to the provisions of the Act within this State so far as they are applicable therein by virtue of this my Instrument of Accession.

3. I accept the matters specified in the Schedule hereto as the matters with respect to which the Dominion Legislature may make laws for this State.

4. I hereby declare that I accede to the Dominion of India on the assurance that if an agreement is made between the Governor-General and the Ruler of this State whereby any function in relation to the administration in this State of any law of the Dominion Legislature shall be exercised by the Ruler of this State, then any such agreement shall be deemed to form part of this Instrument and shall construed and have effect accordingly.

5. The terms of this my Instrument of Accession shall not be varied by any amendment of the Act or of the Indian Independence Act, 1947, unless such amendment is accepted by me by an Instrument supplementary to this Instrument.

6. Nothing in this Instrument shall empower the Dominion Legislature to make any law for this State authorising the compulsory acquisition of land for any purpose, but I hereby undertake that should the Dominion for the purposes of a Dominion law which applies in this State deem it necessary to acquire any land, I will at their request acquire the land at their expense or if the land belongs to me transfer it to them on such terms as may be agreed, or, in default of agreement, determined by an arbitrator to be appointed by the Chief Justice of India.

7. Nothing in this Instrument shall be deemed to commit me in any way to acceptance of any future Constitution of India or to fetter my discretion to enter into arrangements with the

Government of India under any such future Constitution.

8. Nothing in this Instrument affects the continuance of my sovereignty in and over this State, or, save as provided by or under this Instrument, the exercise of any powers, authority and rights now enjoyed by me as ruler of this State or the validity of any law at present in this State.

9. I hereby declare that I execute this Instrument on behalf of this State and that any reference in this Instrument to me or the Ruler of the State is to be construed as including a reference to my heirs and successors.

Given under my hand this 26th day of October, Nineteen Hundred and Forty-Seven.

Sd/- Hari Singh
Maharajadhiraj of Jammu and Kashmir State

Lord Mountbatten to Maharaja Hari Singh
(Reply of 27 October, 1947)

My dear Maharaja Sahib,

Your Highness's letter, dated the 26th October, has been delivered to me by Mr. V. P. Menon. In the special circumstances mentioned by Your Highness, my Government have decided to accept the accession of Kashmir State to the Dominion of India. Consistently with their policy that, in the case of any State where the issue of accession has been the subject of dispute, the question of accession should be decided in accordance with the wishes of the people of the State, it is my Government's wish that, as soon as law and order have been restored in Kashmir and her soil cleared of the invader, the question of the State's accession should be settled by a reference to the people. Meanwhile, in response to your Highness's appeal for military aid, action has been taken today to send troops of the Indian Army to Kashmir to help your own forces to defend your territory and to protect the lives, property and honour of your people.

My Government and I note with satisfaction that your Highness has decided to invite Sheikh Abdullah to form an Interim Government to work with your Prime Minister.

Yours sincerely,
(Sd/-) Mountbatten of Burma

Article 370

Article 370 of the Constitution of India reads as follows:

"Temporary Provisions with respect to the State of Jammu & Kashmir.

(1) Notwithstanding anything in this Constitution:

(a) the provisions of Art 238 shall not apply in relation to the State of Jammu & Kashmir (1) Concerning Part B States, Omitted.

(b) the power of the Parliament to make laws for the said state shall be limited to:

(i) those matters in the Union List and the Concurrent List which, in consultation with the Government, the State, are declared by the President to correspond to matters specified in the Instrument of Accession, governing the Accession of the State to the Dominion of India as the matters with respect to which the Dominion Legislature may make laws for that state.

(ii) Such other matters in the said List as, with the concurrence of the government of the State, the President may by order specify.

(c) the Provisions of Article I and of this Article shall apply in relation to that state;

(d) such of the other provisions of this constitution shall apply in relation to that state subject to such exceptions and modifications as the President may by order specify.

Provided that no such order which relates to the matters specified in the Instrument of Accession of the State referred to in Paragraph (i) of subclause (b) shall be issued except in consultation with the government of the State.

Provided Further that no such order which relates to the matters other than those referred to in the last preceding proviso shall be issued except with the concurrence of that Government.

(2) If the concurrence of the government of the State referred to in Paragraph (ii) of subclause (b) of Clause (1) or in the 2nd proviso to sub-clause (d) of that clause be given before the constituent Assembly for the purpose of framing the constitution of the State is convened, it shall be placed before such Assembly for such decision as it may take thereon,

(3) Notwithstanding anything in the foregoing provision of this Article, the President may, by public notification, declare that this Article shall cease to be operative or shall be operative only with such exceptions and modifications and from such date as he

may specify;

Provided that the recommendations of the Constituent Assembly referred to in clause (2) shall be necessary before the President issues such a notification.

The Constitution (Application to J&K) Order 1950

In exercise of the powers conferred by Article 370 (i) (ii), the President of India issued the Constitution (Application to J & K) Order 1950, in consultation with the government of J&K and specified the matters with respect to which the Union Parliament would be competent to make laws for the said state. The subject matter of the order related mainly to the elaboration of the subjects already specified in the Instrument of Accession, but certain additions were also made. Two schedules were added:

The first schedule related to the jurisdiction of the Union Parliament over the State and enumerated the appropriate items in the Union List of the 7th Schedule to the Indian Constitution. The Power of Parliament to make laws for the state was limited to the matters specified in this schedule. Two items were:

(1) Defence: Entries 1 to 6,

(2) Preventive Detention for the reasons connected with defence, foreign affairs & the security of India, Entry 9,

(3) Foreign Affairs, Entries 10 to 22,

(4) Communications, Entries 25 to 31,

(5) Trade and Commerce with foreign currencies, Entry 41,

(6) Matters relating to Parliament, Entries 72-74,

(7) Union Executive and Supreme Court, Entries 93-96,

(8) Two other entries like those of Audit of Accounts (entry 76) and Railways (entry 22) were applied, with modifications.

The result of the application of this schedule was, firstly that both the concurrent and the state lists were made not applicable to Jammu-Kashmir State and secondly that the residuary powers remained with the State.

The 2nd schedule tabulated the Provisions of the Constitution which, in addition to Article I and Article 370, were to apply in relation to Kashmir. The part of the Indian Constitution made applicable to the State were.

Part V: Concerning Union Executive, the main points: (a) The

Supreme Court had only appellate jurisdiction in Jammu & Kashmir under Art (3). The fundamental rights were not applied in Jammu & Kashmir. So the Supreme Court had no jurisdiction in respect of these.

(b) Comptroller and Auditor General had no jurisdiction in Jammu-Kashmir.

(c) The representatives of Jammu and Kashmir in the Lok Sabha and the Rajya Sabha were to be appointed by the President in consultation with the State government instead of through elections.

Parts XI and XII: Part XI concerning relations between Union and the States: It limited Parliament's powers to the items prescribed in the first schedule to this order and vested residuary powers in the state. The state and the Concurrent Lists were not made applicable to Jammu and Kashmir. Also Article 257 dealing with Administrative control of the Union over the States, did not apply to Jammu and Kashmir.

Part XII : Concerning finance:

(a) Articles 268 to 281 which deal with the distribution of the proceeds of the taxes levied outside Jammu and Kashmir by the Union did not apply to Jammu and Kashmir.

(b) The state had its own Income Tax department, and Customs department.

Part XV: Concerning elections: The Election Commission of India had no jurisdiction in Jammu and Kashmir except the elections of the President and the Vice-President. Articles 325-329 dealing with Parliamentary and State legislatures' elections did not apply to Jammu and Kashmir.

Part XVI: Concerning provisions relating to Scheduled Castes, Scheduled Tribes, Scheduled Areas and Anglo-Indians did not apply to Jammu & Kashmir except the provisions under Article 330 reserving seats for Scheduled Castes and Scheduled Tribes in the Lok Sabha. Article 335 concerning reservation for Scheduled Castes and Scheduled Tribes in services applied only in relation to the Union Services. Provisions concerning appointment of Commissioner to investigate the conditions of Backward Classes and a Special Officer for Scheduled Castes did not apply to Jammu & Kashmir.

Part XVIII: Concerning official language: Applied to Jammu and Kashmir so far as they related to the proceedings in the Supreme Court or the official language of the Union. The directive for the development of Hindi was not applicable to the State.

Part XIX: Concerning miscellaneous provisions:

Article 361, making President, Governors and Rajpramukhs not liable to answer in any court for acts done in exercise of their duties was limited to the President in Jammu and Kashmir.

Article 364, concerning legislation to major ports and aerodromes was to apply to Jammu and Kashmir only in so for as it related to the laws made by the Parliament.

Article 365, giving powers to President to suspend constitution of any state did not apply to Jammu and Kashmir.

Part XX: Article 368, cocerning procedure for amending the constitution, in its application to Jammu and Kashmir is subject to a further proviso….

"Provided further that no such amendment shall have effect in relation to the state of Jammu and Kashmir unless applied by order of the President under Art 370. (i.e., only with the consultation of the Jammu and Kashmir Government).

Part XXI: dealing with temporary and transitional provisions: Articles 379-391 repealed by 7th Constitution Amendment 1956.

Of the 9 Schedules in the Indian constitution, only 5 were made applicable to Jammu and Kashmir. Schedule I which named and determined Parts A, B and C States; Schedule II which prescribed the emoluments of high officials; Schedule III Containing Oaths of offices; Schedule IV dealing with representation in the Council of States; and Schedule VIII prescribing recognised official languages.

Part XXII: dealing with short title of the constitution in Article 393, commencement of the constitution in Article 394 and Article 395 repealing the Indian independence Act, 1947, and the GOI Act 1935 were made applicable to the state.

Parts which did not apply to Jammu-Kashmir

Part III dealing with Fundamental rights — non justiciable.

Part IV: Concerning Directive Principles — non justiciable.

Part XIV: dealing with services under the Union and the States not applicable — Permanent residents in Jammu and Kashmir.

Part XVIII: dealing with Proclamation of emergency.

Article 352 : general emergency; Article 356, suspending the State Constitution, Article 360 financial emergency

Only in case of internal disturbance, the state government would request the President to issue a proclamation of emergency.

From a close reading of this order, it is evident that the powers

of the Union Parliament with regard to Jammu-Kashmir were extended beyond what was originally surrendered under the Instrument of Accession.

The proclamation for Constituent Assembly elections by the Sadar-i-Riyasat was issued on the 1st May 1951. Elections were completed by August and on 31st August, 1951, the first meeting of the Jammu and Kashmir Assembly was held.

Assembly took the following important decisions:

(a) Land reforms without compensation.

(b) fully democratic basis of the political setup in the state.

(c) Abolishing of Hereditary rulership.

(d) State to have its own flag.

Delhi Agreement, 1952

After the adoption of important decisions by the Constituent Assembly, it became necessary for the state government to receive the GOI's concurrence in these matters. The two sides finally came to an arrangement, called the Delhi Agreement 1952. Its main features were:

(a) The vesting of the residuary powers in Jammu-Kashmir.

(b) Jammu-Kashmir given power to make laws for conferring special rights on the state subjects, as already in vogue in the state under the state subject notification of 1927 and 1932. The state was also given power to make laws for the "state subjects" who were forced to migrate to Pakistan in the event of their return to Jammu and Kashmir.

(c) Articles 52 to 62 relating to President's qualifications, term, election and other particulars were further applied to Jammu and Kashmir. Further the powers to grant reprieves, pardons and remissions of sentences were also given to president.

(d) State to have its own flag. The National flag to have the same status in Jammu and Kashmir as in the rest of India.

(e) Sadar-i-Riyasat to be elected by the state legislature and to be recognised and appointed by the President.

(f) On fundamental rights, the question remained to be determined whether the chapter on fundamental rights in the Indian constitution should also form part of the state constitution or of constitution of India as applicable to Jammu and Kashmir.

(g) With regard to Supreme Court, it would have only appellate jurisdiction.

(h) Concerning emergency powers, the GOI insisted on the

application of Article 352 concerning general emergency. But the state government agreed that only in case of war or external aggression, the Union will wield emergency powers and not in case of internal disturbance.

A proviso was added to Article 352: "But in regard to internal disturbance at the request or with the concurrence of the government of the state."

Articles 356 and 360 remained non-applicable to the state.

The Union government accepted the agreement on August 7, 1952.

The Jammu and Kashmir constituent Assembly adopted this agreement on August 21, 1952.

Present Constitutional Position Of Jammu-Kashmir

(1) The present state of Jammu-Kashmir's special status stands as follows.

(2) The Constitution (Application to Jammu-Kashmir) Order, 1954 superseded the Constitution (Application to Jammu-Kashmir) Order 1950 and redefined the scope and extent of the limitations on Jammu-Kashmir's autonomy, consequent upon its accession to India. Subsequent amendments (which further extended the Union powers) to the 1954 Constitution Order brought Jammu-Kashmir State more or less at par with the other Indian states by the application of Indian Constitution's Part III (with a few exceptions), concerning fundamental rights, Part V, Chapter IV, concerning Judiciary, including the Supreme Court, Part V, Chapter V, concerning Comptroller and Auditor General, Part XV, concerning elections, including the Chief Election Commission, Part XVIII (with certain exceptions), concerning emergency provisions, and also provisions substituting the designations of governor and Chief Minister in place of the 1950s constitutional titles of Sadar-i-Riyasat and Prime Minister.

Terrorism And Law Enforcement

By Prof. IOBAL A. ANSARI, A.M.U., Aligarh

Terrorism, i.e., indiscriminate use of force in utter disregard of humanitarian laws on domestic conflicts, is a grave threat to the rule of law. All those who want India to remain a democracy should, therefore, welcome the Government's determination to bring to book the culprits involved in the Bombay serial bombing case. The successful detection of accused in the case proves that Government's law-enforcement machinery has the means, if it has the will, to trace the culprits involved even in sophisticated violence. That should make one note with concern the lack of will on the part of the Government and its law enforcement machinery to punish the guilty in Bombay in 1992-93, Delhi 1984, Meerut-Malliana 1987, Bhagalpur 1989 and at a large number of other places in the country since independence.

This selective and partisan law enforcement is the major source of the increasing recourse to privatisation of justice which on occasions develops into terrorism. Many more terrorists must be in the making as they see rioters and their patrons moving around freely, without the fear of law, whereas thousands of innocent people are facing prosecution and harassment of false charges or mere suspicion, under draconian laws like TADA.

We, therefore, urge on the Government of India to show equal degree of determination and expertise to bring to book the guilty politicians, criminals and policemen who are responsible for the demolition of Babri Masjid and riots at Bombay (1992-93), Delhi (1984) and other places.

The only way to arrest the rising tide of terrorism of the type witnessed in Bombay lies in inspiring confidence about the effectiveness and impartiality of the law enforcement system among the victim groups. This confidence building process can begin if the guilty ones in Bombay and other places are brought

to justice speedily, not using the ongoing judicial inquiry as an excuse for delaying legal proceedings. The secular State of India will continue to remain in the dock, for the events of December 1992 and its aftermath, till it demonstrates its commitment and shows will for impartial law enforcement and even handedness of justice.