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CASE CONCERNING  
RIGHT OF PASSAGE OVER  
INDIAN TERRITORY

(PORTUGAL *v.* INDIA)

(General List No. 32—Judgments of 26 November 1957 and  
12 April 1960)

VOLUME II

Counter-Memorial.—Reply



COUR INTERNATIONALE DE JUSTICE

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MÉMOIRES, PLAIDOIRIES ET DOCUMENTS

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AFFAIRE DU  
DROIT DE PASSAGE  
SUR TERRITOIRE INDIEN  
(PORTUGAL c. INDE)

(Rôle général n° 32 — Arrêts du 26 novembre 1957 et du  
12 avril 1960)

VOLUME II

Contre-mémoire. — Réplique



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PART I

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APPLICATION INSTITUTING PROCEEDINGS  
AND PLEADINGS

*(continued)*

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PREMIÈRE PARTIE

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REQUÊTE INTRODUCTIVE D'INSTANCE  
ET MÉMOIRES

*(suite)*

SECTION B.—PLEADINGS

*(continued)*

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SECTION B. — MÉMOIRES

*(suite)*

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## 4. COUNTER-MEMORIAL OF THE GOVERNMENT OF INDIA

### Introduction

1. The Government of the Republic of Portugal, having filed an Application on 22nd December, 1955, submitted to the International Court of Justice in June, 1956, a Memorial in which it asked the Court: —

- (1) To adjudge and declare—
  - (A) that Portugal has a right of passage through the territory of India in order to ensure communications between its territory of Damão (coastal Damão) and its enclaved territories of Dadra and Nagar Aveli;
  - (B) that this right comprises the transit of persons and goods, as well as the passage of representatives of the authorities and of armed forces necessary to ensure the full exercise of Portuguese sovereignty in the territories in question.
- (2) To adjudge and declare —
  - (A) that the Government of India must respect that right;
  - (B) that it must therefore abstain from any act capable of hampering or impeding its exercise;
  - (C) that neither may it allow such acts to be carried out on its territory.
- (3) To adjudge and declare that the Government of India has acted and continues to act contrary to the obligations recalled above.
- (4) To call upon the Government of India to put an end to this unlawful state of affairs.

2. On 15th April, 1957, the Government of India filed a Preliminary Objection setting out six separate Preliminary Objections to the Court's jurisdiction to entertain the above-mentioned Application of the Government of Portugal. By a judgment dated 26th November, 1957, the Court rejected the first four Preliminary Objections presented by the Government of India and joined the Fifth and Sixth to the merits. The Court further fixed a date for the filing of the Counter-Memorial of the Government of India which date, by a later Order of February, 1958, was extended until 25th March, 1958. In conformity with the said judgment and the said Order the Government of India now files this Counter-Memorial.

3. In this Counter-Memorial the Government of India maintains in full force the arguments and submissions which it has previously presented to the Court on the Fifth and Sixth Preliminary Objections. It does not think that any useful purpose would be served by repeating these arguments and submissions in this Counter-

Memorial, and it respectfully asks the Court to treat them as incorporated in the case here presented. It feels bound, however, to reserve the right to address further arguments and submissions to the Court on the Fifth and Sixth Preliminary Objections in its Rejoinder. The Portuguese Government, in its Memorial and throughout the proceedings concerning India's Preliminary Objections, refrained to a very large extent from placing before the Court the evidence in Portuguese archives relative to the claim which is the subject of its Application. In consequence, the Government of India is obliged to defer the final statement of its arguments and submissions on the Fifth and Sixth Preliminary Objections until after a complete statement of the Portuguese case has been laid before the Court in the Portuguese Reply.

4. In this Counter-Memorial the Government of India will address itself principally to the issues of fact and law which appear to be raised on the merits by the Portuguese claim. Some of these issues of fact and of law have been presented to the Court in a preliminary way in the proceedings relating to the Fifth and Sixth Preliminary Objections. The Government of India has no wish to burden the Court by a needless repetition of evidence and legal authorities with which the Court is already familiar. On the other hand, the Court's examination of the issues of fact and of law on the merits has to be undertaken on a somewhat different basis from its examination of them in the preliminary proceedings and, in consequence, it will have to make a fresh appraisal of the evidence and the legal authorities for the purpose of reaching a decision on the merits. On balance, the Government of India considers that, even although this will involve fairly extensive repetition of matters mentioned in the preliminary proceedings, it will be more convenient to the Court to have India's case on the merits presented to it as a whole in this Counter-Memorial than as a disjointed supplement to the case already presented on the Fifth and Sixth Preliminary Objections. Accordingly the Government of India, while occasionally referring back to the preliminary proceedings in order to save repetition of secondary matters, will set out its case on the merits in this Counter-Memorial as a single coherent whole.

5. This Counter-Memorial is divided into eight parts, as follows:—

*Part I.* The Geographical and General Facts.

*Part II.* The Historical Facts.

*Part III.* The Analysis of the Portuguese Claim.

*Part IV.* The Presumption against Restriction upon the exercise of Territorial Sovereignty.

*Part V.* The Absence of any Restriction on Sovereignty in General Law with regard to Rights of Passage by Road.

*Part VI.* The Absence of any Obligation with regard to Rights of Passage deriving from Special Treaties or so-called Local Custom.

*Part VII.* The Impact on the Passage claimed of the events which have taken place in Dadra and Nagar Aveli.

*Part VIII.* The Conclusions.

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6. The Government of India underlines the fact that the case submitted to the Court concerns, and only concerns, Portugal's alleged rights of transit between Daman and the enclaves and between the two enclaves. As was pointed out in paragraph 196 of India's Preliminary Objection the allegation in paragraph 57 of the Portugal's Memorial "that India failed to observe its international obligations towards Portugal by tolerating the organization on its territory of the armed expeditions which were directed against the Portuguese enclaves" raises an issue which is quite different from the claim submitted to the Court in the Application. The Government of India in that paragraph of the Preliminary Objection formally reserved its right to object to any attempt by Portugal to introduce into the present case a claim not included into her Application. The Government of India have thought it necessary and right to set out in paragraphs 217 *et seq.* below the main facts relating to the insurrection in order that the Court may be able fully to appreciate what Portugal's claims to transit rights really involve in the actual circumstances of the case. By its discussion of the circumstances of the insurrection, however, the Government of India is not to be understood as having impliedly agreed to the introduction into the case, on the principle of *forum prorogatum* of any claim which did not form part of the actual demand formulated in paragraph 23 of the Portuguese Application.

\* \* \*

#### *Annexes*

A large body of evidence, separately printed in a second volume, was attached to India's Preliminary Objection. This body of evidence was arranged in three annexes, of which Annex A contains historical and political documents relating to the general background of the case, Annex B documents relating to the institution of the proceedings in the case, and Annex C documents from British and Indian archives relating to transit of persons or goods between Daman and the enclaves. The Government of India now submits to the Court with this Counter-Memorial certain further evidence in two new annexes, D and E. Annex D contains documents relating to the general facts on intercourse between Indian territory

and the Portuguese possessions in India. Annex E contains supplementary historical documents from British and Indian archives relating to the question of transit between Daman and the enclaves.

The Government of India thinks that it will be more convenient to the Court to have all India's annexes in a single volume. Accordingly, Annexes A, B and C have been reprinted and bound together with Annexes D and E in Volume II of this Counter-Memorial<sup>1</sup>. These annexes will hereafter be referred to in this Counter-Memorial and in the further proceedings in the case as Indian Annexes A, B, C, D and E.

### *Maps*

The attention of the Court is invited to two new maps placed in a pocket inside the back cover of this Counter-Memorial. Map No. 1 is a map of a part of the re-organized States of Bombay and Mysore<sup>2</sup>. Map No. 2 is a larger scale map covering Daman, Dadra and Nagar Aveli, and surrounding Indian territory<sup>3</sup>. These maps are not intended to be comprehensive maps of the areas concerned. They are prepared for the use of the Court only in order to enable it quickly to find the positions of any places mentioned in the Counter-Memorial.

### *Glossary*

Finally, attention is drawn to the glossary explaining the meanings of unfamiliar Indian words which is contained in Indian Annex C No. I<sup>4</sup>.

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<sup>1</sup> In the present edition, the text of Annexes A, B and C, as printed in the Counter-Memorial, is reproduced after the Preliminary Objection (see Vol. I, pp. 189-504), and that of Annexes D and E will be found in this volume, at pp. 157-396. [*Note by the Registry.*]

<sup>2</sup> Not reproduced. [*Note by the Registry.*]

<sup>3</sup> See pocket at end of this volume. [*Note by the Registry.*]

<sup>4</sup> See Vol. I, pp. 224-227. [*Note by the Registry.*]

*Part I*

## THE GEOGRAPHICAL AND GENERAL FACTS

*Geography*

7. The Portuguese possessions in India are all on the Western coast of the Indian peninsula. All of them border on the State of Bombay. The largest of them is Goa with an area of about 1,301 square miles. Goa is about 250 miles south of Bombay and is contiguous to the Indian administrative districts of Ratnagiri, Kolhapur, Belgaum and North Kanara in the States of Bombay and Mysore. Next in size is Daman with an area of about 21 square miles. Daman is about 100 miles north of Bombay and is contiguous to the Indian administrative districts of Thana and Surat in the State of Bombay. The Portuguese possession of Diu is an island, 14 square miles in area, and situated south of the Saurashtra peninsula in the State of Bombay.

8. Dadra and Nagar Aveli, the enclaves with which the present case is concerned, are close to Daman, being separated from it by a strip of Indian territory in the Indian administrative districts of Thana and Surat.

9. Dadra is 3 square miles in area and is  $5\frac{1}{2}$  miles distant from the Daman frontier. Nagar Aveli is about 185 square miles in area and is 9 miles distant from the Daman frontier.

10. Dadra and Nagar Aveli consist of 72 villages which are grouped in ten administrative units, Silvassa being one of them and also the capital. According to the census of 1950 the combined population was 41,523 and was divided in the following religious groups: Hindus 40,492; Christian, 861; Muslims, 159; Parsis, 11. The majority of the population belongs to the backward tribe of Varlis, Kolis or Adivassis.

11. Nagar Aveli is situated in a mountainous region and is surrounded towards the east by the ranges of the Sahya mountains or the Western Ghats, and consisting of the Ghats of Rhorra, Sawala, Ambagaon and Parasbary. The country is covered with thick forest, bamboos, underwood and long grass. Traffic is possible only along the openings in the Ghats and where the forestation is not very thick. Only Dadra, Naroli and one other village are entirely clear of the forest.

12. Dadra and Nagar Aveli are watered by a river known as the Daman Ganga or the Sandalkhal which, rising in the Ghats 40 miles from the coast in Dharampur territory, runs through Dadra and Nagar Aveli, Surat and Thana districts, and Daman and

discharges itself into the Arabian Sea at the port of Daman. The river is seasonal and rises only in the Indian monsoon. During the monsoon and the summer tides the river is navigable for four or five miles from its mouth. Upwards it is not navigable even for small boats except with considerable danger due to the numerous rocks in the middle of the stream.

13. On the West, Dadra and Nagar Aveli have access to the Western Railway of India at the station of Vapi in Indian territory by the road which passes through Silvassa and Dadra; at the station of Bhilad by the road from Naroli; and at the station of Sanjan by the road which goes southwards from Rakholi to Udva in Indian territory and thence to the railway.

14. On the north of Nagar Aveli runs the ancient highway connecting the important district town of Nasik with Pardi Taluka in Surat district and the seaports on the western coast. This road is intersected by the road between Fatepur and Dharampur both in the former native Indian State of Dharampur (or Ramnagar) contiguous to Nagar Aveli on the east and north. The most important road connecting Nagar Aveli with Dharampur territory is the road which joins Rakholi with Fatepur and Kavcha. As said above, this road joins the main Nasik-Pardi road, and this route of access to Pardi Taluka and the western coast appears to have existed from early times.

15. On the south of Nagar Aveli runs another road connecting Nasik with the west coast at Umbargaon. This runs through the territory of Jawhar, a former native Indian State. This road passes through Udva in Indian territory, less than a mile outside Nagar Aveli territory, the point where it is joined by a road from Rakholi.

16. From the modern road between Nagar Aveli and Daman, known as the Vapi road or the Daman-Silvassa road another road branches northwards near Vapi in the direction of Pardi. About half way between Vapi and Dadra yet another road branches southwards in the direction of Vada to join the Umbargaon-Nasik road. Several minor roads, camel and cart tracks and paths branch out from either side of the Daman-Silvassa road, and there is no fencing or any system of control for preventing entry into surrounding country and into the two main branch roads or into the minor roads, camel and cart tracks and paths leading out from the main road. Nor has any fencing or system of control ever been maintained along the road at any time. The country that lies between Daman and Nagar Aveli is agricultural and consists mostly of fields growing paddy and grass. In the absence of any fences along the main road there is nothing to prevent persons or goods using the road from disappearing into the country on either side of the road.

17. For most of its length the frontier between Daman and the Indian districts of Surat and Thana is not marked by any natural



barriers like hills, rivers etc. Two rivers, the Kolak on the north and Kalu on the south, form the border for short distances. But these are shallow rivers which are flooded only for a few days at a time during the few months of rain in the Indian monsoon and are fordable at all other seasons and times. Elsewhere the terrain is the same on both sides of the frontier and there is no continuous fence or line to indicate the boundary. However, there are stones placed at intervals of a mile or so to mark the boundary between Daman and India and along the 29 mile boundary there are also spaced 32 customs posts (called Chowkies), at varying distances inside Indian territory. The function of these customs posts is to prevent smuggling of goods across the border, and to control the movement of persons to and from Daman.

18. As to the boundaries of Nagar Aveli and Dadra, these also are not properly demarcated. Stones placed at selected points act as boundary marks and, for the rest, an imaginary line drawn between the two nearest stones constitutes the boundary. There are no police, customs or frontier posts of any kind round the enclaves; and there never have been any. Innumerable minor roads, camel and cart tracks and paths connect Dadra and Nagar Aveli with the surrounding Indian territory.

19. The economic, commercial, social and cultural contact of the inhabitants of Dadra and Nagar Aveli are with the inhabitants of surrounding Indian territory, from whom they are in no way distinguishable. As has been said above, most of these inhabitants belong to the backward tribes of Varlis, Kolis or Adivassis, who are poor people and whose economic needs are not very great. However, whatever things and services were not available in Dadra and Nagar Aveli were supplied by contiguous Indian administrative districts. An example of this may be cited; when during the Second World War food rationing was introduced in British India, Dadra and Nagar Aveli were treated as British Indian districts and their quota was included in that of the contiguous districts of Surat and Thana. (Indian Annex C. No. 70.)

20. The main natural wealth of Nagar Aveli consists of forests. It was the general practice of the Portuguese Government to sell these by public auction, usually to Indian merchants, there being no timber industry inside Nagar Aveli.

*Customs Frontiers between Portuguese Possessions in India and British India/independent India*

21. From the earliest times the boundaries of Goa, Daman and Diu have been closely guarded from the point of view of customs. This is testified to by the facts set out in paragraphs 115 *et seq.* below. The boundary at Daman was particularly strengthened in view of the possibility of the smuggling into India of salt made in Daman. This is shown in the correspondence of 1875 and 1876 of the

Collector of Salt Revenue of the Presidency of Bombay. (Indian Annex D. No. 1.) Smuggling into India through the Portuguese possessions on the sea coast was always a problem for the British Government and continues to be a problem for the Indian Government. Smuggling took place not only of the produce of the Portuguese possessions but also of luxury articles imported from overseas. The problem assumed further importance for the Indian Government when a law prohibiting import and consumption of liquor was introduced in the State of Bombay in 1946. Even at the present time the energies of the prohibition department of the Government of Bombay are spent mostly on prevention of smuggling from the Portuguese possessions.

22. The British Government attempted to solve the problem through a customs union between the Portuguese possessions and British India. This was brought into force by the Treaty of Commerce and Extradition of 1878. (See paragraph 137 below). However, the experiment was not successful and resulted in considerable loss of revenue to the British Government. In January 1892, therefore, the British Government, having previously given notice under Article XXII, put an end to the Treaty. A strict customs frontier with Daman and Goa was again established and this has continued to the present day. (Indian Annex D. No. 2.)

23. Dadra and Nagar Aveli, on the other hand, were always treated as British Districts from the point of view of customs. (See paragraph 147 below.) No customs frontier was maintained round these territories and goods moved freely from them into British India and vice versa. The only restrictions which applied to these territories were in respect of the illicit manufacture and movement of liquor and of the re-import into India of foreign articles brought into Nagar Aveli through the post. (See Paragraphs 154-157 below.) A loose check was maintained in this regard by the nearest Indian excise authorities but no customs check posts or frontier posts were maintained round Nagar Aveli for this purpose.

24. When the question of import of goods into Dadra and Nagar Aveli from Daman did arise, it was treated as a question of *import* into Indian territory and never a question of transit from one Portuguese possession to another, since Dadra and Nagar Aveli were not closed but open enclaves. (See paragraph 147 *et seq.* below.) On entering India across the Daman border goods became liable to import duty; after payment of import duty, however, they could go to Dadra and Nagar Aveli just as they could go to any part of India; having gone to Dadra and Nagar Aveli they could freely re-enter any part of India there being no customs or other barrier to such re-entry (except the restrictions mentioned above in paragraph 23.)

25. In certain instances duties at the Daman border on import of goods into Indian territory were "as a matter of personal courtesy"

waived by the British authorities in respect of wines and tinned provisions intended for the consumption of certain Portuguese European officers resident in Nagar Aveli. However, when it was known that the concession was being abused and wines and tinned provisions re-sold by the Portuguese European Officer concerned for profit, it was suitably modified. (See paragraph 164 below.)

26. The question of exemption from export duty on certain produce of Nagar Aveli intended for consumption in Daman, however, constantly arose between the Portuguese and British Governments. (See paragraph 114 *et seq.* below.) In 1819 the British Indian Government waived export duty on goods crossing the customs border from British India into Daman on certification by the Portuguese authorities that these were the produce of Nagar Aveli. (See paragraph 117 below.) In 1848, however, as a result of *Indian* produce being taken to Daman under certification of the Portuguese authorities that it was the produce of Nagar Aveli the exemption was cancelled. (See paragraph 124 below.) The Portuguese Government made repeated overtures to the British Government and the exemption was regranted in 1861. (See paragraphs 128-129 below.) Between the years 1878 and 1892, as has been seen above, there was a customs union between British India and the Portuguese possessions and no questions of exemption could arise. (See paragraph 137 *et seq.* below.) In 1893 the exemption was regranted but only in respect of rice, not of other produce of Nagar Aveli. (See paragraph 145 below.) In 1895, however, rice of the British Indian villages was being exported to Daman free of export duty under cover of certificates issued by the Portuguese authorities. The British Government did not particularly blame the Portuguese Government. The concession, it said, was necessarily attended by fraud and no precaution could be suggested whereby fraud could be prevented. The concession was accordingly withdrawn. The Portuguese authorities were requested to make practical suggestions for preventions of the abuse, but they were unable to make any suggestion. (See paragraph 146 below.) In 1895, 1899, 1900, 1906, 1912, 1918, 1923, 1933 and 1935, the Portuguese Government made efforts to obtain the renewal of the concessions but it was unable to do so. (See paragraphs 147-152 below.) The reason which weighed most with the British Indian Government was that since there were no customs frontiers round Dadra and Nagar Aveli, Indian produce could easily enter Dadra and Nagar Aveli and there could be no way of knowing which was or was not the produce of Dadra and Nagar Aveli.

27. After the independence of India the Government of India continued to treat Dadra and Nagar Aveli as Indian districts from the point of view of customs, and movement of goods between these territories and the surrounding Indian territory continued to be as free as before.

28. Nor has there been any change in the position since the liberation of the enclaves from Portuguese rule in 1954.

*Travel between Portuguese possessions and British India*

29. Before the Indian mutiny of 1857 there appear to have been no formalities for travel throughout India, including the Portuguese possessions. This is testified to by a Notification of the Governor-General of India in Council dated the 24th November 1856. (Indian Annex D. No. 3.)

30. The Act of 1857 "to make further provisions relating to foreigners", the first comprehensive Foreigners Act in British India, was promulgated to meet the emergency created by the Indian Mutiny of 1857. (Indian Annex D. No. 4.) It was in the first instance a temporary measure for a period of two years. This Act required every foreigner to report to the police or magisterial authorities on arrival in any part of British Indian territory from "any port or place not within the said territories". It also prohibited travel inside or passage through British Indian territories without possession of a licence from the British authorities. The Act empowered the Governor-General of India to exempt categories of persons from the operation of the Act. No such exemption, however, was made in favour of Portuguese subjects, European or native.

31. The Act of 1857 was continued till the end of 1863 by the Acts of 1859 and 1862. In 1864, the emergency created by the mutiny having passed, the 1857 Act was not renewed; instead the Governor-General of India in Council passed an Act "to give the Government certain powers with respect to foreigners". According to its preamble this Act was intended "to enable the Government to prevent the subjects of foreign States from residing or sojourning in British India, or from passing through or travelling therein, without the consent of the Government." (Indian Annex D. No. 5.) The provisions of the Act were not to come into force immediately but only by notification of the Governor-General of India in Council published in the Gazette of India.

32. The provisions of the Act of 1864 relating to the requirement of licence for travel or passage and relating to reporting to the police or magisterial authorities were brought into force the first time in 1914 in order to meet the emergency created by the Great War. (Indian Annex D. No. 6.) The Governor-General's Notification of the 8th August 1914 extended the provisions relating to reporting to the police or magisterial authorities to all foreigners who were not "Asiatic" and it extended the provisions relating to the requirement of licence for travel in or passage through British Indian territory only to Germans and Austrians. Thus, for the first time, Portuguese Europeans were required to report to the police or magisterial authorities on arrival in British Indian territory. However, they continued to be exempt from the requirement of

a licence for travel or passage. "Asiatic" subjects of Portugal continued to be exempt from the provisions both relating to the reporting of foreigners to police or magisterial authorities and to the requirement of a licence for travel.

33. A compulsory passport and visa system was introduced in British India for the first time by the Defence of India (Passport) Rules 1917. (Indian Annex D. No. 7.) These Rules were replaced by the Passport Act of 1920 and the Passport Rules of 1921. In 1921 the Rules regulated entry only by sea; a passport was not required for entry over the land frontier. Further, persons proceeding from any port in a foreign possession in India, or in Ceylon were, among others, exempted from the requirement of holding a passport and visa. Accordingly, every person who proceeded from the Portuguese possessions in India, and who landed at a port in British India, whether he was Portuguese European, or a native of these possessions, or a foreigner, was exempted from holding a passport. (Indian Annex D. No. 8.)

34. In 1926, the exemption was narrowed to "permanent residents in India or in a foreign possession in India proceeding from a port in such foreign possession, and permanent residents in India or in Ceylon proceeding from a port in Ceylon". Now only permanent residents in the Portuguese possessions, be they European or native, were exempted. However, no passport was required for entry over the land frontier. (Indian Annex D. No. 9.)

35. In 1930, the exemption was further narrowed to "persons domiciled in a foreign possession in India proceeding from any foreign possession in India". (Indian Annex D. No. 10.) Since, according to British Indian law, Portuguese Europeans were not considered "domiciled persons", they were now required to hold a passport when proceeding to British India from Portuguese possessions, by sea or by air. They continued to be exempt when entering India on the land frontier, unless they were engaged in a continuous journey from abroad.

36. In 1935 a passport was for the first time required for entry into British India over the land frontier. (Indian Annex D. No. 11.) Since Portuguese Europeans did not qualify as persons domiciled in the Portuguese possessions and did not come within the category of exempted persons, they were now required to produce a passport duly visaed by the British Indian authorities, when entering British Indian territory over the land frontier. Natives of the Portuguese possessions, that is "domiciled persons", continued to be exempt from the requirement of holding a passport and visa when entering British India either by sea or air or land.

37. Thus it will be seen that between 1864 and 1914 there were no formalities for entry into or travel through British India of foreigners, including Portuguese subjects, European or native, and

that till 1935 no passport or visa was required for entry into British India over the land frontier.

38. During the First World War the Government of India considered controlling the border with Goa in order to prevent entry of enemy aliens through Portuguese territory. At that time no passenger landing by sea in Portuguese possessions was required by Portuguese law to produce any document or proof of identity (unless there was some ground for suspicion against him). The British Government therefore suggested to the Portuguese Government that they might impose a passport system themselves and thereby co-operate with the Government of India in the prevention of entry of enemy aliens into British India. However, this suggestion was not acted upon by the Portuguese Government.

39. In 1940, the Government of Portuguese India enquired from the Government of India as to the passport regulations in force. They were informed that all persons who were not domiciled in the Portuguese possessions had to produce a passport duly visaed by the British Indian authorities before they could enter British India across the land frontier with Portuguese possessions (Indian Annex D. No. 12.)

40. During the Second World War the question of introducing measures to detect and prevent the movement of suspected persons to and from the Portuguese possessions was again considered by the British Government. On the 22nd July, 1944, the Government of India issued several notifications, under the Defence of India Rules, the effect of which was to prohibit British subjects from crossing the land frontier with Goa at points other than the prescribed ones, except under permit from officers specified therein. A Notification under the Foreigners Act 1940 directed that:—

“no Foreigner shall depart from British India for a place in Portuguese India except under the authority of, and subject to the conditions prescribed in, a permit, in the Form annexed to this notification, issued by the Registration Authority of the District in which he resides”.

Another notification of the same date under the Foreigners Act of 1940 empowered “any police officer, any forest officer of the Government of Bombay, any officer of the Central Excises and Salt Revenue Department of the Government of India” to inspect the passport, certificate of registration et cetera of every foreigner entering British India from Goa or leaving British India for Goa by land. (Indian Annex D. No. 13.) After the end of the war these notifications were cancelled on the 22nd November, 1945. (Indian Annex D. No. 14.)

41. Portuguese subjects, European or native, were not exempted from the operation of these notifications.

42. On the 27th March, 1945, His Britannic Majesty's Consul in the Portuguese possessions in India clarified the passport position to the Chief of Cabinet, Nova Goa, in the following terms:—

“At present there are no restrictions on the entry into British India from Diu of European Portuguese subjects domiciled in Portuguese India, nor do the Government of India propose to introduce any such restrictions. European Portuguese subjects not domiciled in Portuguese India are, however, required to take out a passport for entry into British India under Rule 5 of the Indian Passport Rules, 1921, unless they are specifically exempted under an order of the Government of India.”

(Indian Annex D. No. 15.)

43. It may be mentioned here that during the Passport Conference held at Geneva in 1926, the Portuguese and British Governments discussed the question of the abolition of the visa requirement in the case of British and Portuguese nationals desiring to enter the territory of the other Government. However, in a letter from the British Foreign Office to the British Embassy at Lisbon dated the 15th September, 1926, the position of British India in this respect was made clear. This letter read:—

“The Governments of the self-governing Dominions and Southern Rhodesia have been asked whether they are prepared to make unilateral arrangements for the admission of Portuguese nationals into their territories without a visa, but it will not be possible to include India among the territories to which Portuguese nationals may be so admitted.”

(Indian Annex D. No. 16.)

44. There were till 1939 in British India no regulations or procedures for the registration of foreigners except as they were found in the Act of 1864 and brought in force in 1914 in respect of “non-Asiatic” foreigners, including Portuguese Europeans. A Registration of Foreigners Act was enacted in India in 1939. (Indian Annex D. No. 17.) This Act empowered Government to make rules for registration of foreigners. The act also empowered the Government to exempt “any individual foreigner or any class or description of foreigner” from the operation of the Act. The Act was followed by the Registration of Foreigners Rule, 1939, and the Registration of Foreigners (Exemption) Order, 1939. (Indian Annex D. No. 18.) This Order, as amended, exempted among other the following categories:—

“Any persons of Asiatic birth who by any law for the time being in force is not required to obtain a visa for the purpose of entering British India and who is a subject of any State having sovereignty over any territory of which the boundaries are coterminous with the boundaries, external or internal, of India.”

“Any foreigner not specified in any of the preceding clauses of this declaration who enters British India solely in transit to a

destination beyond British India, for so long as he is authorised to travel in British India under a licence previously obtained by him from the Registration Officer of the place at which he enters British India and complies with such conditions as to route and other matters as may be specified in the said licence."

45. It will be noticed that (1) natives of the Portuguese possessions were exempted from the operation of the Act; (2) Portuguese Europeans were not exempted, except when they were in transit under licence from a Registration Officer.

### *Conclusions*

46. The following points emerge clearly from the above account of the geographical and general facts concerning the frontier and the travel regimes which have obtained between the Portuguese possessions and British India.

- (1) From earliest times Dadra and Nagar Aveli have been open enclaves without any police or customs frontier and without any regulation of the movement of persons or goods between the enclaves and the surrounding Indian territory.
- (2) The British Government always maintained a strict customs frontier at the boundaries of the Portuguese coastal possessions, and particularly at the boundary of Daman.
- (3) The roads and paths between Daman and the enclaves are unfenced and unguarded and there are many roads and paths equally unfenced and unguarded allowing free entry and exit between the enclaves and the surrounding Indian territory.
- (4) Up to 1857 there were no formalities at all for entry into or travel within India including the Portuguese possessions. For a short period between 1857 and 1863 the British Government prohibited the entry of foreigners without a licence from the British authorities. From 1864 to August 1914 no formalities applied to Portuguese entering or travelling within India. From that month onwards the British Government made Portuguese Europeans report to the police on arrival in Indian territory. In 1926 the British Government made Portuguese, not permanently resident in India, carry a passport if they entered India directly by air or sea; and in 1930 the passport requirement was applied by the British to all Portuguese unless "domiciled" in India, if they entered directly by air or sea. In 1935 the British Government for the first time required Portuguese not domiciled in India to carry a passport when entering British Indian territory from a Portuguese possession over the land frontier.



- (5) Travel of private individuals overland between any two Portuguese possessions in India was not subject to formalities until 1935, except that between 1857 and 1863 no travel between Portuguese possessions and India was possible without special licence of the British Government and that after 1914 Portuguese Europeans entering India were subject to the registration requirements. The travel of private individuals between Daman and the enclaves was simply part of the general regime of travel without formalities within the continent of India including Portuguese possessions. No special principles applied to transit of private individuals between Daman and Nagar Aveli, and the whole Portuguese concept of special rights of transit for private individuals during the period up till 1935 is simply meaningless in the light of the conditions of travel that actually obtained.
  - (6) The British Government when they found it necessary to introduce formalities for entry into and travel within India or even to forbid it had no hesitation in doing so, and their action was not at any time complained of by the Portuguese Government as an infringement of Portuguese rights of transit.
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## PART II

### THE HISTORICAL FACTS

#### INTRODUCTION

47. The subject matter of the Portuguese Application is a claim that Portugal possesses a right of passage through the territory of India in order to ensure communications between the territory of Daman and the enclaves of Dadra and Nagar Aveli, and that this right extends to the transit of persons and goods as well as of representatives of the Portuguese authorities and armed forces.

48. In paragraph 43 of the Memorial, the Portuguese Government has based its alleged right on the following grounds:

- (1) treaty;
- (2) custom;
- (3) general principles of law.

49. In Section B of Part I of its Memorial, the Portuguese Government has set out a number of alleged historical facts which are presumably intended to establish the treaty basis of the alleged right of passage. The account contained in Section B of Part I of the Portuguese Memorial is entitled: "Events leading up to the establishment of Portuguese sovereignty over the enclaved territories of Dadra and Nagar Aveli." The events described therein belong to the Maratha Period of Indian history; that Period having come to an end in 1818 when the Marathas were conquered by the British and their territories annexed to British India. The Government of India after making a careful study of the historical material relating to the Maratha Period contends (A) that the Marathas did not part with sovereignty over Dadra and Nagar Aveli in favour of the Portuguese, (B) that the Marathas did not create or acknowledge any right of passage in favour of the Portuguese. After making an equally careful study of the British Period the Government of India contends that any alleged rights derived from the Marathas and created during the Maratha Period ceased to have any validity upon the extinction of the Maratha Power in 1818. The reason is that in 1818 when the British annexed the Maratha territories they did not consider themselves bound by any grants made by the Marathas. As will appear from paragraphs 114-119 below, as early as 1819 the British made the position clear to the Portuguese that any Maratha treaties, decrees or grants from which the Portuguese might pretend to derive rights had no legal force or effects as between the Portuguese and the British. Furthermore, they also from the first, and consistently afterwards, took the position that passage over British Indian territory between

Daman and the enclaves, as elsewhere, was a matter exclusively within the jurisdiction of the British Government. As a result, the Maratha treaties, decrees or grants, from which Portugal now seeks to derive alleged rights of passage, are manifestly for all legal purposes dead and extinct and have long been so.

50. In Section C of Part I of the Memorial, the Portuguese Government in an attempt to provide support for the grounds of claim stated in Paragraph 58, has set out a number of alleged historical facts which are said to establish that ever since 1779 Portugal has possessed and continually enjoyed right of passage for persons and goods over Indian territory between Daman and the enclaves. This account of the historical facts, in the view of the Government of India, is highly selective and completely misrepresents the position which actually obtained in regard to the passage of persons and goods over the Indian territory in question during successive periods between 1779 and 22nd December, 1955, the date of the filing of the Portuguese Application. In its letter to the Court dated 10th November, 1956, the Government of India, in applying for an extension of time for the delivery of its pleading, has previously had occasion to draw attention to the paucity of the evidence adduced by the Portuguese Government in support of its claim to a customary right of passage on the basis of uninterrupted user since the year 1785. The Government of India then observed that the number of historical documents relating to the status of the enclaves and to the passage of persons and goods between them and Daman is very large, and pointed out that, although Article 43 of the Rules of Court requires the applicant party to annex to its Memorial "copies of all the relevant documents", the Portuguese Government has annexed to the Memorial no more than 54 documents, of which all but seven relate to two comparatively brief periods. The two periods in question are the first nineteen years from 1779 and the five years immediately preceding the filing of the Portuguese Application, while the long period of a century and a half between 1798 and 1949 is covered by a mere seven carefully chosen documents. Numerous highly relevant documents relating to this long period have been omitted from the Portuguese pleading, and among these documents is the important Anglo-Portuguese Treaty of Commerce and Extradition of 26th December, 1878. The insufficiency of the evidence adduced by the Government of Portugal in its Memorial is all the more surprising since, as previously stated, the burden of proof in the present case is manifestly upon Portugal.

51. The Government of India will now proceed to recite the facts divided into three periods: the Maratha Period (1774-1818); the British Period (1818-1947); and the Post-independence Period (1947-). The facts relating to the Maratha Period, which follow immediately, show in particular that the grants relating to Dadra

and Nagar Aveli obtained by the Portuguese from the Marathas were grants merely of revenue, and that the titles, if any, obtained by the Portuguese were revocable titles, terminable at the will of the Maratha Ruler; and the facts relating to all the three periods disclose the non-existence of any right of passage over Indian territory vesting in Portugal.

#### THE MARATHA PERIOD (1774-1818)

52. In its Application instituting proceedings against India on 22nd December, 1955, the Portuguese Government alleged a "Treaty concluded between Portugal and the sovereign of Punem in the year 1779" as the source of a right of passage over Indian Territory. Thus it stated in paragraph 5 —

*"Portugal's said right was acknowledged in the very title<sup>1</sup> by virtue of which the territories of Dadra and Nagar Aveli were placed under Portuguese sovereignty . . ."*

in paragraph 7—

*"The title in question was the treaty concluded in the year 1779<sup>1</sup> between Portugal and the sovereign of Punem, who at the time had dominion over the territories of Dadra and Nagar Aveli"*

and in paragraph 8—

*"It emerges from the said Treaty that the Parties to it, in addition to agreeing on the transfer of sovereignty over the territory in question, had the intention of creating and actually created a right of passage<sup>1</sup> between the Portuguese territory of Damão (littoral Damão) and the enclaves ceded and from each of these enclaves to the other . . ."*

53. As will appear below (see paragraphs 66 to 74) no treaty was executed in Poona in 1779 between Portugal and the Maratha Ruler; Dadra and Nagar Aveli were not placed under Portuguese sovereignty under the alleged treaty or under any other instrument of the Marathas; the alleged treaty did not mention, specify or intend the grant of Dadra and Nagar Aveli or any other enclaved villages. The alleged treaty did not, as indeed it could not, create, by express clause or by implication, any rights of passage to enclaved villages which were not in the contemplation of the parties. (As will appear below, during the negotiations between 1774 and 1780 both the Marathas and the Portuguese had in their contemplation the grant of the revenues of villages *contiguous* to Daman. Such villages were in fact selected in 1780. However, the assignment of the revenues of these villages was rendered impossible owing to British military activity in the area.)

54. In paragraphs 10 to 16 of its Memorial, the Portuguese Government alleged that Portugal acquired sovereignty over the Maratha territory of Dadra and Nagar Aveli under the alleged treaty and under the Maratha decrees in pursuance of the said

<sup>1</sup> Our italics.

treaty, "thus acquiring *ipso facto* the right of access to it as an indispensable condition to the exercise of her sovereignty". (Paragraph 16 of the Memorial.) It will be noticed that in the Memorial the Portuguese Government did not allege, as it did in the Application, that the alleged right "was acknowledged in the very title by virtue of which the territories of Dadra and Nagar Aveli were placed under Portuguese sovereignty... The title in question was the treaty..." (Paragraphs 6 and 7 of the Application.) Nor did the Portuguese Government allege in the Memorial, as it did in the Application, that the parties to the alleged treaty "had the intention of creating and actually created a right of passage..." (Paragraph 8 of the Application.) In the Memorial the Portuguese Government was content with the allegation that "Article 17 of the treaty *regulated*<sup>1</sup> the cession to Portugal of a certain number of villages" and that the right of passage was "an indispensable condition to the exercise of her sovereignty" over these villages. (Paragraphs 13 and 16 of the Memorial.)

55. Further researches conducted by the Government of India in the contemporary papers of the Marathas show quite clearly that not only was no right of passage created, either by express clause or by implication, but the Marathas did not, under the "treaty of 1779" or under any other instrument part with sovereignty over the territory of Dadra and Nagar Aveli. All that the Marathas did was to make to the Portuguese an annual grant of Rs. 12,000 for maintaining friendly relations, and for this purpose, and so long as the consideration of friendship held good, to assign to them the revenues of certain villages.

56. Saranjam or Jagir (the two terms being interchangeable, Saranjam being the Maratha equivalent of the Moghul term Jagir) was the temporary assignment by a Sovereign grantor of a share of the public revenue from villages or lands. A Saranjam was neither transferable nor hereditary. It was enjoyed at the pleasure of the Sovereign and was terminable at any time. This tenure is well-known in India and originated in the Moghul times when it was known as Jagir. In Maratha country it was known as Saranjam. The revocable nature of the grant known as Saranjam or Jagir was consistently stressed by the British Government which did, in fact, "resume" many saranjams and jagirs. There is considerable jurisprudence on the subject and it appears clearly from numerous decisions of British Indian Courts and of the Judicial Committee of the Privy Council that (A) a Saranjam was a grant only of the royal share of the revenue, and unless expressly provided for did not grant any proprietary interest in the soil, and (B) in either case the grant was revocable at the pleasure of the Government. In *Secretary of State v. Girjabai* (A.I.R. 1927 (P.C.) 238), the Privy

<sup>1</sup> Our italics.

Council held: "Now we find from Wilson's Glossary that amongst the Marathas the term saranjam was applied specially to a temporary assignment of revenue from villages or lands for the support of troops or for personal military services usually for the life of the grantee: also to grants made to persons appointed to civil offices of the States to enable them to maintain their dignity and to grants for charitable purposes. These were neither transferable nor hereditary and were held at the pleasure of the sovereign."

A similar view was taken by the Privy Council in *Raghoji Rao v. Lakshman Rao* (36 Bombay 639), wherein it was held that the term jagir implied no grant of the soil but a personal grant only of the revenue to the grantee. In their rules and regulations relating to Saranjam and Jagir, the British Government recognized and accepted that in Indian public Law saranjams and jagirs were revocable and terminable at the pleasure of the Government. (Reports and studies of British officers on the nature of saranjams and jagir will be found at Indian Annex E. No. 1.) Section 38 of the Bombay Regulation 7 of 1827 provided that a Jagir was liable to resumption at the pleasure of the Government. This principle was repeated in Section 1 (3) of the Bombay Regulation 6 of 1833, and in the Saranjam Rules of 1898. In *Daulatrao v. Province of Bombay* (49 Bombay Law Reports (1947) page 270) the Full Bench of the Bombay High Court observed that "the whole structure of the Saranjam tenure is founded in the sovereign right, which can only be changed by conquest or treaty. So founded, jagirs or saranjams, with the feudal incidents connected with them, are granted or withheld at the will of the sovereign power, and, if granted, the fixity of the tenure is always subject to interruption or revocation by resumption, be it temporary or absolute in character". Under the Bombay Saranjam Rules, 1952, all saranjams were resumed by the Government with effect from 1st November, 1952. (Indian Annex E. No. 1.)

57. As will appear below (see paragraphs 97 to 102), the Marathas attached the Saranjam of Dadra and Nagar Aveli, that is they attached the revenues of Dadra and Nagar Aveli, on no less than three occasions. As will also appear below (see paragraph 105), in 1817, less than a year before they were conquered by the British, they had formed the intention of revoking the grant altogether.

58. In paragraph 10 of the Memorial, the Portuguese Government stated—

"As regards the enclaved territories of Dadra and Nagar Aveli, they were acquired by the Portuguese in the circumstances which will be recited hereunder . . ."

in paragraph 11—

"The acquisition of these territories results from the Third Treaty of Punem which was concluded by Portugal with the Marhatta Empire in 1779.

This Treaty was preceded by protracted negotiations which were carried on, on the Portuguese side, by a Luso-Indian, Narana (or Narena) Sinai Dumo by name—also known as Narana Vital Dumo or Narana Rau Vital.

A number of questions remained pending between Portugal and the Marhatta Empire, following the conclusion of the Treaty of Raia of 1739 by virtue of which certain territories had been ceded by the Portuguese to the Marhattas, namely, the territory of Bassein and a portion of the former territory of Damao (which constituted its North Province). Negotiations were opened to settle these questions. They related particularly to the return to Portugal of the territories of the North Province, which had been ceded in 1739, or failing such return, the acquisition of other territories as compensation."

and in paragraph 12—

"The Third Treaty of Punem (1779), which resulted from these negotiations, was drafted in Portuguese and in Marhatta . . ."

59. The Government of India would wish to observe that the Portuguese Government did not annex to its Memorial the "treaty of 1739" cited by it in paragraphs 9 and 11 of the Memorial; nor the "first Treaty of Punem (1740)" or the "Second Treaty of Punem (1741)" cited in paragraph 9 of its Memorial. Had the texts of these treaties been annexed it would have been seen immediately that no territorial questions were left open by the "treaty of 1739". That treaty resulted from a military defeat inflicted by the Marathas on the Portuguese and there was not and could not have been in the contemplation of the Parties to make territorial transfers to the benefit of the Portuguese. It was the "treaty of 1740" which contemplated certain territorial adjustments; and all these were carried out under the "treaty of 1741". (Indian Annex E. No. 2; Indian Annex C. No. 32.) The "treaty of 1779" was in no way related to the treaties of 1739, 1740 and 1741. As will appear below neither in the negotiations nor in the text of the "treaty of 1779" was there a reference to the earlier treaties.

60. The origin of the "treaty of 1779" lay in the conflict between the Maratha and Portuguese fleets on the Indian Seas and in the civil war which broke out among the Marathas in 1774. In 1769 four Portuguese vessels were seized by the Maratha fleet near Bassein. In 1774, Camara, Governor and Captain General of Goa, deputed his envoy, Narayan Vithal Dhume, to the Poona Court for opening negotiations with the Marathas relating to compensation for the capture or destruction of the Portuguese vessels. This fact emerges clearly from the negotiations between 1774 and 1780 and from the various drafts of the treaty made between those years. It is also a fact generally known to historians and is given in "*The History*

of the Portuguese in India" by F.C. Danvers, published at London in 1884.

61. The first draft of the Treaty appears to have been drawn up in 1775 by the Portuguese envoy, Narayan Vithal Dhume. (Indian Annex E. No. 3). The preamble of this draft stated the object of the treaty to be "perpetual amity without interruption". The draft was discussed between the Portuguese envoy, Dhume, on the one hand, and Trimbak Vinayak, a Maratha official, on the other. It consisted of 21 articles which dealt with matters of commerce and navigation. This draft did not contain any reference to cession of territory or the assignment of revenues.

62. The next document in point of time is available in a Maratha collection known as the "Ithas Sangraha, Par Darbar Maratha Vakils", which can be translated as "Historical Collection relating to Maratha envoys from Foreign Courts". (It may be mentioned here that Dhume, the Portuguese envoy, was a Maratha of Goa, and belonged to the caste of Shenvai Brahmins). This is a memorandum of the Poona Court, dated 24th August, 1776, and it describes the mission of the Portuguese envoy. (Indian Annex C. No. 6.) It appears from this document that Dhume offered on behalf of the Portuguese to abandon the cause of the dissident Maratha Chief, Dada Saheb Raghoba, and to make a treaty of friendship with the Peshwa, the Supreme Maratha Ruler<sup>1</sup>, on this basis. The memorandum also referred to Dhume's representations for compensation to the Portuguese for their loss of shipping. According to the terms of this document friendship was to be established between the Portuguese and the Marathas: the Portuguese were to refuse aid or asylum to Dada Saheb Raghoba or any other enemy of the Marathas; similarly, the Marathas were to refuse shelter to the enemies of the Portuguese; and the Marathas were to assign Kamal revenue of Rs. 15000 per year, that is revenue not exceeding Rs. 15000 per year, from villages continuing under the authority of the Marathas and in which the Portuguese were not to construct any building. The draft of the article relating to the assignment of revenues was made in the following terms<sup>2</sup>:—

"The Sarkar<sup>3</sup> and the Firangee<sup>4</sup> entered into friendship. Therefore the Firangee should be assigned villages of the total revenue yield

<sup>1</sup> The Peshwa was in name the Chief Minister of the Maratha Raja of Satara. In fact he was the Maratha Ruler and the head of the Maratha Confederation. His capital was at Poona.

<sup>2</sup> The Government of India has had the Maratha and Portuguese documents translated into English directly from the original text. All translations quoted in the text of the Counter-Memorial or given in the Annexes, unless indicated to the contrary, have been made directly from the original.

<sup>3</sup> That is, the Maratha Government of Poona. See Glossary at Indian Annex C. No. 1.

<sup>4</sup> Maratha term for Portuguese. See Glossary at Indian Annex C. No. 1.



of Rs. 15,000 useful to Daman. Care should be taken that after the assignment the authority of the Sarkar will meet with no obstruction. Accordingly without interruption of Sarkar's authority they should be assigned. Imarat<sup>1</sup> should not be erected in villages so granted. According to this, agreement be made."

It may be explained here that it was the practice in India in those times not to permit a Saranjamdar or Jagirdar to erect Imarat, that is a building, stronghold or fortification, in the villages the revenues of which were assigned to him.

63. On the 21st January, 1777, Camara, the Governor and Captain of Goa, wrote to Sakharam, a Maratha official, requesting that in accordance with the understanding reached by the Marathas with Dhume, the Portuguese envoy, villages adjoining Daman may be assigned to the Portuguese. (Indian Annex E. No. 4.)

64. On the 21st October, 1777, the Portuguese envoy, Dhume, and Vinayak, the Maratha official, appear to have drawn up a joint draft. This draft closely follows the draft of 1775 (see paragraph 61 above) except for an additional article, number 16, under which the Portuguese were to undertake not to give asylum to Raghoba. This draft did not mention the cession of any territory or the assignment of any revenues. (Indian Annex E. No. 5.)

65. Next followed a draft treaty in the Portuguese language under the signature of Camara and dated the 4th May 1779. (Indian Annex C. No. 2.)

66. A draft treaty in the Marathi language, made in the name of the Maratha Ruler, and dated the 16th December, 1779, has been discovered among the papers of the Marathas. (Indian Annex C. No. 3.) This document is described as "Kararnama", that is an Agreement, in contradistinction to the description "Tuhanama", a Treaty. This document does not contain the seal of the Peshwa and its concluding words read: "Agreement should be made to that effect".

67. On the 17th December, 1779, the seal of the Peshwa was affixed to the above draft treaty or "Agreement to make a Treaty", and this document was forwarded by the Peshwa to the Portuguese at Goa. This appears from the "Collection of Treaties, etc." by Biker<sup>2</sup>. There is found in that book a translation into Portuguese, carried out at Goa on the 4th January, 1780, by Anant Kamodi Wagh, the official Marathi translator to the Portuguese Government, of a letter purported to be addressed from the Peshwa to De Sousa, the successor of Camara. (See paragraph 63 above.) This reads:

<sup>1</sup> Meaning buildings, structure, fortification, etcetera. See Glossary at Indian Annex C. No. 1.

<sup>2</sup> "Collecção de Tratados e Concertos de Pazés" by J. F. J. Biker, Lisbon, 1885.

"To the Illustrious owner of the great State, and Moulder of Fate, the Grand Dom Frederico Guilherme de Sousa, Governor of the Ports of Goa, whose friendship may be everlasting.

After expressing my great friendship I say that I am extremely happy to hear from the lips of the esteemed Narayan Vithal, that you have been entrusted with the Government of those ports, and he spoke to me also of the virtues of your prudence and of your distinguished personality.

The Grand D. Jose Pedro da Camara, former Governor of those ports, sent, for the purpose of strengthening the friendship of my Sarkar, the Treaty of agreement, which was given to my Sarkar by Narayan Vithal. Now, I have directed that the Treaty of Agreement, on the part of my Sarkar, may be handed over to the above named, who will despatch it to you, and I request you to acknowledge receipt of the same, and I desire the reciprocal observance of what has been agreed. And as a token of my friendship I send you five pieces of cloth, specified, in a separate list, which will reach there. Written on the 13th of the month of Gilahaz, which in Portuguese corresponds to 23rd December. I shall not proceed further and this is the letter." (Indian Annex E. No. 6).

68. The Collection of Biker also contains a translation made at Goa on the 6th January, 1780, by the same Anant Kamodi Wagh, the official translator of the Portuguese Government, of the Maratha draft treaty of 17th December, 1779. (Indian Annex C. No. 4.)

69. On the 11th January, 1780, the draft treaty in Portuguese of the 4th May, 1779, referred to in paragraph 65 above, was "confirmed" and counter-signed by Camara's successor, De Sousa. (Indian Annex C. No. 2.) The archives of the Marathas have revealed a translation into the Marathi language of the Portuguese draft treaty of 4th May, 1779, as "confirmed" and counter-signed on 11th January, 1780. It appears that this translation from the Portuguese language into the Marathi language was made by Narayan Vithal Dhume, the Portuguese envoy and negotiator at the Poona Court. (Indian Annex C. No. 5.)

70. It appears from the Collection by Biker that on the 1st January, 1781, De Sousa, the Portuguese Governor of Goa, wrote to Lisbon for the Queen of Portugal's approval and acceptance of the Maratha draft treaty. He wrote as follows:

"My predecessor sent Narayan Sinai Dumo, Envoy on behalf of the Majestic State to the Court of Poona, of Madhav Rao Pandit Pradhan, Ruler of the Marathas in order to discuss and conclude the negotiation of peace and interests of the State. The Envoy had discussed the clauses, but when I assumed office, the agreement had not yet been made and concluded; as soon as I took cognizance of everything, I issued instructions to the said Envoy to request and conclude the Agreement and Treaty.

Madhav Rao, Ruler of the Marathas, signed the Treaty and forwarded it to me, with the request that I should approve it. I approved it and signed it as it seemed convenient in the public interests of the State.

As a result of repeated steps taken and letters addressed to the Ministry of the said Court through our Envoy, we received drafts, so that by one remittance 15,500 rupees were paid, and by another 5,000 rupees, totalling 20,500 rupees, with the advance of 3 per cent. All this has been collected and credited to the Royal Exchequer; the said advance proceeds from the higher value of the Maratha rupees over Goa rupees.

The remaining amount, as promised in the Treaty, has not yet been paid, nor the villages near Daman have been handed over, despite repeated reminders, because of the doubts raised by Subedar Vassagi Pant, administrator of the said villages, in the execution of the Sanads, or orders of the said Madhav Rao; nor can they be handed over now, in view of conquest made in them by the British; however, the Ministry of the said Court promises to hand over other villages, yielding income in the amount mentioned in the Treaty, even though they may not be situated near the jurisdiction of the said city of Daman, towards which end I am negotiating through the said Envoy.

I enclose herewith the copies of the letter of Madhav Rao and the Treaty; of which I inform you, in order that it being submitted to Her Majesty, she may decide what she thinks is the best. May God preserve you.”  
(Indian Annex E. No. 7.)

71. The Governor of Goa received a reply from the Secretary of State at Lisbon as follows:

“Your letter sent along with the translation of the Treaty concluded with the Marathas has been submitted to the Queen, Our Lady, and though some clauses of the Treaty have been badly translated, and cannot be understood, from what one can infer from them, it would appear that this agreement is suitable to us; accordingly Her Majesty has found fit to approve the said Treaty.”

(Indian Annex E. No. 8.)

72. From the above it emerges clearly that the only text of the draft treaty which was seen and approved by the Queen of Portugal was the *Portuguese translation* of the Maratha text of 17th December, 1779; and that the Portuguese text of 4th May, 1779/11th January, 1780, was not sent to her by the Governor of Goa, nor did she sign, approve or ratify that text, or indeed any other text. A photostat copy of the original Maratha text of 17th December, 1779, was supplied by the Portuguese Government with its Memorial. (Annex 1 to the Memorial: “Photocopy of the Original—Maratha Text”<sup>1</sup>.) In this photocopy there does not appear any sign, seal or counter-signature to indicate the approval and acceptance of the document, either on the part of the Governor of Goa or the Queen of Portugal. Nor is there any evidence that a copy of the same document with the seal and signature of the Governor of Goa or the Queen of Portugal was sent to the Maratha Ruler. The Government of India contends, therefore, that the document of 17th December, 1779,

<sup>1</sup> Photostat not reproduced. [Note by the Registry.]

cannot be said to constitute a treaty between two parties. It may also be mentioned in this connection that the Portuguese were in the habit of refusing to approve and accept a treaty several years after it had been signed by the other party. An instance may be cited of the treaty signed by an Indian Ruler, the Angria, in 1778. The Viceroy of Goa sent it for the approval and acceptance of the Queen of Portugal but the approval and acceptance was refused as late as 1782. (Indian Annex E. No. 9).

73. Furthermore, as will be explained below, the Portuguese translation of the Maratha text, which was made at Goa by Wagh, the official Portuguese translator, was not in fact a faithful translation: indeed it was a paraphrase of the *Portuguese* draft of 4th May, 1779/11th January, 1780 (see paragraph 69 above) and not a translation, as it pretended to be, of the Maratha text of 17th December, 1779.

74. In view of the facts set out above, it is highly doubtful if the Maratha document of 17th December, 1779, could be described as has been done by the Portuguese Government as "The Third Treaty of Punem which was concluded by Portugal with the Maratha Empire in 1779". (See paragraph 11 of the Memorial.)

75. Further, if the four texts—the Portuguese text of 4th May, 1779/11th January, 1780; the Maratha text of 17th December, 1779; Wagh's translation into Portuguese of the Maratha text; and Dhume's translation into Marathi of the Portuguese text—are kept side by side, it emerges that (A) the two treaties differed in text, and (B) what purported to be a contemporary translation of, for example, the Maratha text, was in fact not a translation at all, but a repetition of the Portuguese text with certain alterations to make it appear as a document emanating from the Marathas. That is, Anant Kamodi Wagh and Narayan Vithal Dhume, both belonging to the same caste of Shenvai Brahmins, both in the pay of the Portuguese Government, presented to the Portuguese an altered text of the Portuguese document as a translation of the Maratha text, and to the Marathas an altered text of the Maratha text as a translation of the Portuguese text.

76. It is not of much relevance whether Anant Kamodi Wagh and Narayan Vithal Dhume acted in collusion with each other. What is of relevance is the fact that the parties had no means of knowing and did not know what was in the text prepared by the other party.

77. The divergence in the texts obtains particularly in the case of Article 17. A modern translation of Article 17 in the four texts reads as follows:

*In the Portuguese text of 4th May 1779/11th January 1780*

"As the Majestic State has evinced the greatest friendship towards the Pandit Pradhan, as proved by the Attorney, Pandit Pradhan

has agreed to make a contribution in Daman of 12,000 rupees starting from this year<sup>1</sup> through his Daman jurisdiction by virtue of which he shall specifically give to the State the Sanad or the confirmatory order of the villages." (Indian Annex C. No. 2.)

*In the Maratha text of 17th December 1779*

"Narayan Vithal Dhume conveyed assurances that the Firangee had evinced friendly sentiments towards the Sarkar and would in future be more friendly. In response, it is agreed that villages yielding revenue of twelve thousand rupees where the authority of the Sarkar is unimpeded would be assigned towards Daman from the current year. The Firangee will not raise any Imarat in the same<sup>2</sup>. Such villages will be specified." (Indian Annex C. No. 3.)

*In Wagh's translation of the Maratha text*

"As the Portuguese have acted with the greatest friendship towards this Sarkar, as proved by Naraen Vital Dumo, which friendship shall be maintained henceforward, from the current year he shall give, namely in Daman, villages of 12,000 rupees, without having in them dominion, nor any other hindrance on the part of the Sarkar<sup>1</sup> and in which the Portuguese shall not erect buildings in accordance with the arrangement made, and the villages shall be specifically mentioned." (Indian Annex C. No. 4.)

*In Dhume's translation of the Portuguese text*

"The Firangee State entertains friendly sentiments towards Pandit Pradhan; the envoy conveyed assurances. Therefore it is agreed that the Pandit Pradhan should assign towards Daman from the current year a Jagir of the revenue of twelve thousand rupees<sup>1</sup> in Prant Daman. Accordingly a sanad listing the villages be given to the Firangee State by making a separate agreement." (Indian Annex C. No. 5.)

78. It will be seen above that Wagh's translation differs radically from the other three texts, and that Wagh's translation is the only text cited and relied upon by the Government of Portugal. (See paragraphs 12 and 13 of the Memorial.) It will also be seen that the Maratha text, the Portuguese text and the Maratha translation of the Portuguese text are agreed on the intention of the Marathas to assign an annuity of Rs. 12,000 to the Portuguese; and that the Portuguese text uses the word "contribution", and Dhume's text uses the word "Jagir".

79. The Government of India would wish to draw the attention of the Court to the fact that while in paragraph 12 of its Memorial the Portuguese Government stated that "the third Treaty of Punem (1779) which resulted from these negotiations was drafted in Portuguese and in Marhatta", it did not give a clear account of the actual facts, nor did it annex to its Memorial the Portuguese text

<sup>1</sup> Our italics.

of 4th May, 1779/11th January, 1780, or a translation thereof in the Marathi language, Article 17 in which translation described the grant as a "Jagir"; nor, while it mentioned the Maratha text of 17th December, 1779, in the same paragraph, did it annex a direct translation of that text. All that the Portuguese Government annexed was a translation in French of the official Portuguese translation of Anant Kamodi Wagh and a photostat copy of the original in the Marathi-Modi script.

80. The Government of India respectfully calls the attention of the Court to the fact that while it may be contended that the language used in the translation of Wagh implies the grant of some kind of sovereignty over the villages in addition to the assignment of the revenues, all the Maratha versions, particularly the text of 17th December, 1779, which bears the seal of the Peshwa, expressly limit the grant to a temporary assignment of revenue, in a tenure known as Jagir or Saranjam. The Government of India submits that in so far as the grant is purported to have been made by the Marathas it is the Maratha documents that are relevant, and the terms of the grant are to be gathered from the original Maratha documents and not from alleged Portuguese translations.

81. Moreover, the Queen of Portugal having approved only the translation of Wagh, which, according to the admission even of the Portuguese Secretary of State was badly done and could not be understood (see paragraph 71 above), she and the Maratha Ruler obviously did not arrive at any agreement as to what was being granted, and were at cross purposes in this regard. Wagh's translation of Article 17 in particular and which was the only version of Article 17 seen by the Queen of Portugal is, to say the least, ambiguous, and its grammatical construction lends itself to the conjecture that the ambiguity was not accidental. However, it is not necessary to speculate as to the motives which led to an incorrect translation of the Maratha text being placed before the Queen of Portugal. It is sufficient to point out that the parties had no means of knowing and did not in fact know what was in the text of the other party and were not *ad idem*. So far as the Marathas were concerned, it is clear that they had no intention of parting with sovereignty over any part of Maratha territory, specified or unspecified in the document of 17th December, 1779.

82. The following position emerges from the facts stated above:

(1) The treaty as proposed by the Marathas on the 17th December, 1779, was not approved or accepted by the Portuguese; the Queen of Portugal did not receive a faithful translation of the Maratha text of 17th December, 1779;

(2) The Portuguese text of the proposed treaty was not seen or approved by the Queen of Portugal; nor was it accepted or approved by the Marathas; nor did the Marathas see a correct translation of that text;

(3) There was a divergence between the Portuguese and the Maratha texts;

(4) The documents did not constitute a treaty between the parties;

(5) The Maratha text made it clear that a grant only of the revenues was in question;

(6) The Portuguese text while being different from the Maratha text also contemplated a fiscal grant;

(7) Wagh's translation of the Maratha text was incorrect and ambiguous;

(8) Wagh's translation is the text relied upon by the Portuguese Government.

83. It follows that in so far as the Portuguese claim is alleged to be derived from a "treaty of 1779" it must inevitably fail.

84. The nature of the interest actually granted to the Portuguese in the Maratha villages is clearly brought out in the manner in which the grant of revenues was made. These grants were made under sanads. A sanad expresses the notion of a royal grant, diploma, charter, patent; it signifies a document in respect of emoluments, titles, privileges, offices or rights to revenue, etc., made under the seal of the Sovereign. The expression descended from Moghul times, was used by the British Government in India, and is still used. A sanad, by its definition, could not bring about a grant of sovereign rights or rights imposing a binding obligation on the grantor. It was always revocable.

85. On 19th December, 1779, a memorandum of the Poona Court directed the issue of a sanad to the Subedar of Bassein that he should select villages adjoining Daman of the total revenue of Rs. 12,000 for the Portuguese and of the total revenue of Rs. 3,000 for the Portuguese envoy, Narayan Vithal Dhume. (Indian Annex C. No. 7). In accordance with the above resolution, sanads were issued to the Subedar of Bassein, on 10th February, 1780, in respect of the revenue grant to the Portuguese, and on 11th February, 1780, in respect of the revenue grant to the Portuguese envoy. The relevant Marathi documents are entitled: "Saranjam to the Firangee of Goa". (Indian Annex C. No. 8).

86. The Sanads and orders in respect of the grants to the Portuguese and to Narayan Vithal Dhume were in identical terms and no distinction was made between the two parties both being constituted Saranjamdar or Jagirdar by virtue of these grants. This appears again and again from the documents relating to these grants.

87. In compliance with the above sanads, the Subedar of Bassein selected from Pargana Khaladi Pawadi (a district contiguous to Daman) nine villages of the total revenue of Rs. 12,015 for the Portuguese and two villages of the total revenue of Rs. 3,000 for

the Portuguese envoy, Narayan Vithal Dhume (Indian Annex C. No. 9.)

88. An entry in the day book of the Peshwa made on 3rd June, 1780, reproduced the sanad in respect of the grant to the Portuguese issued on 31st May, 1780. This reads:

"Therefore from these villages excluding Sarkar's Watans<sup>1</sup> and Zakat<sup>2</sup> the rest of the right of share in the revenue has been so made over to the Firangee that it may revert on the termination of the grant. Revenue of these villages may be shown on the debit side in the accounts of the Prant<sup>3</sup>. Construction of Imarat in the villages should not be permitted. Sanad to Visaji Keshav accordingly. Sanad to Mukadams<sup>4</sup> of nine villages to the effect that they should make themselves amenable to the Firangee and pay him the revenue of said villages exclusive of Sarkar's Watans and Zakat. Agreement has been made that no Imarat is to be raised in the said villages. Therefore no Imarat may be permitted to be raised."

(Indian Annex C. No. 10.)

89. Another memorandum of the Peshwa's Court of 3rd June, 1780, gave the details of the grant to the Portuguese and to Narayan Vithal Dhume; enumerated the revenue which could be collected by the Portuguese and by Narayan Vithal Dhume, such as land revenue, house tax, fowl tax, cart tax, vegetable tax, profession tax, etc., reserved the Watans of Deshmukh<sup>5</sup>, Deshpande<sup>5</sup>, Kul-karni<sup>5</sup> and Patel<sup>5</sup>, as well as the Zakat, for the Maratha State; and it described the grant both to the Portuguese and to Narayan Vithal Dhume as Dumala. (Indian Annex C. No. 11.) After setting out the details mentioned above this document reads:—

"Nine villages granted to Firangee Rs. 12015. It has been agreed to grant villages of Rs. 12000. On account of this nine villages from the current year exclusive of Zakat and the rights of the Hakdars of the total amount of Rs. 12015 have been granted to the Firangee. Sanads and letters in respect of this:—

1. Sanad to Visaji Keshav of Prant Bassein that the above villages may be given to the Firangee in Dumala and the total receipts of the revenue may be shown on the debit side.
1. Sanad to Mukadams of the nine villages that they should present themselves to the Firangee and pay the revenue regularly.
1. Letter to the Zamindars<sup>6</sup>.
3. Three sanads to be issued accordingly.

*Letters to the same effect about the two villages Kumbhariya and Suklav granted to the Firangee envoy Narayan Vithal Dhume."*

<sup>1</sup> Dues attached to hereditary offices. See Glossary at Indian Annex C. No. 1.

<sup>2</sup> Transit duties and taxes on market produce, etc. See Glossary at Indian Annex C. No. 1.

<sup>3</sup> Province.

<sup>4</sup> Village headmen charged with collection of revenue. See Glossary at Indian Annex C. No. 1.

<sup>5</sup> See Glossary at Indian Annex C. No. 1.

<sup>6</sup> Landholders. See Glossary at Indian Annex C. No. 1.



90. Dumala signifies the reversionary nature of a grant. It describes a revenue grant made for service, or through favour, subject to resumption at pleasure. (See Glossary at Indian Annex C. No. 1.)

91. The above documents show clearly that the Portuguese were granted a terminable right of collecting certain revenues; that certain dues were to be reserved for the Maratha government; that the Portuguese were not to raise any building in the assigned villages; that there was no question of sovereignty being granted to the Portuguese over any part of Maratha territory, and that no distinction was intended in these respects between the Portuguese and Narayan Vithal Dhume.

92. However, as a result of military activity on the part of the British in the districts surrounding Daman, the grant of revenue-villages from Pargana Khaladi, contiguous to Daman, could not be made, and no assignment was made for three years. A memorandum of the Poona Court of 30th January, 1783, explained the circumstances and directed the selection of new villages of the total value of Rs. 12,000. (Indian Annex C. No. 12.) An identical memorandum was made the same day in respect of the grant to the Portuguese envoy, Narayan Vithal Dhume (Indian Annex C. No. 13.) In accordance with the above resolutions sanads appear to have been issued by the Peshwa to the Subedars of Bassein. (Indian Annex C. Nos. 14 and 15).

93. Although in 1783 Pargana Khaladi Pawadi was free from British occupation or military activity, it was nonetheless decided to assign revenue villages away from Daman, in Pargana Nagar Aveli. In 1783, the entire Mahal<sup>1</sup>, that is, the revenue of the district, except that of six villages of Pargana Nagar Aveli, was assigned to the Portuguese. The Maratha Government reserved the Zakat of the entire Pargana of Nagar Aveli to themselves. (Indian Annex C. No. 16.) The documents again make it clear that what was assigned was the *Mahal* of the Pargana<sup>2</sup> and not the Pargana itself. The word *Mahal* refers not to territory but to a grouping of villages for revenue purposes.

94. That the grant intended in Article 17 of the Maratha document of 17th December, 1779, was of a fiscal nature is clearly confirmed by the fact that, for the three years that the revenue-villages could not be assigned, the Marathas paid to the Portuguese equivalent compensation in cash. A memorandum of the Peshwa's Court of 1st March, 1784, suggests that the arrears of the cash compensations were compounded after negotiations with the Portuguese envoy. (Indian Annex C. No. 17.)

<sup>1</sup> Mahal means in this connection a grouping of villages for purpose of revenue assessment. See Glossary at Indian Annex C. No. 1.

<sup>2</sup> Pargana also means Province: a division of territory for administrative purposes, smaller than Prant. See Glossary at Indian Annex C. No. 1.

95. Further, the assignment in 1783 having proved to be short of the annual yield of Rs. 12,000, the Portuguese envoy made representations to the Peshwa, and in consequence a fresh assignment was made in 1785. The revenue of six remaining villages of the Mahal of Pargana Nagar Aveli were assigned to the Portuguese. In addition, the "Zakat of Pargana Nagar Aveli", that is the Zakat of Dadra and Naroli, was also assigned. (Indian Annex C. Nos. 18 and 24.) As will be seen below in paragraphs 98 to 101, the Marathas continued to reserve to themselves what was known as "Ramnagar Zakat".

96. The fiscal character of the grant is further brought out in the account papers of the Marathas, from the year 1783, when the first assignment of villages was made, to the year 1818 when the Marathas were conquered by the British. These papers describe the Mahal of Pargana Nagar Aveli as having been given to the Portuguese in Saranjam, and show the amount annually realized from the Mahal as "Par Darbar Kharch Nisbat Firangee Goekar", that is, "Expenditure on Foreign Affairs concerning the Portuguese of Goa." (Indian Annex C. Nos. 19, 20 and 21.) Till the Marathas were overcome by the British, detailed accounts were maintained of the Mahal of Pargana Nagar Aveli by the local administrators of Taluka Bassein of which Pargana Nagar Aveli formed part, as well as in the Peshwa Daftar<sup>1</sup> at Poona. (Indian Annex C. Nos. 19, 20 and 21.) These documents show quite clearly that the Pargana of Nagar Aveli continued to be within the sovereign jurisdiction of the Marathas, and that all the Marathas had granted to the Portuguese was a Saranjam, that is a share of the public revenue, the annual amount being considered as expenditure on friendly relations with the Portuguese.

97. On three occasions, mentioned below in paragraphs 100 to 102 the Marathas exercised their sovereign rights and attached the saranjam. This they did in order to settle the debts owed to them by the Portuguese. These debts related to Ramnagar Zakat.

98. Pargana Nagar Aveli originally formed part of the territory of the Raja of Ramnagar, later known as Dharampur. In the early eighteenth century, the Marathas acquired the right to collect Zakat in Pargana Nagar Aveli. This right came to be known as Ramnagar Zakat because it was acquired from the Raja of Ramnagar. (Indian Annex C. No. 22.) For the collection of Ramnagar Zakat the Marathas set up posts inside as well as outside the Pargana. (Indian Annex C, Nos. 23 and 24.) In 1759, the Marathas acquired Pargana Nagar Aveli from the Raja of Ramnagar, together with all the rights therein. (Indian Annex C. No. 25.) After acquiring the Pargana the Marathas established Zakat posts at Dadra and Naroli. Zakat collected at Dadra and Naroli was known as Zakat of Pargana Nagar Aveli in contradistinction to the older Ramnagar

<sup>1</sup> The Central Secretariat of the Peshwa.

Zakat which continued to be known by that name. (Indian Annex C. No. 24.)

99. After the assignment of the remaining six villages of the Mahal of Pargana Nagar Aveli, and the Zakat, that is the Zakat of Dadra and Naroli, in 1785 (see paragraph 95), Ramnagar Zakat continued to be reserved to the Maratha Government. (Indian Annex C. No. 24.) This was collected at the posts inside the Pargana from all including the Portuguese.

100. There were occasions when the Portuguese either failed to pay Ramnagar Zakat to the Marathas or themselves collected and appropriated Ramnagar Zakat due to the Maratha Government. In 1792, the Zakat contractor of the Marathas complained of an instance of such unauthorized collection. The emissary of the Portuguese accepted the position that the Portuguese had no right to Ramnagar Zakat and agreed to refund to the Maratha Government the unauthorized collection. However, the amount was never paid. (Indian Annex C. No. 24.) A Maratha account paper shows that in 1794, the Portuguese having wrongly and forcibly collected Ramnagar Zakat to the extent of Rs. 3929, it was decided to recover the amount, if necessary by attachment of the revenue assigned to the Portuguese. (Indian Annex C. No. 26.) Accordingly, the Mahal of Pargana Nagar Aveli was attached by the Maratha Government in 1796/97 and a sum of Rs. 787.8.0. recovered. (Indian Annex C. No. 27.)

101. The Mahal of the Pargana was again attached in 1798 as a result of a dispute over the collection of Zakat by the Portuguese at Fatepur. However, the Portuguese having represented that what they had collected was not Ramnagar Zakat but the ordinary Zakat which had been assigned to them in 1785, the attachment was withdrawn. (Indian Annex C. No. 28.)

102. From Annexes 11 and 13 to Portugal's Memorial and one document found in the Maratha papers it appears that in April, 1798, the Maratha Government, for reasons of budget, attached, as a temporary measure, all its Saranjams, including the Mahal of Pargana Nagar Aveli. Attachment of the Mahal of this Pargana was withdrawn in the same year. (Indian Annex C. No. 29 and paragraph 109 below.)

103. The above three instances underline the precarious nature of the interest granted to the Portuguese and the fact that the Marathas had no intention of parting with sovereignty over the Pargana to the Portuguese, and, in fact, did not do so.

104. This is further borne out by two documents which have been found among the Maratha papers. One is a petition addressed to the Peshwa by the Zamindars of Pargana Nagar Aveli, complaining of the difficulties experienced by them and the other subjects of the Peshwa as a result of the assignment of the Mahal to the Portuguese. They prayed in the petition that the Mahal

should be resumed by the Maratha Government, the petitioners being prepared to pay direct to the Maratha Government the annual sum of Rs. 12,000 promised in the Treaty of 1779. (Indian C. No. 30.)

105. The other document is a resolution of the Poona Court to terminate the Saranjam. It reads: "The envoy from the Firangee of Goa was always accredited to the Sarkar of Poona and the services of the Sarkar were performed by the Government of Goa. For this the Mahal of Nagar Aveli in the Taluka of Bassein has been assigned by the Sarkar in Saranjam to the Firangee. Of late no services to the Sarkar are rendered by the Firangee. And the envoy does not reside at Poona. Therefore, the Mahal should be resumed." (Indian Annex C. No. 31.) This document is dated 1817. In the same year, however, the Marathas lost their power to the British, and they were unable to act upon this resolution.

106. It is thus abundantly clear from the Maratha documents that the Marathas never parted with sovereignty over Pargana Nagar Aveli, and that the Treaty of 1779 and the connected instruments did not bring about cession of territory to the Portuguese, nor did they in any way restrict the sovereignty of the Marathas over their territory. On the contrary, whatever rights of the collection of revenues from certain Maratha villages were granted to the Portuguese, these rights were held during the pleasure of the Marathas and were subject to temporary or permanent confiscation.

107. Further, neither the text of the Maratha document of 17th December, 1779, nor the Portuguese text of 4th May, 1779/11th January, 1780, contained any provision for entry into or passage over Maratha territory. However, both the texts did contain a provision imposing upon the Portuguese the obligation to grant to the Marathas free entry into Portuguese territory through Portuguese ports in India. Thus Article 15 in the Portuguese text reads:

"Henceforward the State shall not build any fortifications in any of the dominions of Gujrat, Saut, Cantevad, Sorat, and other places belonging to Pandit Pradan, and shall allow free entry into its dependencies through the ancient ports which the State now possesses."

It is interesting to note that had the documents constituted a treaty between the parties, and had the treaty come to be in force between Britain and Portugal and between India and Portugal, India would have possessed the right of free entry into Portuguese ports and possessions in India and of free transit through these ports and possessions.

108. In paragraph 14 of the Memorial, the Portuguese Government has related its account of the installation of the Portuguese as collectors of revenue in the villages of Nagar Aveli assigned to them in Saranjam. In support it has cited documents in the Por-

tuguese language purported to be written by the Portuguese Notary Public of Daman and styled by him as "Deeds of Possession". (Annexes 5 to 7 to the Portuguese Memorial.) According to the description contained in the first document (Annex 5), the Administrator of Daman gathered the headmen of the Pargana and informed them of the orders of the Marathas and called upon them to recognize the Queen of Portugal as their Sovereign. Finally, it is said, the assembled headmen, who did not have any knowledge of Portuguese and who were illiterate, were asked to affix their sign to the same "Deed of Possession" in the Portuguese language. The photostat copy<sup>1</sup> of the documents supplied by the Portuguese Government contains certain scrawls and marks at the end of the Portuguese text. Each individual scrawl or mark is underinscribed in the Portuguese language as being the sign of a headman. The Government of India contends that, irrespective of the authenticity or otherwise of the alleged documents, no such documents drawn up or ceremonies performed by the Portuguese without the participation or approval of the Marathas could have affected the sovereign rights of the Marathas in the territories of Dadra and Nagar Aveli, nor could such "Deeds of Possession" drawn up by the Portuguese add to the limited non-sovereign, revocable interest granted to them by the Marathas in Dadra and Nagar Aveli.

109. In paragraph 24 of the Memorial, the Portuguese Government invoked "ancient Maratha ordinances" in support of their claim to "freedom of transit with exemption from duties". In support of this statement they annexed entries in Portuguese registers relating to alleged Maratha documents. The alleged Maratha documents appear to be nothing but *ad hoc* permits for the passage of the produce of Nagar Aveli intended for consumption in Daman and orders exempting the Portuguese from demands in respect of arrears of Maratha Zakat appropriated by them. As will be recalled (see paragraphs 100, 101 and 102 above) on three occasions the Marathas had attached the Saranjam granted to the Portuguese as a result of wrongful collection by the Portuguese of Zakat due to the Maratha Government. Maratha officials continued to make demands from the Portuguese in respect of the arrears of the wrongful collections and often held up and confiscated Portuguese goods. The Portuguese Government deputed an envoy, Vithal Rao Goraksh, to the Poona Court to obtain redress from confiscation. At his suit the Marathas relaxed their pressure on the Portuguese and directed that produce of Nagar Aveli may be allowed to pass "without harassment on account of arrears of Zakat". The Government of India submits that, if anything, the above-mentioned documents (Annexes 19 and 20 to the Portuguese Memorial) demonstrate quite clearly that the power and discretion to allow or refuse passage of goods inside and through Nagar Aveli, as through other parts of Maratha territory, resided solely with

<sup>1</sup> Photostat not reproduced. [Note by the Registry.]

the Maratha Government, and that the Marathas did not create, or intend to create, a right of passage vesting in the Portuguese, nor did they accept, expressly or impliedly, the existence of any such right. Further, these documents confirm that what the Marathas had granted to the Portuguese was the limited, non-sovereign, revocable right to collect revenues in the villages of Dadra and Nagar Aveli. Thus a translation of a portion in the Marathi language in the photostat copy<sup>1</sup> of Annex 19 supplied by the Portuguese Government reads:

“Pargana Nagar Aveli has been assigned to the Firangee of Goa by the Sarkar as Saranjam near Daman.”

(Indian Annex E. No. 10.)

110. In paragraph 16 of the Memorial the Portuguese Government stated the existence of a “Convention of 1785 which was concluded in pursuance of the Treaty of 1779 as a complement to that treaty, which Convention is contemporaneous with the handing over of Nagar Aveli (including Dadra)”. A document purporting to be a translation in Portuguese of the “Capitulations under which the Sarkar has handed over the Paragana Nagar Aveli to the Majestic State” is found at Annex 8 to the Portuguese Memorial. The Portuguese Government has supplied a photostat copy of this document. This photostat copy<sup>1</sup> shows that the alleged “Capitulations” does not contain the seal or signature of any party; nor is anything stated in the text to indicate the name of the parties or the date of the execution of the document. The Government of India has not found any record of this document in the Maratha archives and it finds it reasonable to surmise that no such document was executed by the Marathas. However, the alleged “Convention” itself does not help the Portuguese claim. On the contrary, its terms disclose quite clearly the limited, non-sovereign, revocable nature of the grant to the Portuguese, and the obligations undertaken by them as Saranjamdars of the Marathas. Under its terms the Portuguese were required to preserve the Pagodas; to respect the usages and customs and religion of the inhabitants of the Paragana; not to convert the religion of orphan children; *not to erect a citadel or fortress in the Paragana*; and to control the turbulence of the Kolis. These obligations were imposed by a Sovereign on a Saranjamdar. As has been seen above, in paragraph 56, a Saranjamdar or Jagidar was required to perform some service to the Sovereign, the continuation of the Saranjam or Jagir being dependent upon the performance of such service. It was in fact as a result of the failure of the Portuguese to perform these services that the Marathas resolved in 1817 to revoke the Saranjam.

111. In paragraph 20 of the Memorial the Portuguese Government alleged a right of military passage from Daman to Nagar

<sup>1</sup> Photostats not reproduced. [Note by the Registry.]

Aveli and cited in support of this claim letters written by a Portuguese official to a Maratha official in 1798 in which the Portuguese official threatened to march a military contingent to Nagar Aveli in order to oppose the Maratha guard stationed there. It is a fact that the Portuguese Government was very anxious between the years 1798 and 1802 to obtain removal of the attachment or the constant threat of attachment of the Saranjam and to bring about the withdrawal of the special Maratha guard posted in Nagar Aveli for the purpose of recovering from the Portuguese wrongful Zakat collections. (See paragraphs 100 to 102.) Under instructions from his Government, the Portuguese envoy to the Poona Court, Vithal Rao Goraksh, made strenuous efforts to obtain the removal of the attachment and the withdrawal of the special Maratha guard. Towards this effort the Portuguese Government supplied him ample funds with which to bribe and corrupt minor Maratha officials. He was also instructed to inform the Marathas that if the Portuguese requests were not complied with the Portuguese on their part would withhold supplies of rifles and artillery guns needed by the Marathas. These facts are disclosed in the correspondence between Vithal Rao Goraksh, the Portuguese envoy, and Jose Caetano Pacheco Tavares, a Secretary to the Portuguese Government of Goa, contained in "Agents of Portuguese Diplomacy in India" by Pissurlencar. (Indian Annex E. No. 11.) This correspondence makes it clear that whatever *ad hoc* grants and concessions were obtained by the Portuguese exempting them from arrears of Zakat or permitting the passage of produce of Nagar Aveli without "harassment" by Maratha tax collectors, were not obtained on the basis of a legal claim discussed at high levels of the Maratha Government. These *ad hoc* grants and concessions were obtained from minor Maratha officials as a result of bribe or intimidation. The Government of India submits that the letters cited by the Portuguese Government at Annexes 9, 10, 11 and 12 to their Memorial do not in any way point to a right of passage: they relate to a threat to take military action against the Marathas and not to any assertion of a legal right of military passage over Maratha territory. In this connection the Government of India would wish to draw attention to the Treaty of 1741 between the Portuguese and the Marathas. One of the articles of this Treaty expressly forbade the entry of Portuguese armed forces into the territory of the Marathas and of Maratha armed forces into the territory of the Portuguese:

"A soldier of the Sarkar entering the territory of Daman will do so only with the permission of the Firangee. If a soldier of the Firangee were to enter the territory of the Sarkar, he will do so only with the permission of the Sarkar. There is no reason to enter without permission". (Indian Annex C. No. 32.)

There is no evidence that this Treaty was not in force between the Portuguese and the Marathas in 1798.

112. The above facts explain the presence of the Portuguese in Dadra and Nagar Aveli. During Maratha times they had in Dadra and Nagar Aveli no status other than that of Saranjamdar. If they came to exercise sovereignty in Dadra and Nagar Aveli that was only in usurpation of the rights of the Marathas and subsequently of the British. As will be seen below in paragraphs 114 to 119, after the termination of Maratha power, the Portuguese continued in Dadra and Nagar Aveli. They represented to the British in India that Dadra and Nagar Aveli had been "ceded" to them by the Marathas in a "treaty of 1780"; and the British Government had no opportunity of verifying the facts.

113. From this summary relating to Dadra and Nagar Aveli during the Maratha period the following facts emerge:—

(1) The documents of 4th May, 1779/11th January, 1780, and 17th December, 1779, did not constitute a treaty between the Marathas and the Portuguese.

(2) These documents did not mention any right of passage between Daman and the enclaves.

(3) The Marathas never ceded to the Portuguese any part of the territory of the enclaves.

(4) The Portuguese never received from the Marathas sovereignty over any part of the territory of the enclaves.

(5) The rights connected with the enclaves granted by the Marathas to the Portuguese were merely rights to receive revenue.

(6) These rights were revocable at the will of the Marathas;

(7) These rights were in fact withdrawn by the levy of attachment on no less than three occasions.

(8) On the eve of their conquest by the British the Marathas had resolved to revoke these rights.

#### THE BRITISH PERIOD: 1818-1947

##### I. *Transit of Goods, 1818-1879.*

114. The Treaty of Poona, concluded between the British and the Peshwa on the 13th June, 1817, and the Proclamation of the 11th February, 1818, (Indian Annex E. No. 12), established British sovereignty over the territory of the Peshwa adjoining Daman.

In 1818 correspondence began between the Governor of Daman and the Governor of Bombay about the levying by the British authorities of customs duties on products of Nagar Aveli exported thence to Daman. The correspondence shows the attitude taken up right at the start of the British occupation of the intervening territory. The Portuguese claimed exemption from customs duties on the ground of treaty arrangements allegedly made between them and the Peshwa during the Maratha period. They did not suggest



that, apart from treaties, they enjoyed any general right of freedom of passage or transit between Daman and the enclaves. The British declined to recognize any obligation arising out of arrangements between the Portuguese and the Peshwa, and regarded the granting or withholding of the exemption as a matter of policy to be governed by considerations of local expediency alone.

115. The correspondence began with a letter of 11th November, 1818, from the Governor of Daman to Sir Evan Nepean, then Governor of Bombay. (Indian Annex C. No. 33, I, p. 295). The Governor represented that under a "Treaty of 1780" the Marathas had ceded Nagar Aveli to the Crown of Portugal; that since 1780 Nagar Aveli was under Portuguese Government; and that under the "Treaty" the Marathas had promised that all produce of Nagar Aveli exported to Daman should be absolutely exempt from all duties and taxes; in consequence of breaches of this provision, the Peshwa had issued a sanad re-affirming the exemption; an arrangement had subsequently been made by one of the Maratha chieftains that, for the avoidance of misunderstandings, produce of Nagar Aveli imported for consumption in Daman should be certified under the hand and seal of the Governor of Daman, but this arrangement had been inconvenient in practice; and the British collectors had been levying duties and taxes on all articles exported from Nagar Aveli to Daman, whether certified by the Governor or not. The Governor asked that the treaties, exempting all articles so exported from duties and taxes, should be confirmed. In fact, as will be seen from the four texts of the "treaty" (Indian Annex C. Nos. 2, 3, 4 and 5) discussed in paragraphs 65 to 83 above, none of these documents provided for exemption from duties and taxes of produce of Nagar Aveli exported to Daman. His mention of a sanad was equally inaccurate. He was referring to the document of 26th April, 1799 (Portuguese Annex No. 19), which is not a sanad but a permit issued for a single occasion. (See Paragraph 109 above.) It should also be noted that, even according to the Portuguese, the system of certification was imposed by a Maratha official and accepted by the Portuguese, although the "treaty", according to the Portuguese, provided no justification for it, and the arrangement was clearly very unwelcome to them.

116. On 31st December, 1818, the Government of Bombay referred this letter to the Governor-General in Council at Fort William. In his covering letter (Indian Annex C. No. 33, I, p. 298), the Chief Secretary to the Government of Bombay remarked:

"you will be pleased to acquaint His Lordship in Council that however trifling the remission of the duties collected on articles which do not bear the Governor's Certificate may be—the Governor in Council has not thought himself justified in granting what may increase hereafter to a considerable extent deeming it also previously necessary to consult His Lordship in Council on all such arrangements with Foreign European Nations.

*"The plea set up by the Governor that the concession was originally made by the Poona Government appears to the Governor in Council to be entitled to little weight; and it is considered a question of Policy alone which it is deemed advisable to refer to the decision of His Lordship in Council."*

In reply (Indian Annex C. No. 33, I, p. 299), the Secretary to the Government wrote:

*"His Excellency the Governor General in Council does not see any sufficient reasons, of a Political nature, to require a deviation from the practice hitherto pursued, and requests that His Excellency the Governor in Council will decide on the application of the Governor of Damaun with reference to local Expediency alone."*

117. Sir Evan Nepean wrote to the Governor of Daman on 1st May, 1819 (Indian Annex C. No. 33, I, p. 300), stating that articles grown and produced in Nagar Aveli and intended for the use of Daman would be exempt from duties and taxes if accompanied by a certificate signed by the Governor of Daman or his nominee, while the local revenue officers would be empowered to open any packages which they suspected of containing contraband goods. The Governor of Daman was asked to confirm "a similar privilege", by which the inhabitants of the Pargana of Bagwara, in British territory, north-west of Nagar Aveli, were allowed to take articles out of Nagar Aveli under notes signed by the Tannadar (a local police official). Sir Evan Nepean added:

*"It will be necessary I should explain to your Worship that on the cession of the Northern Concan by the late Peshwa to the British Government no communication was made to it of any reservation of privileges to the Portuguese Government; and it consequently follows that any exemption which has been so granted could not be considered in any degree binding on the British authorities but considering the amicable relations which happily subsist between the two Governments your Worship may readily believe that a disposition exists to guard your wishes at all times whenever it can be done consistently with a due attention to the interests of my Hon'ble employers."*

118. The Governor of Daman replied on 30th May, 1819. (Indian Annex C. No. 33, I, p. 302.) He said that, disregarding arguments which might have shown that the Treaty of 1780 should be observed in spite of the silence of the Peshwa, since Sir Evan Nepean had "so generously been pleased to accede" to his request, he agreed to maintain the practice, notwithstanding its impropriety, whereby certificates of articles imported into Daman from Nagar Aveli were signed by the Governor of Daman and only articles accompanied by such certificates were allowed to pass free of duty. He agreed that the revenue officers of both Governments might open the packages if they had cause to suspect the presence of contraband goods. He was giving orders that the privileges granted by the "Treaty between the Portuguese and the Marathas" to the inhabitants of the Pargana of Bagwara should continue to be observed. These privileges were

restricted to materials for the construction of the inhabitants' houses and fuel during the rains; and the Governor asked that the inhabitants should be provided with certificates that articles taken from Nagar Aveli were actually required for the construction or use of their own houses. In the same letter the Governor represented that "the long quiet and peaceful possession of the Purgunnaha of Nagar Aveli by the crown of Portugal" was "incontestable proof" of the "authentic and regular" conclusion of the "Treaty". However, he did not send any text or translation of the alleged treaty. Sir Evan Nepean acknowledged this letter on 18th June, 1819 (Indian Annex C. No. 33, I, p. 304), expressing satisfaction that "the concession which has been made to the Portuguese Government" had been gratifying to the Governor and agreeing that the suggested certificates should be issued to the inhabitants of Bagwara.

119. It is to be noted that the whole of the correspondence discussed above related only to produce of Nagar Aveli passing to Daman, and not to any goods passing in the opposite direction; that the Portuguese Government relied solely on a misrepresentation as to the effect and provisions of the "Treaty of 1779"; that no text or translation of the alleged treaty was produced to the British Government; that the British Government refused to recognize the alleged treaty as imposing any obligation upon them; and that in spite of this refusal the Portuguese Government did not attempt to set up any right existing independently of the alleged treaty.

120. In the years immediately following this correspondence the question of these duties was again raised by the Portuguese more than once, but never with any suggestion that the exemption depended upon anything but the grace of the British authorities. Thus, on 9th June, 1823, the Governor of Daman wrote (Indian Annex C. No. 33, I, p. 307), alleging that duties were being exacted, and asking the Governor of Bombay to take the matter into his consideration and "order whatever you may think proper." He added that he was sure the Governor would "condescend to accede to so just a claim." On 13th December, 1824, the Governor of Daman wrote (Indian Annex C. No. 33, I, p. 308), complaining that the British authorities had prohibited the export of provisions, cattle, hay, etc. from British territory to Daman, and that certain duties were being levied on provisions, cattle, etc. coming into Daman from the enclaves. (As appears from the foregoing, these articles were exempt from duty only if accompanied by the Governor of Daman's certificate.) He asked the Governor of Bombay to remove these duties "in consideration of the indissoluble ties which unite the two Crowns," and added that he would consider this "a very particular favour conferred on me". The prohibition of the export of provisions from British territory had been imposed in consequence of a like prohibition of the export of provisions from Portuguese territory,

and it was raised when the Portuguese prohibition was raised. The duties on produce exported from Nagar Aveli were maintained.

121. On 12th July, 1833, the British Political Agent at Surat wrote to the Governor of Daman (Indian Annex C. No. 33, I, p. 313), complaining that employees of the Portuguese Government had carried off some teakwood from British territory without paying duty. In his reply (Indian Annex C. No. 33, I, p. 314), the Governor stated that this timber had been bought for use on a Portuguese frigate then building at Daman; he alleged that, under "an ancient agreement", no duty was payable on any goods belonging to the King of Portugal brought into Daman through the British chowkies (customs posts), and none was charged on goods of the East India Company passing through the Portuguese chowkies. When asked for evidence of this alleged agreement, the Governor, in his letter of 11th October, 1833 (Indian Annex C. No. 33, I, p. 320), referred to the correspondence between Sir Evan Nepean and the Governor of Daman in 1819 (set out in paragraphs 115 to 119 above). The British Political Agent reported this in a letter of 17th October, 1833 (Indian Annex C. No. 33, I, p. 317) to the Secretary to the Government of Bombay. He pointed out that the Governor was claiming free transit of any goods of the King of Portugal brought into Daman, alleging that reciprocal freedom of transit through the Portuguese chowkies was allowed to all goods of the Company; whereas the correspondence cited covered only produce exported from Nagar Aveli (whoever might be the owner of it), and the counter-privilege did not refer to property of the Company, but was confined to timber for building and fuel taken from Nagar Aveli by inhabitants of Bagwara. The Governor of Bombay in Council (Indian Annex C. No. 33, I, p. 321) ultimately directed the Political Agent to inform the Governor of Daman that the British Government would adhere strictly to the arrangement of 1819, but that arrangement had not been infringed by the demand for duty on the teakwood, which had not been proved to be produce of Nagar Aveli.

122. It is to be observed that in this incident also the Portuguese authorities relied on nothing but an inaccurate account of earlier events. Although trying to establish a privilege which was clearly outside the terms of the arrangement of 1819, they resorted only to mis-statements of the scope of that arrangement, and never alleged the existence of any general right going beyond the terms of that arrangement.

123. On the 25th September, 1844 the Governor General of Goa wrote to the Governor of Bombay, asking that articles exported from Daman for consumption in Nagar Aveli might be free of duty (Indian Annex E. No. 13, p. 279). Commenting on this request, the Revenue Commissioner of the Northern Division wrote thus to the

Secretary to the Government of Bombay on the 31st January 1845  
(Indian Annex E. No. 13, p. 281):

"I can readily believe it to be both inconvenient and unpalatable to the Government of Daman that there should be any restriction on the freedom of its traffic with a detached dependency such as Nagar Aveli, and *if it could be relaxed without material risk to our revenue it might be politic and courteous to concede the point, if however this could not be done, it does not appear to me that the Portuguese Government has any reasonable ground to expect that its subjects in that district should be placed on a more favourable footing than our own, with whom they are at present in every respect on an equality.*"

The Commissioner thought the concession would involve risk to the British revenue; and on the 1st March, 1845, the Bombay Government wrote to the Governor General of Goa that it could not be granted (Indian Annex E. No. 13, p. 282).

124. *In 1848 the British authorities withdrew the concession granted to the Portuguese in 1819, and soon after terminated the arrangement.* In May, 1848, the Deputy Collector of Continental Customs and Excise submitted a report (Indian Annex C. No. 34, I, p. 322), stating that a privilege granted to the Governor of Daman of receiving certain personal supplies from Nagar Aveli free of duty had been grossly abused. On the 10th June, 1848 he wrote again to the Secretary to the Government of Bombay, as follows (Indian Annex C. No. 34, I, p. 323):

"In the absences of the Collector I have the honour to submit to you that in my report on Damaun of the 18th ultimo I pointed out the abuse of an indulgence granted to the Governor of Damaun of having certain supplies passed from Nuggar Haveli to Damaun through our custom Chokies without paying duty.

"In the report referred to I have shown that under this pretext goods have been passed from every direction under passes from the Governor of Damaun—to large amount and involving a considerable sacrifice of Revenue.

"In the last year the value of the goods so passed was fifty-five thousand six hundred and fifty-nine Rupees and one anna, the amount of customs that should have been paid thereon Rupees four thousand and two hundred and forty thirteen annas and four pies—fortunately this is not a case the proof of which depends on the validity of an account kept by an inferior carcoon and might be open to trial—I have the passes of the Governor of Damaun to prove the fact.

"Involving as it did a daily and hourly sacrifice of our Revenue and considering that the countenance which has been given to the salt smuggling by the Damaun Government to the great injury of our Excise in no wise entitled them to extravagant indulgence and that the abuse of a concession and favour made in courtesy—required instant correction—I directed that no goods should be passed the Damaun Frontier free of duty on any pretext whatever.

"I have given the detail of this matter in paras. 17th, 18th, 19th and 20th of the report above referred to. I regret however to find I

have not mentioned that I had given the orders immediate effect. I trust however Government will consider me justified in having done so for the reasons above mentioned."

125. The Governor of Daman reported this (Indian Annex C. No. 34, I, p. 324) to the British Political Agent at Surat on 20th May, 1848. On 12th December, 1848, the Governor of Daman wrote to the Governor of Bombay (Indian Annex C. No. 34, I, p. 327), stating that duty was being demanded on fowls, butter, etc., brought in for his own table; he enquired whether this was being done by the order of the Governor of Bombay, "in which case", he added, "I shall rest satisfied on the point". The Revenue Commissioner of the Northern Division was then asked to report on the whole subject of exemption from duty of produce of Nagar Aveli passing through British territory, and submitted a report dated 19th April, 1849 (Indian Annex C. No. 34, I, p. 328). Having referred to the arrangement of 1819, he said:

*"... it is, I apprehend, conclusive His Excellency the Governor of Demaun (who by his letter to Mr. Andrews declined an explanation) has abused the indulgence of the Bombay Government, and as no necessity in the present day can exist of allowing the inhabitants of Bagwara the privilege of getting their building timber and fuel from the Nuggur Havellee duty free, an arrangement which Mr. Bettington shows in the 3rd para. of his letter to Mr. Secretary Lumsden No. 252 of the 10th June last, was attended with a loss of customs dues to Government of Rupees Four thousand, two hundred and forty, annas thirteen and pies four, this discussion, I respectfully venture to submit might be brought to a close by His Excellency the Governor of Demaun being informed, that as it had been discovered numerous abuses (probably on both sides), had taken place, in defrauding the Customs, the agreement entered into in A.D. 1819, of permitting the produce of Nuggur Havailee to pass duty free over the British frontier into Demaun, upon the Demaun Government allowing Building Timber and fuel to be similarly exported from Nuggur Havailee into Bugwara, was to cease, and that henceforth the British Government would not expect the continuance of this indulgence or grant its equivalent to the state of Demaun."*

He did recommend, however, that articles for the Governor of Daman's own household should be passed free of duty on production of the Governor's certificate. On 25th May, 1849, the British Political Agent at Surat wrote to the Governor of Damaun (Indian Annex C. No. 34, I, p. 331), informing him of the decision of the Governor of Bombay that, "as it has been discovered that numerous abuses (probably on both sides) have taken place", the arrangement of 1819 was to cease; but all articles for the Governor's private consumption were to be passed free of duty on production of his certificate.

126. *The arrangement of 1819 was terminated because it had been abused. From the following account of subsequent events it will appear*

*that there were other occasions on which the British authorities granted exemptions from duty to goods passing from Nagar Aveli to Daman, and in practically every case the exemptions led to abuse and so had to be withdrawn.* The development of these abuses illustrates the absolute necessity that any special arrangement either for passage of persons or for transit of goods to an enclave should be based on express and precise agreement between the authorities concerned upon practical measures for the prevention of abuse.

127. It is very significant that this decision of the Government of Bombay to terminate the arrangement of 1819 appears to have been accepted in silence by the Portuguese authorities. They made no protest or complaint, and did not allege that any right enjoyed by the Portuguese Government was being infringed. *They thus acquiesced in the view taken by the British Government, that the transit of any goods over British territory between Daman and the enclaves was a matter lying entirely within the domestic jurisdiction of the British Government, and to be controlled according to that Government's policy.*

128. In 1859 the matter of these duties was again raised by the Portuguese. Commissioners appointed by the British and Portuguese Governments were engaged in settling certain questions in issue between the two Governments concerning the boundaries of the Portuguese territories in India. On 23rd April, 1859, the Portuguese Commissioner, Senhor Cunha Rivara, wrote to the Government of Bombay (Indian Annex C. No. 35, I, p. 332), stating that, as the Portuguese Government had allowed free transit through Portuguese territory to all articles required for the British railway works, it appeared to them just "that there would be reciprocity on the side of the British" and duties should not be enforced on produce of Nagar Aveli passing through British territory to Daman. (On this occasion, as on all occasions, the duties in question were export duties levied by the British on the Daman border. No customs barrier existed round the borders of Nagar Aveli, and no import duty was levied by the British on goods leaving the enclaves.) The Government of Bombay called for a report on the subject, and the British Commissioner, Colonel Pope, submitted a report on 23rd June, 1859 (Indian Annex C. No. 35, I, p. 338), enclosing with it a memorandum of the 26th May by Senhor Cunha Rivara. In this memorandum (Indian Annex C. No. 35, I, p. 344), Senhor Cunha Rivara referred to the "Treaty of 1779" between the Peshwa and the Portuguese. He wrote:

"That Treaty contains a clause which establishes the widest exemption and the freedom of trade between the Portuguese and Maratha dominions. After some time certain doubts and controversies having been raised about the payment of transit duties on commodities produced in the said Pragana, and transported to the city of Daman, crossing the territories which remained in the possession of the Peshwa, and which are intermediary to that Pragana

and to the city of Daman, the Peshwa, by his Sanads of 26th April, 1799, directed that the paddy, teakwood, and any other things which the Portuguese might bring from Pragana to Daman, by water or land routes, should be allowed free passage without payment of any duties, in accordance with the procedure observed since old times, that is, since the Treaty; and thus it was observed."

He also referred to the arrangement of 1819, calling it a pact, the correspondence of 1833 and the withdrawal of the concession in 1848. He then went on to express doubt whether the allegations of abuse made by the British in 1848 had been well founded. He said the Portuguese Government exempted from duty on transit through Portuguese territory all alcoholic drinks for consumption in British territory and all British products and manufactured goods, and had recently allowed free transit to materials, owned privately and not by the British Government, for railways and telegraphs. He concluded:

"When, therefore, it appeared that things should have been so arranged as to do justice to us, and to establish a well set reciprocity regarding exemption from transit duties, it is now a month more or less that an unexpected increase in the same duties has been introduced which has aggravated the situation and redoubled the oppression . . .

In view of what has been stated, my Government hopes that the British Government will, not only in view of the spirit of alliance and friendship which binds both the Nations, but also in view of their infallible justice, restore the former system of free transit and exemption from duties, which was observed up to 1848."

It is to be noted that Senhor Cunha Rivara was guilty of a number of tendentious inaccuracies in his account of these transactions. His assertion that the "Treaty of 1779" between the Peshwa and the Portuguese contained a clause establishing 'the widest exemption and the freedom of trade' was, as has been seen, quite groundless. He was similarly inaccurate in calling the permit of 1799 (Portuguese Annex No. 19, mentioned in paragraphs 109 and 115 above) a sanad, and the arrangement of 1819 (see paragraphs 117 and 118 above) a pact. Nevertheless, in spite of this obvious attempt to attribute to the earlier arrangements a binding character which they did not in fact possess, Senhor Rivara did not venture to claim free transit of goods through British territory as of right. This is clear from the concluding words of his memorandum, quoted above.

129. Commenting on this memorandum in his report of 23rd June, 1859 (Indian Annex C. No. 35, I, p. 338) Colonel Pope remarked:

"I do not suppose that the right of the British Government to levy duties on goods belonging to a foreign State, passing through its territories, can be denied, though the policy of doing so, especially considering the liberal conduct of the Portuguese Government . . ., may be worthy of the consideration of Government . . ."

"But as Government, in the event of its seeing fit now to revert



to the agreement on the subject of the duties under consideration, made on the 1st May, 1819, and confirmed on the 12th November, 1833 (Vide paras. 7 and 11 of this report), would not probably abandon its right to act on any future occasion as it might see fit, I submit that such a settlement of the question could not be considered final."

Colonel Pope suggested that the best permanent settlement of the question would be by an exchange of territory, giving the Portuguese a strip of territory to form a corridor between Nagar Aveli and Daman. The Governor-General of Goa wrote to the Governor of Bombay on 12th September, 1859, endorsing this suggestion (Indian Annex C. No. 35, I, p. 343); but on 28th September, 1860, the Governor of Bombay answered that, after full enquiry and consideration, the cession of any British territory had been found to be impracticable. (Indian Annex C. No. 35, I, p. 355.) In November 1861, after correspondence with the Secretary of State for India, the Portuguese request was granted and produce of Nagar Aveli was allowed to pass through British territory free of duty for use in Daman, if accompanied by a pass from the Governor of Daman. (Indian Annex C. No. 36.)

130. After 1861, the position of goods in transit between the Portuguese territories and that of duty levied on those goods seem not to have been altered until the conclusion of the Treaty of 1878, mentioned below in paragraph 137.

131. It is important to observe once more the presuppositions which governed the conduct of both sides in their dealings just described. The Portuguese had been anxious in 1819 to obtain, in 1848 to preserve, and in 1859 to regain a valuable exemption from duty. While they did appeal to the arrangements which they had made with the Marathas, the appeals consisted chiefly of mis-statements of the effect of those transactions; and they never made any attempt to insist when the British Government declined to regard as binding arrangements made between the Marathas and the Portuguese. Apart from these appeals, *the Portuguese arguments were based on reciprocity, the friendship between the two countries and the British Government's sense of justice. They never claimed to be entitled to freedom of transit between their territories.* They never appealed to any custom, or general right existing by treaty, or principle of international law, but regarded the imposition and raising of the duties as lying entirely within the power and domestic jurisdiction of the British Government. Accordingly, when, in 1849, the British Government withdrew the concession granted in 1819, the Portuguese Government acquiesced in silence (see paragraphs 124 to 127 above). *The British Government, on their side, also regarded the imposition of these duties as a purely domestic matter, which was not affected by any considerations of treaty, custom or law, but might be handled purely on considerations of policy.* Right from the outset they consistently refused to recognise any obligation

arising from any treaty or arrangement made by the Portuguese with the Marathas.

## II. *Passage and Entry of Soldiers and Police, 1818-1879.*

132. As with the transit of goods, so with the passage of soldiers and police, there is no evidence that during this period, from the origin of British sovereignty in 1817/1818 to the conclusion of the Treaty of 1878, either Government ever claimed any right of passage through the territory of the other. Facilities seem to have been granted or restrictions enforced simply on the basis of reciprocity, and there is no evidence that passage of Portuguese troops or police over the territory intervening between Daman and the enclaves was treated in any different way from passage over other British territory. There are three incidents which show that entry of soldiers and police was regarded as lying entirely within the control of the Government of the territory to be traversed, and no reliance was placed upon any right alleged to exist by treaty, custom or any principle of law.

133. As regards entry for the arrest of criminals, this is clearly shown by an incident of 1851. The British authorities in Surat asked (Indian Annex C. No. 37) the Governor of Daman to allow British police to enter Portuguese villages in order to arrest persons who had committed offences in British territory. In his reply (Indian Annex C. No. 37), dated 17th June, 1851, the Governor declined to allow this, but said that the Portuguese police would, at the request of the British Government, arrest such persons; and in the same letter the Governor asked the British authorities to arrest a certain person who was wanted by the Judge of Daman but was apparently in British territory.

134. In 1857, during the Mutiny in British India, the Portuguese Government allowed a detachment of British troops to pass through Goa on their way to the Southern Maratha district. The Governor-General, in a letter of 27th November, 1857 (Indian Annex C. No. 38) to the Governor-General of Portuguese India, expressed the thanks of the British Government "for the ready and cordial assistance afforded by yourself, and the authorities under you".

135. In 1859 an incident arose in connection with the despatch of two Portuguese sepoy from Daman to Bassein, to escort thence a Portuguese judge. The British police at Dahanu deprived the sepoy of their bayonets (apparently the only weapons they carried). The Governor-General of Goa, on 16th May, 1859, protested to the Governor of Bombay against the disarming of the sepoy in spite of their having produced Government passes (Indian Annex C. No. 39). He based his protest on the ground of reciprocity, claiming that English soldiers carrying arms were allowed to pass unmolested in Portuguese territory. The Governor-General mentioned, as an "additional circumstance" at Daman, the existence of Portuguese

villages surrounded by British territory, but did not attempt to found any special right upon it. The Governor of Bombay apologised (Indian Annex C. No. 39) for the "inadvertence" through which the arms had been detained.

136. From these three incidents it is impossible to deduce that either Government claimed any right of entry into, or passage over, the territory of the other, or conceded to the other Government any right of entry into, or passage over, its own territory. When either Government did allow passage to the troops or police of the other, this was done as a concession and a favour, and on the basis of reciprocity. No appeal was made to treaty, custom or any principle of law. The Portuguese Government, even when drawing attention to the peculiar position of Dadra and Nagar Aveli, did not found upon the position of these enclaves any claim to a special right.

### III. *The Treaty of Commerce and Extradition, 1879-1892.*

137. In 1878 Great Britain and Portugal concluded a Treaty of Commerce and Extradition for their Indian possessions. The negotiations which led to this treaty sprang from the abrogation by the British Government of what were known as the "firman privileges". In 1714 the Moghul Emperor Ferokhsair issued a firman under which Portuguese goods arriving in Portuguese vessels at Surat were subject to duty at a rate of only 2½%, the normal rate of duty being 5%. Until 1868 the volume of Portuguese commerce at Surat was negligible, and the British authorities did not interfere with these firman privileges. In 1869, however, the position was entirely changed by the appearance of a new trade. This was the trade in Portuguese wine. The wine was taken out of bond at Bombay, shipped to Daman, and taken thence in Portuguese coasting craft to Surat. This trade grew considerably, and in consequence the observation of the firman privileges began to cause serious loss to the British revenue. In 1872, therefore, the Government of Bombay put an end to the firman privileges. *In the face of loud protests by the Portuguese Government against this action, the British Government maintained that the firman contained nothing to imply that the privilege was granted in perpetuity; firmans were revocable by the Moghul Government, and, therefore, by its successor, the British Government; long continuance of the grant did not convert a matter of favour into a matter of right; and the abrogation of the privilege was not contrary to any treaty obligation.* (Indian Annex E. No. 14.) The British Government therefore refused to consider the Portuguese claim for compensation for the withdrawal of the firman privileges. This is another illustration of the attitude of the British Government towards arrangements which had formerly prevailed between their predecessors and the Portuguese. While willing to abide by such arrangements so long as it was convenient for them to do so, the British refused to regard these arrangements as imposing upon them any obligation.

138. The negotiations consequent upon the suspension of the firman privileges dragged on for a number of years. Eventually the British and Portuguese Governments reached agreement on the following principles:

- (i) the firman privileges should be abolished;
- (ii) there should be reciprocal freedom of commerce, navigation and transit between all British and Portuguese territory in India;
- (iii) the two Governments should co-operate in building a railway from the Portuguese port of Marmagao through Goa to the frontier of British India;
- (iv) there should be mutual exemptions from, and reductions of, import duties.

These principles were accordingly embodied in the Treaty of 1878.

139. Articles I and II of this Treaty of 1878 (Indian Annex C. No. 40) gave complete freedom of commerce, navigation, transit, residence, possession of property and trading to the subjects of either Government within the dominions of the other, with the same restrictions and laws only as were applicable to nationals. Article VII abolished all customs duties on imports and exports levied on the frontier lines between the Indian possessions of Britain and Portugal. The Treaty also provided for the extension of this article to such native states as the Governor-General might declare to be entitled to the same Customs privileges as British India. Article V provided for a uniform monetary system, and a separate convention to this effect was signed between the two powers. By Article XIV the Portuguese Government undertook to prohibit the cultivation and export of opium except on account of the British Indian Government. Article XII gave to the Government of India the exclusive privilege of regulating or undertaking the manufacture and sale of salt in Portuguese possessions. From the fiscal point of view this article was considered important for the British. Goa and Daman possess special natural facilities for producing sea salt, and the smuggling of salt into Indian territory meant an annual loss of duty between £50,000 and £75,000. Similarly, Article XIII provided for the introduction into Portuguese India of the British system of excise on spirituous liquors. The British Government on its part agreed to pay annually 400,000 rupees to the Portuguese Government. By Article VI the British Government undertook to provide "all usual and reasonable facilities for the making and working of a railway from the port of Marmagaum to the town of New Hubli". In return the Government of India secured the rights of conveyance on the whole line from Marmagao to New Hubli, "upon terms similar to those on which the same are conveyed upon the guaranteed railways in India, of Her Majesty's mails, post office officials, police, artisans and stores,

and also (subject in the case of transit through His Most Faithful Majesty's territory to the provisions of article XVIII of this Treaty) of her troops, arms and munitions of war".

140. Article XVIII provided that the revenue, magisterial and police authorities of the Indian dominions of either party might enter the dominions of the other in pursuit of criminals and smugglers. The Article read:

"The High Contracting Parties mutually agree to adopt in their respective territories suitable measures for the prevention and punishment of smuggling; or other evasion of the spirit of the arrangements relating to navigation, customs, salt, spirituous liquors and toddy, and opium effected by this Treaty.

The revenue, magisterial and police authorities of the Indian dominions of the High Contracting Parties shall cordially co-operate with each other for the maintenance, on the common lines of traffic and elsewhere, of perfect security of persons and property; and in the pursuit of criminals and persons engaged in smuggling and contraband practices, the said authorities of the one High Contracting Party may cross the frontier and enter the dominions of the other High Contracting Party: Provided that in such dominions they shall act in accordance with the local laws and the provisions of this Treaty.

"The armed forces of one of the two High Contracting Parties shall not enter the Indian dominions of the other, except for the purposes specified in former Treaties, for the rendering of mutual assistance as provided for in the present Treaty, or except in consequence of a formal request made by the party desiring such entry to the other.

The exportation of arms, ammunition or military stores from the Indian dominions of one of the High Contracting Parties into those of the other shall not be permitted, except with the consent of, and under rules approved of by, the latter. The Governments of British India and Portuguese India shall co-operate to enforce all such rules as are herein contemplated.

The Governor-General of British India will from time to time communicate to the Governor-General of Portuguese India a list of the Native States to be placed, in respect of arms, ammunition and military stores, upon the same footing as British India."

141. By Article XIX the parties engaged to enter into a separate Convention governing extradition. Article XXII provided that the Treaty should come into force three months after the exchange of ratifications, and remain in force for a period of twelve years and then, unless terminated by notice given by one party to the other twelve months before the expiration of that period, for further successive periods of twelve years until so terminated.

142. The Treaty came into force on 15 January 1880. Thereafter it governed all matters of passage of persons and transit of goods between British and Portuguese India until January, 1892.

Between 1879 and 1892, therefore, the arrangements concerning passage and transit between Daman and the enclaves were purely conventional, being governed entirely by this Treaty. This applied to the passage of all persons, whether military, police or civilian, and the transit of all goods. In particular, soldiers or police of one country could enter the territory of the other only in accordance with Article XVIII.

143. The foregoing summary shows that the Treaty was founded entirely on the basis of reciprocity. Its provisions contain no hint that either party claimed, whether by earlier agreement or by custom or by general principles of law, any unilateral or absolute right of transit or of passage through the territory of the other.

#### IV. *Transit of Goods, 1892-1947.*

144. The Treaty of 1878 expired in January, 1892, the British Government having previously given notice to terminate it under Article XXII. The Portuguese Government then contended that either the firman privileges should be restored or they should receive compensation for the loss of those privileges, but the British Government refused firmly to consider either request. Another consequence of the termination of the Treaty was that the question of the exaction of customs duties on goods passing between Daman and Nagar Aveli again arose. The Governor-General of Portuguese India wrote to the Governor of Bombay on 27th May, 1892 (Indian Annex C. No. 41, I, p. 378), stating that, before the Treaty, transit of goods between the two districts had been free, subject only to the issue of passes by the Portuguese authorities, but since the expiration of the Treaty, free transit had not been allowed at the British fiscal posts. He went on:—

“In bringing the above fact to Your Excellency’s notice I request that Your Excellency will be so good as to issue the necessary instructions with a view to all products leaving any part of the Portuguese territory of Daman, and passing from one district to the other, being allowed transit free of duty in British territory, or territory belonging to the Raja of Dharampur.

As regards the Portuguese Authorities, I assure Your Excellency that this condescension on the part of the British Authorities will be duly returned by an equal exemption from duty of products passing from British territory or territory under British protection.”

The Governor-General added that his request was justifiable because of the practice followed before the Treaty, and because goods from British posts passing over the Marmagao railway were not charged customs dues by the Portuguese. In this letter the Portuguese request was once more put forward as a request for a favour to be enjoyed reciprocally by both Governments, not as a demand for the recognition of a right.

145. The Commissioner of Customs, Salt, Opium and Abkari at Bombay pointed out, in a memorandum of 3rd August, 1892 (Indian Annex C. No. 41, I, p. 379), that the Governor-General's account of the practice followed before the Treaty was inaccurate. The exemption had been limited to produce of Nagar Aveli brought under the Governor's pass to Daman and no exemption had ever been allowed to goods passing from Daman to Nagar Haveli. He went on:—

"It will thus be seen that the account given by His Excellency the Governor-General of the practice in vogue before the Treaty is incorrect in some important particulars and the general and unrestricted exemption he now asks for would go far beyond any previous concessions regarding the traffic between Nagar Aveli and Daman.

Undersigned would strongly deprecate any exemption from duty being now granted to goods forwarded under the Governor's passes from Daman to Nagar Haveli as abuses which it would practically be impossible to control would inevitably spring up.

As regards the exemption from export duty of rice, the produce of Nagar Haveli when taken to Daman for consumption in that place . . . So far as undersigned is aware there are no special grounds for relinquishing without equivalent the revenue which will be sacrificed if the exemption asked for is granted, and past experience in connection with the abolished *firman* privileges as well as with the Anjediva and Nagar Haveli exemption from duty goes to show that arrangements with the Portuguese of the kind proposed by the Governor-General invariably lead to complications and loss of revenue."

The remission of Portuguese duty on goods passing from British posts over the Marmagao Railway was, the Commissioner said, dictated by self-interest, as the application of the tariff would at once have put a stop to all goods traffic on the West of Indian Portuguese Guaranteed Railway. On 21st February, 1893, the Government of Bombay resolved (Indian Annex C. No. 41, I, p. 381):—

"The Governor-General of Portuguese India should be informed in reply to his letter No. 58, dated the 27th May, 1892, that the Goa Treaty of 1878 having lapsed, this Government is prepared to restore the *status quo ante* and allow rice, the produce of Nagar Haveli, to pass free of duty into Daman whether for local consumption or for export, as was done before the Treaty came into force, subject to such precautions for its identification as really the produce of Portuguese territory as may from time to time be found necessary. Beyond this concession, this Government regrets that it cannot go."

146. On 29th January, 1895, the acting Collector of Salt Revenue wrote to the Commissioner of Customs, Salt, Opium and Abkari (Indian Annex C. No. 42, I, p. 388) reporting that it had long been suspected that rice grown in British villages was being fraudulently exported to Daman free of duty under cover of Portuguese passes,

and a case had recently occurred in which two cart loads of rice, certified by the administrator of Nagar Aveli as being produce of Nagar Aveli, had been proved to have come from British territory. The acting Collector did not blame the administrator: *the concession was necessarily attended by fraud, and he could suggest no precaution by which it could be prevented.* Accordingly, he concluded:

“As matters now stand not only is the British Revenue defrauded of a considerable sum every year, but the traders and owners of vessels in Daman are subsidised to the detriment of those living in British territory.

Now that the worthlessness of the certificates granted by the Portuguese Authorities has been so fully demonstrated, I trust that Government will see fit to withdraw the concession.”

The Commissioner wrote (Indian Annex C. No. 42, I, p. 388) on 8th March, 1895, to the Chief Secretary of the Revenue Department of the Government of Bombay, endorsing this suggestion and stating there could be no reasonable doubt that the concession was abused and much British rice evaded duty by passing as Portuguese rice. In support of this he quoted figures supplied by the Acting Collector. On 21st August, 1895, the acting Chief Secretary to the Government of Bombay wrote (Indian Annex C. No. 42, I, p. 387) to the Government of India, stating that the Bombay Government proposed to accept the Commissioner's suggestion and terminate the concession, but thought it advisable to enquire if the Government of India had any objection to this course. In reply, the Assistant Secretary to the Government of India wrote, on 29th October, 1895 (Indian Annex C. No. 42, I, p. 390):

“I am directed to acknowledge the receipt of your letter No. 5224, dated the 21st August, 1895, relative to the passage free of duty into Daman, through intervening British territory, of rice produced in the Portuguese district of Nagar Haveli.

It appears clear that the concession has been abused, and I am to request that, with the permission of His Excellency the Governor, the position may be explained to the Government of Portuguese India, who should be informed that any practical suggestion for the prevention of the abuse will receive careful consideration, but that meanwhile, to prevent loss to British Revenue, the concession will be provisionally withdrawn one month after the date of the letter.”

The Portuguese Authorities were apparently unable to make any practical suggestion for prevention of the abuse, for the concession was not restored.

147. On a number of occasions after 1895, the Portuguese authorities tried to get this concession renewed. On 2nd September, 1899, the Governor-General of Portuguese India wrote (Indian Annex C. No. 43, I, p. 393) to the Governor of Bombay (Lord Sandhurst), pleading that, as the inhabitants of Daman had been reduced by



plague and drought to "a very miserable condition", products of Nagar Aveli, except country liquor, should be allowed to be carried to Daman and vice versa free from duties. He suggested various precautions which might be taken to prevent frauds, and remarked that the Portuguese Government did not levy any tax on goods passing through Marmagao harbour and the Goa territory either to or from British districts. On this letter, the Collector of Salt Revenue commented (Indian Annex C. No. 43, I, p. 394) on 11th October, 1899, that imports into Nagar Aveli and exports therefrom were absolutely unrestricted, and, in respect of exports to Daman, Nagar Aveli was treated exactly as though it was British territory. All trade between the two districts was, therefore, free already, except that in rice. As to this, he added:

"When Customs posts were established on the Daman frontier, privileges were under certain conditions accorded to rice the produce of Nagar Aveli exported to Daman. It was found however that the concession was abused, and after a peculiarly gross case of fraud had been brought to light, it was withdrawn by the Government of India (Government Resolution No. 7831 of the 17th December 1895, Political Department). Mr. Jenkins cannot recommend that the concession should be renewed."

148. The Acting Commissioner of Customs, Salt, Opium and Abkari concurred in this view. (Indian Annex C, No. 43, I, p. 395.) On 6th March, 1900, Lord Northcote having meanwhile succeeded Lord Sandhurst as Governor of Bombay, the Governor-General of Portuguese India renewed his request. (Indian Annex C. No. 43, I, p. 396.) He said it seemed to him unfair that rice produced in Nagar Aveli should be allowed to be exported free into British territory, but should be liable to British taxes when intended for Portuguese territory, and referred again to the freedom from duty of traffic passing over the Marmagao railway. He asked the Governor, "if it should be impossible to allow free transit to all goods between Nagar Aveli and Daman and vice versa", to allow rice produced in Nagar Aveli and exported to Daman, and fish exported from Daman to Nagar Aveli, to pass free. Commenting on this request on 29th April, 1900 (Indian Annex C. No. 43, I, p. 398), the Collector of Salt Revenue said it had been proved that fraud was "the necessary concomitant" of any exemption from duty of rice purporting to be produce of Nagar Aveli. He described how, between 1893 and 1895, large quantities of rice grown in British districts had been exported "under fraudulent certificates obtained from the Portuguese authorities". *Free and unrestricted traffic with British territory was, he said, far more important to Nagar Aveli than export of rice to Daman and receipt of goods from Daman, free of duty. It was unreasonable to expect that Nagar Aveli, while treated for purposes of British customs as a British district, should receive special concessions as being part of Portuguese India.* On 21st July, 1900, the Governor

of Bombay wrote to the Governor-General of Portuguese India (Indian Annex C. No. 43, I, p. 399), conveying his decision thus:

“I have the honour to acknowledge the receipt of the letter No. 26 dated the 6th March, 1900, from your Excellency’s predecessor, regarding the proposal to allow rice to be exported from Nagar Haveli into Daman free of duty, and in reply to say that my Government regret that they are unable, after a careful consideration of the question, to grant the concession asked for as past experience has shown that it is sure to be abused.”

149. The subject was raised again in 1906, in the course of negotiations for the prevention of the smuggling of liquor from Daman into the adjoining British districts. The British Government had asked the Portuguese Government to fix a minimum price for the sale of liquor, and to limit the number of liquor shops, in these territories. The Portuguese Government offered to do so if, as a compensation for the loss of revenue, the British Government would permit free passage through their territory of salt, rice and other dutiable products from Daman to Nagar Aveli and vice versa. The Government of India submitted this proposal to the Government of Bombay. In his answer, dated 1st November, 1906 (Indian Annex C. No. 44, I, p. 410), the Secretary to the Government of Bombay wrote that this particular form of compensation, “in the opinion of the Governor in Council, should most emphatically not be granted”. Regarding rice, he referred to the withdrawal of the concession in 1895, and added that, although every effort had been made, it had never been possible to guard the concession from abuse. The Government of India, accordingly, wrote, in a despatch of 28th February, 1907, to the Secretary of State for India (Indian Annex C. No. 44, I, p. 414):

“We are entirely opposed to the acceptance of the proposal of the Portuguese Government that, as a *quid pro quo* for their meeting our wishes in respect to their liquor arrangements in Daman and Nagar Aveli, we should allow the free transit of rice and other articles between these districts. As is pointed out by the Local Government, such transit would, in the case of salt and rice, inevitably degenerate, as formerly, into unauthorised free import of these articles into British territory.”

(The last sentence quoted is not absolutely clearly expressed. The import of salt from Daman into British territory was totally prohibited (see paragraph 153); but, as regards rice, import from Nagar Aveli into British territory was never subject to any duty or restriction, and the freedom which the Portuguese were seeking was freedom from British export duties on the Daman frontier. This letter of the Government of India does, however, emphasize once more that fraud and abuse appeared inevitably to accompany any exemption from duty which the British might allow.)

150. Strenuous efforts to obtain the renewal of the concession were made by various Portuguese authorities between 1933 and 1935. On 15th December, 1933, the Portuguese Consul-General at Bombay wrote (Indian Annex C. No. 45, I, p. 417) to the Chief Secretary of the Political and Reforms Department of the Government of Bombay, pointing out that rice grown in Nagar Aveli could not enter Daman without passing through British territory, and, alleging (wrongly, as it proved) that goods from British territory passing in transit through the Dabel district of Daman were exempted from customs duty. He asked that rice despatched from Nagar Aveli to Daman might be allowed free transit. The Chief Secretary wrote in reply on 15th March, 1934 (Indian Annex C. No. 45, I, p. 422). He referred to the withdrawal of the concession in 1895 and the correspondence of 1900, and stated:

“For the reasons set forth in the two letters referred to above and in view of the fact that the conditions which necessitated the withdrawal of the concession have not changed, the Governor in Council regrets that he is unable to permit free transit to rice despatched from Nagar-Aveli to Daman.”

151. On 3rd August, 1934 the Governor of Daman renewed the request, in a “private and personal” letter to the Collector of Surat (Indian Annex C. No. 45, I, p. 425). He suggested certain safeguards which might prevent frauds, and hoped that “the ever proved good sense and spirit of justice of the British administration” would lead them to grant his request, thus easing a little the “enormous difficulties” of the population of Daman. The Governor’s suggestions were carefully considered, but on 10th January, 1935 the Collector was instructed (Indian Annex C. No. 45, I, p. 429) to inform him that the Government of Bombay could not reconsider their previous decision. A third attempt was made on 6th June, 1935, when the Governor-General of Portuguese India made the same request to the Government of Bombay (Indian Annex C. No. 45, I, p. 432), expressing the hope that it might be “considered just and deserving of consideration”. The reply, dated 28th June, 1935 (Indian Annex C. No. 45, I, p. 433), stated that the Governor in Council regretted that it was not possible to allow the concession for the reasons set out in the letter of 15th March, 1934 to the Portuguese Consul-General at Bombay (Indian Annex C. No. 45, I, p. 422).

152. It appears from the foregoing that the exaction of customs duty on rice grown in Nagar Aveli and exported to Daman was a matter to which the Portuguese authorities attached much importance. They agitated it repeatedly over a period of many years, and tried every means available to them of obtaining the concession which they desired. Yet, although they made the concession a matter of petition and a matter of bargaining and sought to obtain it on grounds of reciprocity, they never suggested it was

a matter of right. *The correspondence contains no reference to any right in international law. The Portuguese never suggested that they possessed any right of transit whatever. The British authorities regarded the matter throughout as one to be governed solely by considerations of policy and lying entirely within their domestic jurisdiction. This attitude the Portuguese authorities never challenged.*

153. The view taken, alike by the British and Portuguese Governments, of the unrestricted right of the British Government to control the transit of goods through British territory is further illustrated by the action taken about salt manufactured in Daman. On 25th January, 1895, the Government of India, in consequence of the illicit importation of salt into the British districts adjacent to Daman, prohibited the importation by land of Daman salt into British India (Indian Annex C. No. 46). *It is to be noted that in this case the British Government imposed, not merely a duty, but a complete embargo upon the import of salt from Daman into British territory. The Portuguese Government never alleged that this infringed any right enjoyed by them, although clearly the embargo was not to their liking.* The free passage of salt through British territory from Daman to Nagar Aveli and vice versa was one of the concessions demanded by the Portuguese Government in the negotiations in 1906, mentioned in paragraph 149 above. The Secretary to the Government of Bombay, in his letter of 1st November, 1906, there mentioned (Indian Annex C. No. 44, I, p. 410), referred to the prohibition of 1895, and said that the removal of that prohibition would lead to a revival of the difficulties and loss of revenue. As set out in paragraph 149 above, the Government of India informed the Secretary of State (Indian Annex C. No. 44, I, p. 414) that they were "entirely opposed to the acceptance of the proposal of the Portuguese Government". This prohibition of the import of Daman salt was never removed during the rest of the period of British rule in India, yet the Portuguese Government never suggested that it infringed any right possessed by them.

154. A matter which gave rise to much negotiation between the British and Portuguese Governments was the distilling of liquor in the Portuguese territories in India. Great quantities of such liquor were produced, and smuggled over the borders into British territory. The British Government were most anxious to stop this process, as it had a serious effect upon their revenues. The Portuguese Government, on the other hand, showed little inclination to cooperate to this end, as the illicit traffic in liquor was very profitable for those conducting it. The negotiations which resulted show both Governments adopting the same attitudes as have already been noticed towards the transit of goods through British territory. The British authorities felt themselves free entirely to prohibit the transit of particular goods, if this were necessary for the protection of British interests. The Portuguese authorities never ventured

to question the right of the British to place what restrictions they pleased upon transit through British territory.

155. On the 12th January, 1892; in connection with the termination of the Treaty of 1878, the Government of India prohibited entirely the importation into any part of the Presidency of Bombay of country liquor produced in Portuguese territory (Indian Annex E. No. 15). In the following years smuggling of liquor from Portuguese into British territory became rife, and negotiations between the two Governments were opened. As has been mentioned in paragraph 149 above, in the course of these negotiations the Portuguese Government offered to take steps to check the traffic in liquor if in return the British Government would allow other goods to pass between Daman and the enclaves free of duty. This proposal, as has been seen, was rejected by the British Government. It thus proving impossible to reach any agreement with the Portuguese for the control of the liquor traffic, the Government of India made an order on the 9th January, 1908, prohibiting the taking by sea or by land of mhowra flowers (the material most commonly used for distilling liquor) from any part of British India into any of the Indian possessions of Portugal (Indian Annex E. No. 16). For the time being this prohibition brought the smuggling to an end; and on the 21st December, 1909 the Governor General of Portuguese India wrote to the Governor of Bombay suggesting that negotiations be opened for a new agreement (Indian Annex E. No. 17). He wrote:

"It appears to me that such an agreement should be entered into without delay for mutual convenience and that it should, if possible, be made in the manner I have already referred to, that is, comprising not only the question of the system of distillation and sale of country liquor, but also in a special manner the question of transit of productions across the respective frontiers between the two Portuguese territories of Daman and Nagar-Aveli and between the parts of the latter intersected by the British territories,—a question intimately connected with the former and which cannot be left out of consideration in entering into this agreement."

156. Reporting this, on the 8th April, 1910, to the Government of India (Indian Annex E. No. 17), the Acting Chief Secretary to the Government of Bombay wrote:

*"That Government apparently wishes to bring under review the whole question of customs arrangements on the frontier, and especially the treatment of goods in transit from one part of the Portuguese possessions to another. The Governor in Council is strongly of opinion that this ought not to be allowed. The sole question for consideration is upon what terms as to the manufacture and sale of country liquor in Daman and Nagar-Aveli, the British Government will withdraw their Notification No. 127-4, dated 9th January 1908, prohibiting the export of Mhowra flowers from British districts into the Portuguese territory; and the Governor in Council is of opinion*

that the negotiations with the Portuguese Government should be confined to that point only."

157. Nothing appears to have come of this suggested resumption of negotiations. About this time, however, it came to the notice of the British authorities that, the supply of mhowra flowers having been cut off by the prohibition of 1908, dates and jagri were being used instead of mhowra flowers for distilling in Portuguese territory. Orders were accordingly made by the Government of India, on the 6th January, 1912, and the 12th October, 1912, respectively, prohibiting the export of dates and jagri from British India to Nagar Aveli (Indian Annex E. Nos. 18 and 19). However, in order to avoid unnecessary inconvenience to travellers the Government of Bombay ordered, on 9th June, 1916 (Indian Annex C. No. 49), that travellers from Daman to Nagar Aveli be allowed to take with them one pound of dates each for their personal consumption on the journey. On the 4th January, 1913, the Government of India made a further order, prohibiting the export of molasses from British India to Nagar Aveli (Indian Annex E. No. 20).

158. In consequence of these measures, the Portuguese Government again proposed the negotiation of an agreement. On the 2nd December, 1912, they submitted 'Bases of Convention' to the India Office in London (Indian Annex E. No. 21). This document contained proposals (in articles 8, 9 and 10) for transit free of duty between Daman and the enclaves of spirits and salt. It is particularly to be noted that it contained no mention either of the much agitated question of rice or of a general exemption from duty of goods passing between these points. The 'Bases of Convention' were passed to the Government of Bombay for negotiation with the Portuguese, but no result was achieved. In 1918 the Portuguese submitted new 'Bases of Convention'. (Indian Annex E. No. 22). This time the document did contain the following proposals:

8th

"The Portuguese Government engage to allow free transit of British products that pass through their territories, under the same condition as may be done by the British Government.

The British Government should take the following engagements . . .

12th

To allow the salt produced in the salt works of Daman to be exported not only to any place of British India but also to any of the Native States, in boats of any tonnage, by paying at respective ports the customs duties which should not be higher than those collected at present.

13th

To allow the products of Daman and Nagar-Aveli to be freely exchanged without the payment of duties at the British Customs

posts up to such quantities as may be fixed according to the Customs statistics and enquiry to be held.

The Portuguese Government will take the necessary measure in order that by these concessions the other high contracting party may not suffer any injury and engage—

1st.—The quantity of salt shall be regulated at 14 pounds per head. To prevent any embezzlement or misdirection it shall be sent under a pass granted with the legal formalities accompanied by an escort from Daman to Nagar-Avely, and stored in two depots established one at Silvassa and the other at Dadra. From these places it shall be distributed to the heads of families on the production of passes as it was done when the treaty of 26th December 1878 was in force.

2nd.—When salt is exported by sea the Chief Customs Officer at Daman shall inform of its shipment, by the shortest route, the authority of the port of destination, and the exporter shall be responsible to produce a certificate from the respective Customs stating that the salt shipped was discharged and cleared there.

3rd.—The products of Daman in transit to Nagar-Avely and *vice versa* shall be accompanied by a pass signed and sealed at the Administrator's office stating the quality and quantity of goods, the name of the exporter, the route of transit to follow, the nature of conveyance and the name of the driver. These passes shall be presented at the British Custom posts and registered there, in order to institute legal proceedings against any person committing embezzlement or misdirection. Should it deem necessary, these products in transit may be also accompanied by an escort of regular troops in the same way as it is to be done with the salt.

#### 14th

The British Government engage not to collect any duty on all British products which may be imported into Portuguese territories of Daman and Nagar-Avely."

The elaborate nature of the safeguards here suggested by the Portuguese Government is particularly to be observed. It indicates that Government's recognition, in view of the many abuses which had previously occurred, that a special arrangement for transit of goods between Daman and the enclaves could be made only on very carefully defined conditions.

159. When writing to the Governor-General of Portuguese India on the 6th December, 1918, agreeing to discuss the new draft, the Governor of Bombay specifically excepted articles 8, 12, 13 and 14 (set out above) (Indian Annex E. No. 22). These articles the Government of Bombay refused to consider. No more was heard from the Portuguese Government of these 'Bases of Convention'.

160. This was the position when the First General Conference on Freedom of Communications and Transit met at Barcelona in 1921. The Portuguese settlements in India were specifically excluded from the scope of the convention drawn up at Barcelona. In the course of the conference, the Portuguese delegate wrote to the

delegate of the Government of India a letter (Indian Annex C. No. 89) containing this passage:—

“As I have told you my Government desires to arrive at a fair arrangement regarding some difficulties in India, where it will be very difficult to apply the Convention we are discussing at Barcelona:—

- (a) Transit Damão Nagar Aveli.—An arrangement that will be most convenient for this transit that owing to some difficulties arising out of the salt trade, could be made on such basis as would be negotiated between the two local Governments.
- (b) As the salt question is difficult to settle, it would be wiser not to include this product in the transit arrangement.”

This letter emphasizes once more the view held by both the Governments, that such transit was a matter for negotiation and not a matter affected by any right.

161. The negotiations thus contemplated by the Indian and Portuguese delegates at Barcelona opened in 1923, when a commission appointed by the Portuguese Government presented to the Government of Bombay a memorandum relating to Daman, Nagar Aveli and Diu. This memorandum contained (*inter alia*) proposals for the uniform administration of the liquor trade in Portuguese and neighbouring British territories; the import into British territory of Daman salt; and transit of goods other than spirits and salt between Daman and the enclaves free of duty, or alternatively, a customs union between Daman (*i.e.* littoral Daman and the enclaves) and British India. Negotiations upon these proposals broke down in 1925 upon the question of the *per capita* liquor ration to be allowed for Daman and Nagar Aveli, and were never resumed.

162. It may be observed that while these negotiations were actually going on there occurred another instance of a total prohibition by the British of transit of certain goods. On the 2nd June, 1924 the Government of India made an order prohibiting the import of saccharine into British India from a number of foreign settlements, including Goa and Daman (Indian Annex E. No. 23).

163. The whole course of the negotiations thus provides yet another confirmation of the attitude consistently adopted by both Governments towards the question of transit across British territory. The British authorities were very anxious, for the protection of their revenue, to limit the amount of liquor distilled in Portuguese territory. Failing an arrangement with the Portuguese, they did not hesitate to make orders the effect of which was entirely to prevent all transit of country liquor, mhowra flowers, dates, jagri, molasses and saccharine between Daman and the enclaves. *In spite of the obvious inconvenience thus caused to them, the Portuguese authorities never contended that these prohibitions infringed any right.* Instead, they tried to get rid of them by offering concessions desired



by the British. *The terms put forward by the Portuguese from time to time show clearly that they regarded any exemption from customs duties and any degree of freedom of passage of goods passing between Daman and the enclaves as a privilege to be gained (if possible) by bargaining, and not as a right which they were in a position to demand.*

164. A number of other incidents testify to the recognition by the Portuguese Government of the right of the British authorities to regulate, solely on grounds of policy, the transit of goods through British territory. Thus, on the 1st March, 1904, the acting Governor of Daman wrote to the Collector of Salt Revenue at Bombay (Indian Annex C. No. 47, I, p. 435), complaining about the closing on public holidays of the British customs house at Kunta. This, he alleged, had caused a good deal of inconvenience, medicines urgently required in Nagar Aveli having sometimes been detained at the customs house. The acting Governor did not suggest that the Government of Bombay were exceeding their rights in charging duty upon, or even detaining, goods consigned from Daman to Nagar Aveli, but merely wrote that he would "esteem it a great favour" if arrangements could be made for passing goods through the customs house on public holidays. The Collector of Salt Revenue wrote back on the 21st July, 1904 (Indian Annex C. No. 47, I, p. 439), stating that on such days stores of the Portuguese Government would be passed, provided they were covered by a pass signed by the Governor or some responsible official. Again, on the 4th January, 22nd February and 15th March, 1915 (Indian Annex C. No. 48.) the Government of Bombay, acting on requests of the Portuguese Consul-General at Bombay, allowed certain specified articles of food, drink and tobacco to pass from Daman to Nagar Aveli free of duty, for the use of certain Portuguese officers. At the same period the Military Commandant of Nagar Aveli was allowed (Indian Annex C. No 48, I, p. 445), "as a matter of personal courtesy", to import from Daman without payment of duty specified quantities of wines, spirits, tobacco and other provisions, for his own use and that of his family. In the autumn of 1915, however, a consignment for the Commandant was found, when opened at the frontier, to contain articles not covered by the permit. Consequently, the Government of Bombay ordered (Indian Annex C. No. 48, I, p. 445), on the 23rd December, 1916, that the Commandant be allowed free passage each year of 60 dozen Portuguese wine for himself alone; the concession was not to be allowed to other officials, nor was it to extend to other stores. On the 9th June, 1936, the Portuguese authorities asked (Indian Annex C. No. 50) to be allowed to send from Daman free of duty some iron rails to replace the wooden posts of the telegraph lines in Nagar-Aveli. They pointed out in their letter that the rails belonged to the Portuguese Government, and the Government of Bombay was interested in these lines, which formed part of the telegraph communication between Bombay and the native state of Dharampur. The Government of

India, as stated in their letter of the 10th August, 1936 to the Government of Bombay (Indian Annex C. No. 50), were "pleased to sanction, as a special case" the transport of the rails through British territory free of customs duty.

V. *Passage and Entry of Soldiers and Police, 1892-1947.*

165. The next matter to be considered is that of the conditions under which the police and armed forces of one party were allowed to enter the territory of the other. While the Treaty of 1878 was in force, such entry was governed by Article XVIII, which read:

"The High Contracting Parties mutually agree to adopt in their respective territories suitable measures for the prevention and punishment of smuggling; or other evasion of the spirit of the arrangements relating to navigation, customs, salt, spirituous liquors and toddy, and opium effected by this Treaty.

The revenue, magisterial and police authorities of the Indian dominions of the High Contracting Parties shall cordially cooperate with each other for the maintenance, on the common lines of traffic and elsewhere, of perfect security of persons and property; and in the pursuit of criminals and persons engaged in smuggling and contraband practices, the said authorities of the one High Contracting Party may cross the frontier and enter the dominions of the other High Contracting Party: Provided that in such dominions they shall act in accordance with the local laws and the provisions of this Treaty.

The armed forces of one of the two High Contracting Parties shall not enter the Indian dominions of the other, except for the purposes specified in former Treaties<sup>1</sup>, or for the rendering of mutual assistance as provided for in the present Treaty, or except in consequence of a formal request made by the party desiring such entry to the other.

The exportation of arms, ammunition or military stores from the Indian dominions of one of the High Contracting Parties into those of the other shall not be permitted, except with the consent of, and under rules approved of by, the latter. The Governments of British India and Portuguese India shall co-operate to enforce all such rules as are herein contemplated.

The Governor-General of British India will from time to time communicate to the Governor-General of Portuguese India a list of the Native States to be placed, in respect of arms ammunition and military stores, upon the same footing as British India."

<sup>1</sup> A number of treaties had been made between England and Portugal before 1878, but only three of those treaties, viz. those of 1373, 1386 and 1661, could have been relevant in any way to this provision. Under none of these three treaties could Portugal have claimed a right to send troops into, or over, British territory. Those of 1373 and 1386 provided for one party to supply military assistance to the other only at the request of the latter. The treaty of 1661 provided that England should defend Portugal and send to Portugal certain troops, but contained no reciprocal promise on the part of Portugal and no terms obliging or entitling Portugal to send troops into English territory. There is considerable doubt, moreover, about the extent to which any of these treaties remained effective and binding in 1878.

166. That Article thus permitted the revenue, magisterial and police authorities of either party to cross the frontier and enter the dominions of the other in pursuit of criminals or smugglers. The clear inference from this provision is that those authorities had no right to cross the frontier for any other purpose. The Article went on to provide expressly that the armed forces of either party "shall not enter the Indian dominions of the other", except for purposes specified in that treaty or in former treaties or "in consequence of a formal request".

167. The Treaty of 1878 lapsed in January, 1892, so that the treaty obligation itself contained in Article XVIII no longer applied. Nevertheless, neither Government ever regarded itself as possessing any right of such entry. Thus, on the 26th November, 1901 the Portuguese Consul-General in British India applied to the Government of Bombay by telegram (Indian Annex C. No. 51) for urgent permission for a Portuguese military detachment to proceed from Daman to Bombay by land with arms. The Government of Bombay answered on the same day (Indian Annex C. No. 51):

*"I am directed to acknowledge the receipt of your letter No. 161 of to-day's date, relative to the movement of a detachment of soldiers from Daman to Goa by rail, and in reply to state that the entry of armed troops into British territory cannot be permitted until the orders of Government have been obtained and instructions issued to the local British officers concerned."*

Permission for this detachment was sent to the Consul-General on the 30th November (Indian Annex C. No. 51), with a request that 'on future occasions the date of the proposed movement of such detachments may be stated, and that sufficient notice may be given to enable the orders of Government to be obtained and instructions to be issued to the local authorities'. The Consul-General acknowledged this request (Indian Annex C. No. 51) and thanked the Government of Bombay for their "prompt and kind concession". In 1912, there was a rebellion in Goa against the Portuguese Government. In connection with this, the Portuguese Government asked permission (Indian Annex C. No. 52) to send a detachment of soldiers across British territory close to the border, and on the 5th August, 1912, the Government of India gave this permission by telegram (Indian Annex C. No. 52) 'as a special case'. The Portuguese Government subsequently abandoned this plan, but in October asked permission (Indian Annex C. No. 52) to send the detachment about thirty miles into British territory by train, and then to march them nine miles to the Portuguese border. On the 11th October, 1912, the Government of India refused to allow the transport of the troops by train (Indian Annex C. No. 52). The detachment eventually passed through British territory on foot, and on the 25th November, 1912, the Portuguese Consul-General

at Bombay sent to the Government of Bombay (Indian Annex C. No. 52) the Governor-General of Portuguese India's "sincere thanks to the British Government for having graciously allowed the passage of Portuguese armed force in the British territories". On the 1st October, 1912, four armed British police escorting two prisoners passed through Goa on their way from Ratnagiri to Dharwar, no previous intimation having been given to the Portuguese Government. The Portuguese Consul-General wrote to the Government of Bombay on the following day (Indian Annex C. No. 53, I, p. 459), stating that in such cases the Portuguese Government should be informed. The Acting Secretary to the Government wrote back on the 7th December, 1912 (Indian Annex C. No. 53, I, p. 462), apologizing for the incident and stating that officers of the Government would be instructed to communicate directly with the Chief Secretary to the Portuguese Government, or the local authorities, before sending armed police through Portuguese territory. The Consul-General replied (Indian Annex C. No. 53, I, p. 462), on the 21st January, 1913, that there was no objection to the passage of British police on duty through Portuguese territory, provided there was "the same reciprocity under similar conditions", in which case previous notice would be given to the Government of Bombay. The Government, by their letter of the 20th February, 1913 (Indian Annex C. No. 53, I, p. 463), accepted this arrangement, but made it clear that it was not to apply to armed troops, in the following terms:

"With reference to your letter, dated the 21st January, 1913, I am directed to inform you that Government are willing to grant reciprocity in the matter of allowing parties of Portuguese Armed Police to travel across intervening British territory when it is necessary for them to do so in journeying from one part of Portuguese India to another, provided that previous intimation of their intention is given to the local authorities.

*"It must be clearly understood, however, that this arrangement does not extend to armed troops operating on the frontier between Portuguese and British territory."*

168. On the 7th August, 1913, the Portuguese Consul-General at Bombay, Sen. Alfredo Casanova, wrote to the Secretary to the Government of Bombay (Indian Annex C. No. 54), informing him that a detachment of Portuguese soldiers had arrived in Bombay that day from Goa. He met the Secretary to the Government the same day, and apologized for having forgotten to give information beforehand about the passage of the troops through British territory. On the 15th September, 1913, the Secretary to the Government of Bombay wrote to the Secretary-General to the Government of Portuguese India (Indian Annex C. No. 54), drawing his attention to this incident and asking that orders be given to ensure that Portuguese troops did not cross the frontier of British territory until permission had been received from the Government. Further

correspondence about this incident took place later in the year. The Portuguese Government tried to rely on the arrangement set out above (Indian Annex E. No. 24). The Government of Bombay, in their letter of the 22nd, January, 1914 to the Chief Secretary to the Government of Portuguese India (Indian Annex E. No. 24), pointed out that this arrangement

*"refers to reciprocal arrangements relating to the passage of Police only and not of troops of the British or Portuguese Governments through intervening Portuguese or British territory."*

169. During the year 1915, the Government of Bombay received from the Portuguese authorities seventy-nine applications for permission for Portuguese soldiers to pass through British territory. These applications show that the Portuguese Government entirely accepted the position that not even individual soldiers, far less military detachments, could pass through British territory without the prior permission of the British authorities. Of these seventy-nine applications, one, dated the 13th January, 1915, was for the passage of eleven soldiers from Daman to Nagar Aveli (Indian Annex E. No. 25), and another, dated the 22nd March, 1915, for the passage of one soldier from Goa to Nagar Aveli (Indian Annex E. No. 26). *There is no indication in these two cases that either Government thought any special consideration applied to passage to the enclaves. The cases were treated in exactly the same way as other cases, in which passage to or from the enclaves was not under consideration.* To make this clear, the papers relating to one or two examples of these other cases have been included in the Annexes (Indian Annex E. Nos. 27 to 30). The applications also show that major movements of Portuguese troops through British territory did not take place. In every case permission was being sought for the passage of the few men (sometimes only a single soldier) being transferred from one station to another. In most cases the permission sought was for passage through Bombay, this being usually the most convenient route.

170. An incident occurred on the 12th January, 1916 (Indian Annex C. No. 55), when a detachment of Portuguese soldiers arrived in Bombay from Daman on their way to Diu, having passed through British territory without permission from the Government of Bombay. In consequence the Portuguese Consul-General (Senhor Casanova) sent them back to Daman. On the 12th February, 1916, Senhor Casanova received a telegram (Indian Annex C. No. 55) from the Governor of Diu informing him that a detachment of Portuguese soldiers would arrive in Bombay the following day and go on to Goa. Senhor Casanova at once sent a telegram in reply (Indian Annex C. No. 55), telling the Governor of Diu that when soldiers had to cross British territory he should always "communicate beforehand" for the "indispensable authorization". The following is his letter

(Indian Annex C. No. 55) to the Government of Bombay reporting this:

"I have the honour to inform you that I am in receipt from the Governor of Diu the following telegram:

'Portuguese Consul Bombay.—Proceeding Goa via Jafrabad arriving Bombay steamer day 13th. Sunday 4 soldiers Guarda Fiscal. Governor Diu'.

having sent today only the following telegraphic reply:

'Governor Diu Delwada.—Always when soldiers have to cross British territory beg communicate beforehand according to resolution between Governments Portuguese India and British to ask for indispensable authorisation and after being granted the soldiers can proceed journey. Casanova.'

Request you therefore to issue the necessary orders that there may be no obstacle in landing as well in departure to Nova-Goa of the same soldiers who are expected from Diu, for which I anticipate my best thanks."

171. Permission was asked in this way not only for the passage of detachments, but even for the passage of individuals. Thus, on the 6th May, 1916, the Portuguese Consul-General applied (Indian Annex C. No. 55) to the Government of Bombay for permission for one officer and his family to travel from Bombay to Nagar Aveli, and on the 9th May (Indian Annex C. No. 55) for a musician to travel from Bombay to Daman. *It is particularly to be observed that the Portuguese Consul-General's own statement, in his telegram of the 12th February, 1916, quoted above (Indian Annex C. No. 55), was quite unqualified. Before any Portuguese troops could cross any British territory, the "authorisation" of the British Government was "indispensable".*

172. Between the 29th December, 1916, and the 25th August, 1917, the Government of Bombay received from the Portuguese authorities seventy-nine applications for permission for Portuguese troops to pass through British territory. One of these applications dated the 10th February, 1917 (Indian Annex E. No. 31), was for the passage of three soldiers from Daman to Nagar Aveli, and another, dated the 7th August, 1917 (Indian Annex E. No. 32), for the passage of a Portuguese officer and a soldier from Bombay to Nagar Aveli. Once again, these two applications for permission to travel to Nagar Aveli were treated in exactly the same way as applications for permission to travel through other British Territory.

173. It is clear from these incidents that neither Government possessed a right of passage for armed men over any part of the territory of the other. This is confirmed by an agreement (Indian Annex C. No. 56) made on the 25th September, 1920, between the Government of Bombay and the Government of Portuguese India. This agreement provided that armed police of either party might enter the territory of the other in actual pursuit of an offender, and

might arrest the offender if the pursuit had not been interrupted; they had to report themselves as soon as possible to the authority of the territory entered, and hand over the person arrested to the police of that territory. Subject to this, armed police of either party below the rank of sub-inspector, and officers of, or above, that rank, were not to enter the territory of the other escorting prisoners without consent previously obtained. The agreement also laid down conditions on which unarmed police of either party, and officers of, or above, the rank of sub-inspector, might enter the territory of the other; and special provisions for British Police escorts travelling by rail from British India to Marmagao and vice versa.

174. This agreement of 1920 applied only to police. For the passage of soldiers through British territory the Portuguese Government continued to ask permission. On the 30th January, 1933, the Government of Bombay, in answer to a request dated the 28th January, 1933, of the Portuguese Consul-General at Bombay, gave instructions allowing a detachment of armed men to move from Nagar Aveli to Daman and back (Indian Annex E. No. 33). It was not only for detachments that permission was asked. On several occasions the Government of Bombay was asked to allow transit for two soldiers escorting an official carrying money between Daman and Nagar Aveli (Indian Annex E. Nos. 34 to 38).

175. Two particular incidents from the last years of British rule may be cited. On the 11th April, 1940, the Government of Portuguese India wrote (Indian Annex C. No. 57, I, p. 473) to the Government of Bombay, mentioning an occasion on which a German missionary travelling on a bus from Nagar Aveli had been arrested by British troops at the customs post of Lavacha. The Portuguese Government suggested that, as the road from Daman to Nagar Aveli passed "several times" through British territory, it might be possible to come

"to an understanding with the Government of Bombay, by which on this road, and only on this road, owing to its special nature, armed police forces of both the Governments may travel freely, independently of any previous authorization".

The Government of Bombay answered, on the 30th July, 1940 (Indian Annex C. No. 57, I, p. 479), thus:

"I am directed to refer to your letter No. 122/G, dated the 11th April, 1940, on the above subject, and to state that, in the circumstances stated, the Government of Bombay is prepared to enter into reciprocal arrangements with the Government of Portuguese India in the matter, subject to the understanding that the armed police travelling across intervening British territory on the road in question should not exceed ten in number at one time and that intimation of their passage through British territory is given by post to the local authorities within 24 hours of the passage. If any number exceeding ten at a time are required so to travel at any time the

existing practice should be followed and concurrence of the British authorities should be obtained by prior notice as heretofore. I am to request that you will be so good as to inform the Government of Bombay whether the Government of Portuguese India are agreeable to the above proposal. On receipt of their agreement, necessary instructions will be issued to the officers concerned."

The close limits set by the Government of Bombay to this arrangement are quite inconsistent with the existence of any general right of passage for police. This is the more significant because this arrangement was concerned specifically, and concerned only, with passage between Daman and Nagar Aveli.

176. On the 17th October, 1941, the Portuguese Vice-Consul at Bombay wrote (Indian Annex C. No. 58, I, p. 484) to the Chief Secretary to the Government of Bombay, asking that permanent instructions might be issued allowing free transit to the armed soldiers accompanying the Shroff (treasurer) whenever public funds had to be transferred from Nagar Aveli to Daman. The Chief Secretary answered on the 11th November, 1941 (Indian Annex C. No. 58, I, p. 484) referring to the agreement of 1920, and stating that the Government of Bombay anticipated no difficulty in issuing the necessary orders on each occasion, and suggested that the existing practice be continued. The Portuguese authorities did not then pursue the matter further. It may be observed that an incident of April, 1943, is wrongly quoted in the Portuguese Memorial (paragraph 23 and Portuguese Annex No. 18) as an example of armed men being allowed by the Government of Bombay to escort public funds from Nagar Aveli to Daman. That incident related to a transfer of funds from Nagar Aveli to Bombay, not to Daman.

177. It may here be observed further that the Portuguese Government, in support of their claim that, from the acquisition of the enclaves to 1954, they never ceased to exercise a right of passage between the enclaves and Daman, cite only two more incidents. Both belong to the distant past, and neither supports the claim. There is first the incident of 1826, mentioned in paragraph 21 of the Memorial. That incident has no significance, for the object of the Portuguese expedition was to punish the Raja of Dharampur, and the British Government was no less anxious than the Portuguese Government that he should be punished. Furthermore, the Governor of Daman thought it necessary immediately to report his proceedings against the Raja to the British Political Agent at Surat. The second incident is that of 1849, mentioned in paragraph 22 of the Memorial. In this case there is no evidence that the permission of the British Government was not sought and obtained before any Portuguese troops passed through British territory.



178. *From the foregoing it is clear that, after the lapse of the Treaty of 1878, the British authorities in India always regarded the passage through any part of their territory of armed Portuguese soldiers or police as a matter lying entirely within their jurisdiction, to be permitted or prohibited as they chose. The Portuguese authorities shared this view and (except in cases covered by special agreements) applied for permission whenever such passage was desired. There was never any suggestion of the existence, by treaty, custom or any principle of law, of a general right of passage for armed men.*

#### VI. *Import of Arms, 1892-1947.*

179. Other questions, closely related to those concerning the admission to British territory of armed Portuguese troops and police, must now be discussed. These questions arose in connection with the introduction by the Portuguese into British territory of arms. Here again, both in cases of individuals bearing arms and in cases of consignments of arms sent by the Portuguese Government across British territory, it is clear from what happened that neither side regarded the Portuguese as possessing any peculiar rights. The ordinary municipal law of British India was applied to these cases, subject to one or two special concessions made by the British Government from time to time.

180. From 1860 onward, if not from an even earlier date, no arms could be carried over the British territory intervening between Daman and the enclaves, unless a licence had been got from the British authorities. This was the effect of section 17 of Act No. XXXI of 1860 (Indian Annex E. No. 39).

181. This Act was replaced by the Indian Arms Act, 1878 (Indian Annex C. No. 59), which extended to the whole of British India (and still extends to the whole of the Indian Union). Section 6 provides that no person shall bring or take by sea or land into or out of British India any arms, ammunition or military stores, except under a licence (but this does not apply to arms, other than cannon, or ammunition imported or exported in reasonable quantities for his own private use by any person lawfully entitled to possess them). Sections 8 and 9 provide for the imposition of duties on arms brought into British India. Section 10 empowers the Governor General in Council to regulate or prohibit the transport of any description of arms, ammunition or military stores. The Indian Arms Rules, 1879 (Indian Annex C. No. 60), made under the powers contained in this Act, provided for the issue of licences for the import and export of arms, ammunition and military stores. In April, 1880, the Governor General in Council added to these Rules rule 7A (Indian Annex C. No. 60). Rule 7A (a) provided that nothing in the Rules should be deemed to authorize the grant of a licence to import arms, ammunition or military stores from Portuguese India. Rule 7A (b) provided that nothing in the Rules should be deemed to authorize the grant of a licence to export to

Portuguese India any arms, ammunition or military stores, unless they were exported for the exclusive use of, or covered by a special import licence issued by, the Government of Portuguese India. Rule 7A (b) was made in compliance with Article XVIII of the Treaty of 1878, one of the provisions of which was:

“The exportation of arms, ammunition or military stores from the Indian dominions of one of the High Contracting Parties into those of the other shall not be permitted, except with the consent of, and under rules approved of by, the latter. The Governments of British India and Portuguese India shall co-operate to enforce all such rules as are herein contemplated.”

182. Some exceptions to rule 7A (b) were subsequently made, and in 1895, the Treaty having lapsed, rule 7A (b) was repealed. (Indian Annex C. No. 62.) Rule 7A (a) remained in force, and was re-enacted in new Rules made in 1909 and in subsequent re-enactments (Indian Annex C. No. 66). The effect of rule 7A (a) was to make it impossible for any arms, ammunition or military stores to be sent from Daman to Nagar Aveli or vice versa or from any other part of Portuguese India into British India, without the special dispensation of the Government of India. As will appear, the Portuguese Government recognized this operation of the rule by applying for such dispensation whenever they wanted to send a consignment of arms across British Territory. They never claimed to be entitled to send arms, ammunition or military stores across any part of British territory, or complained that rule 7A (a) infringed any right possessed by them.

183. A few instances may be cited of such application by the Portuguese Government. On the 3rd November, 1898, the Governor General of Portuguese India wrote to the Governor of Bombay (Indian Annex C. No. 63), asking that the British police be directed to offer no objection to the carriage of certain rifles, bandoliers and ammunition from Daman to Nagar Aveli. The necessary instructions were given to the district officers, and on the 2nd December 1898 the Governor General wrote (Indian Annex C. No. 63) to thank the Governor for “the readiness and goodwill” with which he had granted the request. Another example occurred at the end of 1914. On the 21st December, the Portuguese Consul-General at Bombay wrote to the Secretary to the Government of Bombay (Indian Annex C. No. 64, I, p. 496), asking for permission to send certain rifles and cartridges from Goa to Nagar Aveli and certain guns and cartridges back from Nagar Aveli to Goa. On the 30th December, he wrote (Indian Annex C. No. 64, I, p. 498) saying that permission was required for passage between Daman (not Goa) and Nagar Aveli. A minute (Indian Annex C. No. 64, I, p. 497) written in the office of the Secretary to the Government pointed out that the Government of Bombay could grant a licence for the export of the arms, but the import, since importation of arms and

ammunition from Portuguese India was prohibited under the Indian Arms Rules, 1909, rule 7, could be sanctioned only by the Government of India. The Government of Bombay wrote to the Government of India about this on the 31st December, 1914 (Indian Annex C. No. 64, I, p. 499), and the latter Government on the 28th January, 1915 (Indian Annex C. No. 64, I, p. 500), sanctioned the importation of the arms and ammunition from Daman to Nagar Aveli. Import and export licenses (Indian Annex C. No. 64, I, pp. 502 *et seq.*) were accordingly issued to the Portuguese Consul-General. A similar instance occurred in 1917. On the 10th September, the Secretary-General to the Government of Portuguese India wrote to the Secretary of the Government of Bombay (Indian Annex C. No. 65, I, p. 512) asking for an authorization for the sending of certain arms, equipment and ammunition from Daman to Nagar Aveli. The same procedure was followed as in the last instance. The Government of India having, on the 1st October, 1917, sanctioned the importation (Indian Annex C. No. 65, I, p. 514), import and export licenses (Indian Annex C. No. 65, I, pp. 518 *et seq.*) were issued to the Governor of Daman.

184. In later years permission was still asked. On the 11th January, 1939 the Governor General of Portuguese India wrote to the Governor of Bombay, asking for free transit for three muskets being sent from Nagar Aveli to Daman and three others to be sent from Daman to Nagar Aveli (Indian Annex E. No. 40), on the 24th March, 1939, he wrote again, asking for free transit for eight muskets with 400 ball-cartridges, and one revolver with 50 cartridges, to be sent from Daman to Nagar Aveli (Indian Annex E. No. 41). On both occasions the necessary facilities were granted. On the 17th April, 1940, the Government of Portuguese India applied to the Government of Bombay for free transit for 52,000 cartridges to be sent from Daman to Nagar Aveli, and the necessary facilities were granted (Indian Annex E. No. 42).

185. Sections 13 to 15 of the Indian Arms Act, 1878, prohibit the possession of arms, ammunition or military stores by any person, except under a license. By notification of the 6th March, 1879 (Indian Annex C. No. 60), the Governor-General in Council exempted from the operation of these sections a number of classes of persons, including Europeans, other than British-born subjects of the Queen-Empress, who were temporarily residing or travelling in India. All Portuguese officers and officials not covered by this exemption were always regarded by both British and Portuguese Governments as obliged, under the Indian Arms Act and Rules, both to obtain licenses for their arms and to pay duty on them. This appears from the special concessions which were sometimes made, and the Portuguese Government never protested against the operation of the Act or complained of the infringement of any right.

186. Thus, in 1893 the Government of Bombay proposed to exempt from the operation of the Arms Act all non-European civil officials entitled to wear a uniform and sword, and all military officers, of the Government of Portuguese India. The Government of India answered thus on the 26th July, 1893 (Indian Annex C. No. 67, I, p. 527):

“I am directed to acknowledge the receipt of your letter No. 3240, dated the 20th May, 1893, regarding the proposed exemption of (a) non-European civil officials, serving under the Government of Portuguese India, who are entitled to wear a uniform and sword, and (b) military officers of that Government, when travelling through British India, from the operation of the Arms Act, and from the liability to pay customs duty in respect of the weapons they carry.

In reply, I am to say that the Governor-General in Council, as at present advised, does not consider it desirable to amend the notifications cited in the margin as suggested in paragraphs 3 and 4 of your letter under acknowledgment, with a view to authorise the exemptions proposed. The Governor-General in Council would not, however, offer any objection to the issue of executive orders by the Bombay Government to the effect that the provisions of Chapter IV of the Indian Arms Act (XI of 1878) should not, as a matter of courtesy, be enforced in the case of such officials when travelling through specified districts in the Bombay Presidency, and that the arms, which they are entitled to carry in Portuguese India, should be exempted from liability to the payment of customs duty at such places in the Bombay Presidency as the Governor in Council may specify. I am to add that the particular case of exemption from customs duty reported in your letter under reply is sanctioned.”

(Chapter IV of the Act includes sections 13 to 15.)

Accordingly, the Governor in Council ordered on the 28th December, 1893, (Indian Annex C. No. 67, I, p. 527) that, “as a special case” and “as a matter of courtesy”, Chapter IV of the Act should not be enforced against these officials and officers “when travelling through Districts through which the ordinary routes by land or sea from Goa to Daman pass”; and an order of the 22nd February, 1894 (Indian Annex C. No. 67, I, p. 528) exempted from customs duty in the same districts the arms which these officials and officers were entitled to carry in Portuguese India. It is to be noted that these privileges applied only between Goa and Daman, and not between Daman and Nagar Aveli. The Governor General of Portuguese India, writing on the 20th March, 1894, to the Governor of Bombay (Indian Annex C. No. 67, I, p. 526), promised in return “equal privileges to British functionaries who may pass through Portuguese India”.

187. On the 1st March, 1904 the acting Governor of Daman wrote to the Collector of Salt Revenue at Bombay (Indian Annex C. No. 47, I, p. 435), asking that officials of his district crossing the frontier for sporting purposes might not be required to get licences for their guns. In his answer of the 21st July, 1904 (Indian Annex C. No. 47,

I, p. 439), the Collector referred to the order of the 22nd February, 1894 (Indian Annex C. No. 67, I, p. 528), and regretted that he could not make any concession beyond those already granted. By an order of the 4th March, 1907, (Indian Annex C. No. 68), the Government of Bombay extended the exemption from customs duty, granted by the order of 1894, to the weapons belonging to Portuguese officers passing through Bombay en route to Goa or other Portuguese possessions. The exemption still did not apply to officers travelling between Daman and Nagar Aveli.

188. That the rules governing the carriage of arms in British territory were strictly enforced appears again from an incident which occurred in 1917 (Indian Annex E. No. 43). A Portuguese official travelling from Goa to Nagar Aveli arrived at Bombay on the 15th May, 1917, with two sporting guns. The British authorities at Bombay detained these guns. It was only after the sanction of the Government of India had been given that a licence was issued for the export of the two guns from Bombay to Nagar Aveli.

189. On the 11th April, 1908, the Commissioner of Customs, Salt, Opium and Abkari wrote to the Secretary to the Government of Bombay (Indian Annex C. No. 69, I, p. 532), referring to the orders of 1894 and 1907 and suggesting that, as British officers from time to time had occasion to pass through Castle Rock to Marmagao, the Portuguese authorities might be asked in return to allow British officers to carry their personal firearms by rail across Portuguese territory without restriction. This suggestion was communicated to the Governor General of Portuguese India; he answered on the 14th July, 1908 (Indian Annex C. No. 69, I, p. 533), offering to allow British civil or military officers travelling by the Marmagao railway to carry a revolver or a gun free, and asking for "a similar concession" for Portuguese civil or military officers. The Commissioner pointed out, in a letter of the 15th October, 1908, to the Secretary to the Government (Indian Annex C. No. 69, I, p. 535), that the only return the Portuguese could claim was the same concession for the firearms of Portuguese officers passing from Goa via Castle Rock direct to Daman. The Governor of Bombay wrote to the Governor General on the 13th November, 1908 (Indian Annex C. No. 69, I, p. 536), thus:

"In thanking your Excellency for your letter No. 83, dated the 14th July, 1908, I have the honour to explain that all that is desired by my Government is that British officers passing through Goa territory on their way to British territory may be allowed to transport their firearms without let or hindrance. If this is conceded by your Government, a similar concession will be made by my Government to Portuguese officers passing direct, through British territory, from one portion to another of Portuguese territory."

The Governor General, by his letter of the 21st November, 1908, (Indian Annex C. No. 69, I, p. 536) accepted this proposal.

190. *It is thus clear that the Portuguese never conceived themselves to possess any right to send or to carry arms across British territory. They never alleged that any treaty, custom or principle of law entitled them to ignore the ordinary municipal law of British India. They never contended that any special rules applied to the enclaves of Dadra and Nagar Aveli.* The arrangement of 1908, under which Portuguese officers travelling direct between Daman (or Goa) and the enclaves could carry their firearms, without let or hindrance, was strictly reciprocal, a similar concession being granted by the Portuguese to British officers passing through Goa. Both Governments regarded all matters of the carriage or consignment of arms within, or across, any British territory as lying exclusively within the domestic jurisdiction of the British Government.

### VII. Conclusion

191. Before passing from the British period, it is instructive to notice the inferences which are clearly to be drawn from the conduct of the British and Portuguese Governments. Between the termination of the Treaty in 1892 and the end of British rule in 1947, the Portuguese never attempted to claim, far less to exercise, any right whatsoever of transit or of passage over British territory. The British Government levied customs duties on goods passing between Daman and the enclaves, granting and withdrawing concessions just as they chose. Transit of certain goods they prevented entirely, by the imposition of embargoes. When it was desired that Portuguese troops should enter British territory, whether for the purpose of travelling to, or from, the enclaves or for any other reason, the Portuguese authorities asked the British authorities for permission. Permission was asked in the same way for entry of Portuguese police, subject to special agreements of limited scope. Carriage or despatch of arms and ammunition by the Portuguese, whether to, or from, the enclaves or elsewhere, was subjected to the ordinary municipal law of British India. The Portuguese never complained that any feature of the system just described constituted an encroachment upon their rights. Never did they protest on the basis of treaty, custom or any other legal ground against any of the controls and restrictions exercised by the British. Such conduct would be quite inexplicable, had the Portuguese possessed, or then believed themselves to possess, the rights which now they claim.

### THE POST INDEPENDENCE PERIOD: 1947-

192. After the withdrawal of the British from India in 1947, the Portuguese authorities seized the opportunity to address anew to the Government of Bombay requests which they had previously made without success in the days of the British rule. On neither side, however, was there any change in the fundamental attitudes

and presuppositions which have already been illustrated. In making requests concerning transit of goods and passage of persons between Daman and Nagar Aveli, the Portuguese authorities still made no attempt to rely on any right, whether existing by treaty, custom or principle of law. In dealing with such requests the Indian authorities guided themselves purely by considerations of policy, and regarded the transit and the passage as matters lying wholly within the domestic jurisdiction of India.

193. Thus, on the 27th November, 1947, the Portuguese Consul at Bombay wrote to the Government of Bombay (Indian Annex C. No. 70, I, p. 538) complaining that a temporary customs house had been opened at Pimpolia, for the purpose of preventing certain goods from entering Nagar Aveli. He also complained that such things as wheat, flour and sugar were subject to duty when passing from Daman to Nagar Aveli, and there were other things (such as salt) the entry of which into Indian territory was prohibited altogether. He proposed that the Portuguese and Indian Governments should agree that no duty be demanded on goods, other than goods of local production, transported from Daman to Nagar Aveli. The Assistant Collector at Anand stated, in a letter of the 20th February, 1948 (Indian Annex C. No. 70, I, p. 542), that the post at Pimpolia had been established by the Civil Supplies Department, in order to prevent more than specified quantities of rationed and controlled commodities passing into Nagar Aveli. The Collector of Central Excise passed this information on to the Chief Secretary to the Government of Bombay in his letter of the 5th March, 1948. (Indian Annex C. No. 70, I, p. 541.) He added that, for all customs purposes, Nagar Aveli was considered Indian territory; so that imports from Daman, whether for consumption in Indian territory or in Nagar Aveli, were liable to duty.

194. On the 17th May, 1949, the Governor of Daman wrote to the Collector of Central Excise at Bombay (Indian Annex C. No. 71), asking that the import of Daman salt into Nagar Aveli for local consumption be permitted. The Collector, reporting this to the Secretary of the Central Board of Revenue in a letter of the 4th June, 1949 (Indian Annex C. No. 71), stated that the prohibition of the import of Daman Salt dating from 1895 (see paragraph 153 above) had been imposed to safeguard the salt revenue of the Government of India. The central excise duty on salt had been abolished in 1947, so there was, in his opinion, no point in maintaining the embargo on Daman salt. Government of India accepted this view, and removed the prohibition of the entry of Daman salt into Indian territory.

195. In 1950 the Government of India made a considerable concession, allowing all stores of the Portuguese Government to pass from Daman to Nagar Aveli free of duty, if accompanied by the Governor of Daman's certificate. Information of this is

contained in the letter of the 14th June, 1950, from the Ministry of External Affairs to the Portuguese Legation in India. (Indian Annex C. No. 72, I, p. 544.) The concession was withdrawn in 1954.

196. From the above it is clear that the Government of India maintained the same position which obtained before 1947. It reaffirmed its right to levy customs duties on goods entering India from across the customs frontier with Portuguese possessions. The Government of India continued to maintain that exemptions from customs duties was a matter entirely within its discretion and that exemptions granted in respect of goods intended for consumption in Dadra and Nagar Aveli were always a matter of concession which could be modified or withdrawn or regranted according to the discretion and policy of the Government of India.

197. Regarding travel between Portuguese possessions and India and the registration of foreigners, the Government of India maintained the existing regime after the grant of independence in 1947. This meant (see paragraph 46 above), that natives of Portuguese possessions could travel between India and the Portuguese possessions without requirement of passport and visa; Portuguese Europeans were required to produce a passport and visa when entering Indian territory by sea, air or land; natives of Portuguese possessions were exempted from provisions relating to registration of foreigners.

198. The Portuguese Government, on the other hand, decided to start a breach in the regime of easy intercourse which had previously existed between the Portuguese possessions and India. Only four months after India became independent, the Portuguese Government promulgated Decree No. 4590, dated the 26th December, 1947. This Decree put restrictions on the entry and sojourn of Indian nationals in the Portuguese possessions. Under its terms "natives of neighbouring India" were required to produce documents and declarations of identity, whenever the authorities considered such production necessary. The same decree required Indian nationals to present themselves before the police authorities in the area of their residence within eight days from the date of entry into Portuguese possessions. (Indian Annex E. No. 44.)

199. The Government of India did not take any corresponding action and the natives or "domiciled persons" of the Portuguese possessions continued to remain exempt from the production of any passport or identity paper when entering India. They also remained exempt from the provisions of the Registration of Foreigners Act.

200. The Portuguese Decree of 26th December, 1947, was modified shortly after its issue and made still more restrictive by Order in Council No. 4632, dated the 25th March, 1948. (Indian Annex E. No. 45.) This Order required Indian nationals to present themselves



before the Portuguese police authorities within twenty-four hours of entry into the Portuguese territory. The Government of India protested to the Portuguese Government that by imposing these restrictions it was undermining the traditional friendship and good neighbourly relations which had existed between the two Governments. To these protests the Portuguese Government turned a deaf ear, and the only result of the protest of the Indian Government was that in 1950 the Portuguese Government extended the time limit of twenty-four hours to seventy-two hours. (Indian Annex E. No. 46.)

201. The above Portuguese decrees and orders gave wide powers to the Portuguese police to stop, interrogate and harass Indian nationals and the Portuguese police did not hesitate to use them. Innumerable cases of harassment of Indian nationals in Goa were dealt with in exchange of notes between the Ministry of External Affairs of the Government of India and the Portuguese Legation in New Delhi. In a note of the 16th October, 1952, the Ministry of External Affairs of the Government of India wrote to the Portuguese Legation in New Delhi:—

“Within the past few months cases have also been brought to the notice of the Consulate General of India in Goa of Indian nationals entering and desiring to reside in Goa for over a period of a fortnight who have, after complying with the regulations of Order in Council No. 5046 dated the 23rd March, 1950, been called up by the Central Police Organization, Nova Goa, for further questioning. Indeed it would appear that the purpose of the original regulations, harsh as they were, is being extended still further to cause genuine inconveniences and even harassment to Indian nationals entering Portuguese territories.”

(Indian Annex A. No. 12.)

There was no satisfactory reply from the Portuguese Legation to this representation.

202. The Portuguese Government was thus responsible for a rapid deterioration in the traditional regime of easy intercourse for “natives” of the Indian continent between British India and the Portuguese possessions.

203. As regards the entry of Portuguese Europeans the position continued as before. (Indian Annex E. No. 47.) In 1949 the Chief of Cabinet of the Portuguese Governor General raised with the Indian Consul General in Goa certain points for clarification on Indian passport regulations. He inquired if a Portuguese document known as “Guia” would be acceptable to the Indian Government in lieu of passport, and if all public servants, including Portuguese Europeans, who possessed legal domicile in the Portuguese possessions came within the purview of the exemptions clause in the Indian Passport Rules. (Indian Annex E. No. 48.) By a letter dated the 17th January, 1950, the Indian Consul General informed the Portuguese Chief of

Cabinet that "Guias" in lieu of passports were acceptable to the Indian Government, that all Portuguese nationals, including Europeans, were required to be in the possession of "Guias" or passports duly visaed for entry into Indian territory, and that only those who were domiciled in the Portuguese possessions were exempt from these requirements. He defined domicile in Portuguese possessions in the following terms:—

"In accordance with general international practice in this respect, the Government of India are prepared to regard only those persons as domiciled in Portuguese India who are resident in Portuguese India and who intend to make that country their permanent home. The mere fact that an official is serving in Goa does not prove that it is or will be his permanent home."

(Indian Annex E. No. 49.)

It may be recalled that the position in regard to domicile was clarified in similar terms by the British Government in 1940 and in 1945. (See Paragraphs 39 and 42 above.)

204. Visas on Portuguese "Guias" or passports were obtainable from the Indian Consul General in Goa. In fact one of the most important functions of the Indian Consulate General in Goa was to examine these requests and to grant the visa in proper cases.

205. After the independence of India the hostile policy which the Portuguese Government had adopted towards the Indian Government did not find expression only in the Decrees and Orders which have been mentioned above. The Portuguese Government began a spate of restrictive legislation aimed against Indian nationals and various Indian interests in the Portuguese possessions, cultural and commercial. In 1950, the Portuguese Government decreed restrictions on the setting up of commercial establishments by Indian nationals in the Portuguese possessions in India. In 1952, a measure intended to affect the resident Indian population provided that no "foreigner" could rent accommodation without authorization of the Portuguese Government. In the same year an authorization from the Portuguese Overseas Minister at Lisbon was made compulsory in respect of transactions connected with immovable property. The entry of Indian newspapers and magazines was banned. Entry of Indian films was restricted, and those that were allowed were required to have Portuguese sub-titles. Administrative orders and regulations made it difficult for Indian nationals to continue in the Portuguese possessions with peace and honour. Often they were subjected to ill-treatment by the police. (Indian Annex A. No. 12.)

206. While the Government of India did not retaliate against the Portuguese Government by introducing new laws and regulations on entry and exit between the territory of the Indian Union and the territory of the Portuguese possessions, it was determined at least to see that the existing laws and regulations were properly observed. From now on, therefore, the Government of India

insisted on strict observance of the laws and regulations in respect of entry of Portuguese Europeans into India which existed during British times and which had on several occasions been expressly acquiesced in by the Portuguese Government.

207. In 1953, an incident occurred which drew the attention of the Indian Government to the violation of Indian laws and regulations relating to entry into India on the part of certain Portuguese European officials. Accordingly, on the 1st October, 1953, the Indian Consul General in Goa protested to the Portuguese Governor General that on a number of occasions Portuguese European officials had travelled between the Portuguese possessions in India, thus entering Indian territory, without obtaining visas, and in contravention of the Indian Passport Act. He also complained that certain Portuguese European officials, having entered India either on transit visa or on entry visa, had indulged in various official activities not permitted to them by virtue of the terms under which those visas were granted. (Indian Annex E. No. 50.) On the 5th December, 1953, he addressed another letter in which he referred to entry at the Daman border in contravention of the Indian laws and regulations. (Indian Annex E. No. 51.) To this letter he received a reply dated the 21st December, 1953, from the Chief of Cabinet of the Portuguese Governor General stating that:—

“The ban whereby the European officials cannot transit through Indian Union territory between Daman and Nagar Aveli without visas from the Consulate General of India, constitutes a change to the status quo ante, owing to which fact that matter has been submitted to my Government.”

Nevertheless the Chief of Cabinet added:—

“Guias are being issued to the European officials on duty in the Daman District as well as to their families for the purpose of being visaed by you.”

(Indian Annex E. No. 52.)

Thus, the Portuguese Government did not question the requirement of a passport and visa in respect of Portuguese Europeans desiring to enter Indian territory.

208. The Ministry of External Affairs of the Government of India also addressed a note to the Portuguese Legation in New Delhi protesting against the general unfriendly attitude of the Portuguese Government and the misuse of the concessions hitherto enjoyed by the Portuguese European officials. (Indian Annex E. No. 53.) In its reply of the 11th February, 1954, the Portuguese Legation did not question the requirement of visas but “firmly reiterated their conviction that the principle of co-operation to facilitate the transit of officials should be re-established although

subject to local arrangement to be agreed upon between the two Governments". (Indian Annex E. No. 54.)

209. In 1954 there was a further deterioration in the situation owing to the arbitrary arrest and deportation of Dr. Gaitonde, an eminent surgeon, by the Portuguese authorities in Goa. This incident made a very bad impression in India and particularly among the Goans of Bombay. (See paragraph 226 below.) In a note of protest handed to the Portuguese Legation in New Delhi on the 15th March, 1954, the Government of India pointed out that the "continuance of these repressive measures resulting in the arrest and deportation of Goans for professing pro-Indian sentiments is likely to have serious repercussions in India." (Indian Annex A. No. 6). The Portuguese Government, however, intensified its policy of repression and the Indian Government then decided to exclude from the exemption in the Indian Passport Rules those "domiciled persons" who were in the service of the Portuguese Government. This was done by a notification under the Indian Passport Act made on the 10th April, 1954. The exempted category was now defined in the following terms:

"persons domiciled in a Portuguese establishment in India other than persons in the service of the Government of such establishment or the members of the family of any such person proceeding from any such establishment on or after the 1st April, 1954".

(Indian Annex E. No. 55.)

210. The above was acquiesced in by the Portuguese Government and requests for visas and permits for Portuguese Europeans and native subjects in the service of the Portuguese Government desiring to enter India for holiday or for transit from one Portuguese possession to another, were received by the Indian Consul General in Goa, and granted by him on individual merits. However, some Portuguese officials continued occasionally to evade Indian laws and regulations relating to entry into India. Some of these instances were brought to the notice of the Portuguese Legation at New Delhi by the Ministry of External Affairs of the Government of India. (Indian Annex E. No. 56.)

211. Thus in April 1954 the position in regard to travel between Portuguese possessions and India was that Goans who were not in the service of the Portuguese Government could enter Indian territory without formalities and freely move within it; and that *Indian nationals also could enter the Portuguese possessions without requirement of passport and visa, but were required to report to the police authorities within a certain time of arrival and were subject to inspection of identity certificates, restrictions on residence, and official harassment.* Portuguese Europeans and Portuguese native subjects who were in the service of the Portuguese Government were required to produce "Guias" or pass-

ports having a visa for entry in or transit through India. There was no ban on such entry or transit right up to the date of the insurrection in Dadra. The day before the insurrection in Dadra, that is, on the 21st July, 1954, the Governor of Daman had been allowed to enter Indian territory and proceed to Dadra and to complete the return journey on the strength of visas granted by the Indian Government. After the insurrection in Dadra, the Indian Government ceased to grant visas to Portuguese Europeans or to native subjects in the service of the Portuguese Government wishing to go to Dadra and Nagar Aveli.

212. On the 31st July, 1954, the Portuguese Legation in New Delhi informed the Ministry of External Affairs that "all Indian nationals who wish to enter the Portuguese Indian territory at any place of the frontier have to produce passports or equivalent documents duly visaed by Portuguese Consular Authorities. This procedure will be enforced from the 1st August, 1954". (Indian Annex E. No. 57.) On the 7th August, 1954, the Portuguese Commissioner of Police issued a notice to all mine-owners and other employers to arrange for the departure from Portuguese territory of all Indians who did not possess residential permits. (Indian Annex E. No. 58.) As a result of this notice more than six thousand Indians were expelled from Goa and had to cross the border into India, leaving their entire property behind.

213. On the 4th August, 1954, the Government of India issued a press-note informing the general public of the Portuguese regulations and of the intention of the Government of India to introduce "a permit scheme in regard to entry of persons from the Portuguese settlements into India". (Indian Annex E. No. 59.) This permit scheme came into force on the 4th September, 1954, when the Indian Passport Rules 1950 were amended to omit the exemption in favour of persons domiciled in the Portuguese possessions proceeding from these possessions to India. However, persons domiciled in the Portuguese possessions continued to be exempt from provisions relating to registration of foreigners.

214. As regards the entry of Portuguese armed forces into or passage over Indian territory it was absolutely clear both to the Government of India and the Portuguese Government that such entry or passage was dependent entirely on permission granted by the Government of India within its discretion.

215. Thus, on the 30th December, 1947, the Portuguese Consul at Bombay wrote to the Government of Bombay. (Indian Annex C. No. 58, I, p. 485). He asked for general permission for armed soldiers to accompany the shroff (treasurer) of Daman whenever he transferred money to Bombay, and to use their firearms in case of any surprise attempt. The Chief Secretary to the Government of Bombay answered on the 23rd February, 1948 (Indian Annex

C. No. 58, I, p. 486), referring to the letter of the 11th November, 1941, (Indian Annex C. No. 58, I, p. 484), and stating that the existing procedure should continue, unless there were special reasons for a change. This existing procedure continued to be followed, permission for the passage of the soldiers being asked on each occasion (Indian Annex E. No. 60), until October, 1952, when escorts provided by the Indian Government took the place of the Portuguese escorts. (Indian Annex C. No. 58, I, p. 486.)

216. From the above facts it will be seen that upon the independence of India, the Government of India on its part maintained the existing regime of traffic between India and the Portuguese possessions, and that the first breach in the regime of easy intercourse between all the Portuguese possessions and the rest of India was introduced by the Portuguese Government. It will also be seen that in spite of the introduction of restrictions by the Portuguese Government and the general policy of hostility adopted by the Portuguese Government towards the Government of India and its nationals, the Government of India was slow on its part in introducing similar restrictions as regards the entry of Portuguese subjects into Indian territory. It will also be seen that travel from Daman to Nagar Aveli was not on any special basis: it formed part of the general picture of intercourse between Portuguese possessions and Indian territory. It also appears very clearly from the facts stated above that the Government of India did not suddenly impose restrictions upon the entry of Portuguese armed forces, Portuguese officials and Portuguese Europeans in order to "isolate" Dadra and Nagar Aveli. There was a long story of restrictive and repressive legislation on the part of the Portuguese Government which resulted in the breakdown of any easy regime of intercourse and travel between Portuguese possessions and Indian territory; as a result of this breakdown which, as has been said, was very gradual and hesitating on the part of the Government of India, there resulted the withdrawal of exemptions from Indian laws relating to passports which had been made in favour of non-European Portuguese subjects, not only as regards entry into Indian territory from Daman but also in relation to entry from other parts of Portuguese possessions. As regards the entry of Portuguese armed forces, the facts recited above establish beyond a shadow of doubt that neither the Indian Government, nor the British Government before it, ever recognized the right of the Portuguese Government to send its armed forces into or through any part of the Indian territory; and that the Portuguese Government never claimed that the British Government or the Government of independent India was not entitled to refuse or grant such entry or passage according to its discretion. This was the position as regards entry into Indian territory from Daman or from Goa, when the insurrection took place in Dadra and Nagar Aveli.

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*Insurrection in Dadra and Nagar Aveli and the establishment of a local de facto Government*

217. The Government of India emphatically denies all the allegations and suggestions in the Portuguese Memorial that the Government of India was in any way responsible for the events which took place in Dadra and Nagar Aveli in July and August 1954 in connection with the liberation of the enclaves. The facts and circumstances leading to the liberation are, to the best of the knowledge and belief of the Government of India, as hereinafter stated. Such of these facts as by their nature could not be within the knowledge of the Government of India are stated on the basis of contemporary records and evidence which the Government of India has no reason to disbelieve.

218. The reasons for the insurrection which took place against Portuguese rule in Dadra and Nagar Aveli are not far to seek. The people of Dadra and Nagar Aveli are of Indian race, the great majority being Hindus, speaking the same language as the inhabitants of the surrounding Indian territory in the State of Bombay. The people of Daman and Goa, as also of Diu, are in no way different from the people of the surrounding Indian regions. The majority of the population of Goa are Hindus closely related to the Hindus of Maharashtra and Konkan in the States of Bombay and Mysore. Furthermore, a large number of the Christians in the Portuguese possessions are also of Indian race and of the same kith and kin as Christians who left Goa and settled on its outskirts, in the districts of Belgaum and Kolhapur in the State of Bombay and North Kanara and Mangalore in the State of Mysore. It is not therefore to be wondered at that when the movement for independence started and grew in British India and in the French possessions, it should also have been felt in the Portuguese possessions. Nor it is a matter of surprise that the movement should have made its largest impact in the Portuguese possession of Goa, where a Goan committee of the Indian National Congress was set up as long ago as 1928 by an engineer called Dr. Tristao Braganza Cunha.

219. No less than 150,000 Goans reside in India, out of which at least 80 to 90 thousand reside in the State of Bombay. Goans in India have homes and relations in Goa and it is on remittances of their earnings in India that the substantial part of Goan economy was founded. Goans were not considered British subjects before 1947 and the majority of them are not nationals of India.

220. Although the Goan movement for the liberation of the Portuguese possessions in India dates from before the second World War, it inevitably received a sharp stimulus from the

British recognition of Indian independence at the end of the war. In March 1946, a Goan political conference was held at Bombay. This conference issued a manifesto which took note of the principles of democracy and of self-determination solemnly recognised by the British Government, and of the elections which were being held in India for a constitution making body, and it demanded the immediate grant of civil liberties by the Portuguese Government in India. The manifesto said: "We are assured of the support of our brothers in British India with whom we align ourselves in demanding freedom for our motherland." (Indian Annex A. No. 2.) In the same month at a general meeting of the Goa Congress Committee held in Bombay a resolution was unanimously passed calling upon the Portuguese "to leave the shores of Goa, Daman and Diu, so that we can achieve our destiny in common with the rest of India". (Indian Annex A. No. 3.) Shortly afterwards, the people of Goa welcomed a leader of the Indian National Movement, and when he was prevented from addressing a meeting in Goa, subjected to indignities and deported to British India, there began in Goa an open campaign for civil liberties. (Indian Annex E. No. 61.) In a famous letter of 18th July, 1946, concerning the deportation of the Indian leader from Goa, Mahatma Gandhi wrote to the Portuguese Governor-General Mr. Jose Bossa: "... He has commanded my admiration for his having gone to Goa and put his finger on its black spot. Inhabitants of Goa can afford to wait for independence, until much greater India has regained it ... Your description of him as 'stranger' would excite laughter, if it was not so tragic. Surely the truth is that the Portuguese coming from Portugal are strangers ..." (Indian Annex A. No. 4.) Thereafter the campaign for civil liberties, emancipation from the foreign rule and union with the motherland developed in Goa in consonance with the principles and philosophy of Mahatma Gandhi. It came to be known as the "Jai Hind" movement and took the form of mass civil disobedience, non co-operation with governmental activities, boycott and peaceful agitation. Throughout Goa people held meetings to demand civil liberties. These meetings were broken up by the Portuguese police and military with considerable violence. Between June and November 1946, about 1,500 Goans were arrested by the Portuguese Government. They were held in detention without trial for long periods and subjected to severe beating. The leaders were charged with treason, sentenced to long terms of imprisonment and deported to Portugal. These included Dr. Tristao Braganza Cunha, Mr. Purshottam Kakodkar, Mr. Luxmikant Bhembre, Dr. Rama Hegde and Mr. Ignacio de Loyola, all of whom were sent to Peniche, an island prison off the coast of Portugal. About eight prisoners were sent to Angola in Portuguese West Africa.

221. In 1947, the year of Indian independence, the Portuguese Government took strong measures to suppress the Goan liberation



movement and introduced several thousand European and African troops into the Portuguese possessions. The result was that the Goan liberation movement went underground in the Portuguese possessions and numbers of Goans, fearing for their liberty, fled into India and made their way to Bombay to join the Goan communities there.

222. The new Government of independent India lost no time in taking up with the French and Portuguese Governments the question of the future of the French and Portuguese possessions in India. A friendly settlement was reached with the French Government, under which all the French settlements; Chandernagore, Pondicherry, Karikal, Mahe and Yanam became merged in the Indian Union in accordance with the wishes of their peoples. The merger of these settlements in the Indian Union took place in 1950 and 1954.

223. Meanwhile the Portuguese Government was refusing absolutely to enter into discussions with the Government of India concerning the future of the Portuguese possessions. Not unnaturally, this entirely negative attitude on the part of Portugal excited strong feelings both amongst peoples of Portuguese possessions and amongst the Goans in Goa and in India. The Government of India, however, made it plain from the first that, although its objective was the termination of all foreign rule in India, it would seek to achieve this objective only by peaceful means. In a statement made in Parliament on the 25th August, 1954, soon after the Goan liberation of the enclaves, the Prime Minister of India reiterated that India's policy was one of non-violence: "The policy that we have pursued has been, even as in India under British rule, one of non-violence, and we have fashioned our conduct accordingly. This adherence to non-violence means: (i) that we may not abandon or permit any derogation of our identification with the cause of our compatriots under Portuguese rule; and (ii) equally, we may not adopt, advocate or deliberately bring about situations of violence." (Indian Annex A. No. 11).

224. Goans in Goa and in Bombay continued to voice their wish for unity with India. In April 1948, Dr. J. M. Furtado was arrested in connection with the activities of the "National Congress, Goa". In June 1948, Mr. Waman Desai was arrested for having issued a publication of the "National Congress, Goa". In February 1949, Mr. Keshav Talaulikar was arrested. In March 1950, Mr. Divakar Kakodkar, a school teacher, was deported on the orders of the Portuguese Minister for Colonies to Cape Verde Islands, "for holding views contrary to the security of the State". In April 1950, Dr. Antonio Furtado, having been threatened with deportation to Cape Verde Islands, left Goa and took refuge in India. In June 1950, Mr. Madhav Bir, a teacher, was arrested for having taken part in a political meeting. In December 1950, the

Portuguese Government arrested Mrs. Zambaulikar and Messrs. Gajanan Desai, Prabhu Desai, Shirodkar, Vernekar, Costa, and other Goan leaders. In 1951, the Portuguese Government arrested Mr. Nilkant Kamat, and Mr. Gopinath Kurade, Dr. Carvalho, Mr. Goculdas Keni, Dr. Victor Luis and Dr. Clementine George, and Mr. Armando Pereira. In October 1951, a military tribunal of the Portuguese Government passed a sentence *in absentio* on Mr. Lambert Mascarenhas of the United Front of Goans. In December 1951, the Portuguese Government closed down for an indefinite period the Almeida College following the setting of the subject "The role of students in Modern India" for an essay test. (Indian Annex E. No. 62.) In 1952, seven Goan political prisoners, Messrs. Mayekar, Ticlo, Karapurkar, and four others were deported from Goa to Portuguese West Africa. In 1953, Messrs. C. S. Lobo, P. S. Lobo and R. S. Fernandez, Goans normally resident in Bombay, but on temporary visit to Goa, were arrested by the Portuguese Government in Goa for having taken part in the Goan freedom movement in Bombay. In the same year, 1953, Professor Nicolau Menezes, Principal of a School in S. Matias, fled Goa and sought asylum in India after receiving a summons from Captain Romba, the Chief of Police of the Portuguese possessions.

225. On the 7th August, 1953, the same Captain Fernando R. Romba, the Chief of the Police of the Portuguese possessions, wrote to Mr. Francis Mascarenhas, President of the United Front of Goans at Bombay, inviting him to Daman for discussions on the future of the Portuguese possessions in India. Captain Romba said in the letter that he was empowered by the Overseas Ministry at Lisbon to discuss all political problems regarding Goa, Daman and Diu. (Indian Annex A. No. 5.) After an exchange of telegrams, and having received the necessary assurances, Mr Mascarenhas, accompanied by Mr. Waman Desai, Secretary of the United Front of Goans, and a party of four, left Bombay for Daman. At Daman they were received by the Acting Governor. On the 13th August, 1953, at 3 a.m., an agreement was signed. However, as Mr. Mascarenhas and his party were leaving the building, they were suddenly arrested by the police in the presence and at the orders of Captain Romba, and the signed documents as well as other papers were seized from them. After three days of detention and rough treatment Mr. Mascarenhas and his party were let off and conducted to the border.

226. Early in 1954, the Portuguese authorities in Goa arrested Dr. Gaitonde, an eminent surgeon, for having uttered the words "I protest" in response to a statement made by a speaker that "Goa is Portugal", and at once deported him without any trial to Portugal. In a note of the 15th March, 1954, the Government of India pointed out to the Portuguese Government that the arrests and deportation of Goans for professing pro-Indian sentiments were

likely to have serious repercussions in India. (Indian Annex A. No. 6.) On the 18th June, 1954, however, the Portuguese Government arrested over 40 eminent Goans, advocates, doctors and professors, and subjected many others to interrogation. News of these arrests produced the strongest emotions in the Goan community of Bombay, and all the different Goan parties (the Goa National Congress, the United Front of Goans, the Goan People's Party and the Azad Gomantak Dal), combined to form an Action Committee under the presidentship of Dr. Tristao Braganza Cunha. They passed a resolution that they would work for the liberation of the Goan homeland, but at the same time they reaffirmed their faith in the Gandhian principle of non-violence. (Indian Annex A. No. 7.)

227. In July 1954, Mr. Mascarenhas and Mr. Waman Desai, president and secretary respectively of the United Front of Goans, on whom an unscrupulous deception had been practised by the Portuguese authorities (see paragraph 225 above), entered the village of Dadra together with a small party of Goan compatriots. An incident took place in front of the police station in Dadra where a Portuguese police officer, Aniceto Rozario, opened fire on the party with a machine-gun. From accounts received by the Goans in India it appears that after a time the Portuguese officer's machine-gun went out of order and that this interruption was taken advantage of by the people of Dadra to deal him with severe and mortal blows. In the *mélée* which resulted another Portuguese police officer received serious injuries to which he succumbed a few days later. This was the only incident of violence which took place in Dadra. (Indian Annex E. No. 63.)

228. The demonstration in Dadra developed into an active liberation movement and after a few days, in the first week of August 1954, the members of the Azad Gomantak Dal and the Goan People's Party, led by its leaders Mr. Vishwanath Lavande and Mr. Geroge Vaz, entered Nagar Aveli. They met with no resistance, the Portuguese Administrator of Dadra and Nagar Aveli, and his entire police force having left the administrative capital, Silvassa, the previous day. The accounts received in India make it absolutely clear that the Goan movement for liberation of Nagar Aveli was entirely peaceful. (Indian Annex E. No. 63.)

229. The people of Dadra and Nagar Aveli proclaimed their independence from Portuguese rule and set up an Administration of their own. They requested Dr. Antonio Furtado, a Goan patriot and former Administrator of the Comunidades and Judge of the Administrative Court of Panjim, to assume charge as Administrator. He has continued as Administrator to the present day. His report on the Administration was published recently by a Goan body in London (The Goa League of 374 Gray's Inn Road, London, W.C. 1.) which, as stated on the back cover of

the publication, "was founded on the 20th August, 1954, by Goans resident in the United Kingdom to work for the freedom of their Motherland from Portuguese Colonial rule". (Indian Annex E. No. 64.)

230. This report states that soon after the liberation, a provisional administration was set up, and three months after, in November 1954, a constituent assembly of thirty-five members, The Gram Panchayat, was convened. In 1956, the local Panchayats, or councils, having been created, the Gram Panchayat was dissolved and the Central Assembly of People, the Varishtha Panchayat, was organized with thirty-six members representing different classes, religions, linguistic groups and areas. The Varishtha Panchayat exercises the legislative function. The executive function is exercised by the Administrative Council consisting of the Administrator and eight heads of departments. The Civil and Criminal Tribunals and a Council of Appeal constitute the judiciary.

231. In August 1958, the people of Dadra and Nagar Aveli will already have completed four years of self-rule. Reports have reached India of progress and achievement of the people of Dadra and Nagar Aveli in various fields of endeavour—social, economic and political. (Indian Annex E. No. 64.) The forests and "abkari" (that is, taxes on the distillation and sale of liquor) constitute the largest source of revenues of Dadra and Nagar Aveli. By husbanding the forests in an efficient manner and by improving the system of "abkari" collection, the Administration has considerably increased its revenues which it has employed for the benefit of the people. As against four schools before the liberation, there are today fifty-one schools. The Administration has improved the health services, introduced land reforms, and provided assistance to cultivators. For the first time, a democratic regime prevails in Dadra and Nagar Aveli.

232. On a number of times, the people of Dadra and Nagar Aveli have requested the Government of India to accept the merger of the liberated territories into greater India.

233. At its inaugural session on the 25th November, 1954, the Gram Panchayat of Dadra and Nagar Aveli, consisting of 25 members, adopted a unanimous resolution "To express to the National Government of India their patriotic will and fervent desire to integrate these liberated territories into Indian Union to realise and solidify its inalienable and imprescriptible territorial and political UNITY." (Indian Annex E. No. 65.) Similar requests were addressed to the Government of India by the Varishtha Panchayat, the Dadra and Nagar Aveli committee for Union ("Sanghatan Samiti"), the Administrative Council, and by the Goans in Bombay. Towards all such requests the Government of India has up to now adopted an attitude of reserve.

234. On the 28th December, 1955, six days after the filing of the Portuguese Application, the Administrator of Dadra and Nagar Aveli, Dr. Antonio Furtado, issued a statement to the press in which he said:

“The liberation of these territories was carried out by Goans and the people of these areas acting in whole-hearted co-operation with each other. The established Government is now that of the people of Dadra and Nagar Haveli, rid once and for all of the inefficiency and the corruption that marked the colonial administration for the past 170 years. The people are proud of the social and economic progress they have achieved since July 1954 and whatever the Indian Government says in this issue before The Hague Court, Dadra and Nagar Haveli will not accept a single Portuguese on their soil at any time.”  
(Indian Annex E. No. 66.)

235. On the 15th January, 1956, a mass meeting was held in Silvassa. This meeting unanimously approved a resolution:

“The people of Dadra and Nagar Haveli gathered in this vast meeting without distinction of class and creed, proclaim their complete liberation from the Portuguese colonialization and declare before the UNO that the right of liberty is inalienable and imprescriptible.

They declare moreover that it is the duty of Hague Tribunal not merely to observe the spirit and letter of the UNO charter but also take into consideration the wishes of the People of Dadra and Nagar-Haveli represented by their Panchayat, against which the fascist Portuguese regime seeks to exercise military action.

They emphatically lodge their protest against any act or contract which may contribute towards the colonial subjugation of the people of Dadra and Nagar-Haveli as abject and invalid because the material and moral slavery of a people can never be the object of any transaction and the history of the Portuguese in Asia, in the words of her own historian has been the history of piracy.

They further declare that even if the Government of Indian Union consents to discuss at the Hague the questions of her sovereignty such as of granting of passage to the Portuguese to recolonize Dadra and Nagar-Haveli, the people of these territories solemnly swear that they will resist by all means within their power and with every sacrifice any attempt of the Portuguese to reoccupy these territories to strangle the precious fruits which the colonizers denied and which the Liberation has restored—the sacred Liberation which was obtained by the people repelling the unjust and inhuman domination of the Portuguese.”

(Indian Annex E. No. 67.)

This resolution appears to have been re-adopted on the 19th April, 1956. (Indian Annex E. No. 64.)

236. On the 14th April, 1957, the people of Dadra and Nagar Aveli assembled in large numbers and in a formal demonstration “declared that any verdict of the Court of the Hague on this point would be irrelevant and null, because neither the people nor

their representative body—Panchayat—or their *de facto* Government were heard and convinced about this litigation arisen among the third parties: Portugal on one side and India on the other". This resolution reads:

"The people of Dadra and Nagar-Haveli gathered in a mass meeting protest against Portugal's pretensions and draw the attention of the Hague Court and International public opinion to the following:—

1. After Portugal had taken its complaint to the Hague Court demanding free passage through Indian Territory to occupy Dadra and Nagar-Haveli, the people of these territories protested that any decision of that Court regarding the matter, would be irrelevant and null, for neither the people of these Liberated Territories, neither its representative body—the Panchayat—nor its *de facto* Government were heard in the case which is going on between third parties: Portugal on one side and India on the other.

2. The present *de facto* Government of Dadra and Nagar-Haveli is as respectable as the Government of the Portuguese Dictatorship. Both the Governments were the result of a Revolution. And so, just as the present Portuguese Government overthrew the Democratic Government of the Portuguese Constitutional Republic, the people of Dadra and Nagar-Haveli overthrew the Portuguese foreign domination and established their own local Administration, which in a short period of a little over 2 years has done for the regions what Portugal failed to do during almost two centuries of its domination. Besides, the Portuguese Government established itself in India by conquest and such a government can never be a legitimate government but a *de facto* government, for otherwise the basis of legitimacy would be conquest or violence and the inalienable and imprescriptible birthright of peoples would not exist.

3. The people of Dadra and Nagar-Haveli, its Varishtha Panchayat and the Azad Dadra and Nagar-Haveli Sanghathana Samiti several times manifested to the Indian Government their desire to integrate with the Indian Union. This request which has not yet been considered by the Indian Government, leaves them politically isolated from the rest of India. They, therefore, demand that either this integration be accomplished or the juridical and political status of the present Administration of those Liberated Territories be recognized.

4. Should the Hague Court reject Portugal's demand that Court will merely have consecrated the spirit and the letter of U.N.O. Charter which orders respect for the fundamental rights and liberties of Man and recognition of the political aspirations of the Colonial or non-self-governing peoples and to assist them in the progressive development of their free political institutions. Art. 1(3) and Art. 73(b).

5. Should the Hague Court, without taking into consideration the new political situation in these Territories, permit the Portuguese Government (who curbs the civil rights of its own people and opposes the progressive liberation of its colonial peoples) to take its troops to reoccupy these liberated territories then in that case,

the only recourse left the PEOPLE of Dadra and Nagar Haveli is to assert their right of defence against the new oppression, by either organizing their defence, or by requesting India's military help to prevent that the old aggressor of Indian Territory come to reinstall itself on India's soil, making light of human liberty and of the inalienable and imprescriptible right of self-determination."

The above resolution together with a letter was sent by "The President, Varishtha Panchayat, free Nagar-Haveli and Dadra" to "Advocate Sri Setalwad, C/o. Secretariat of International Court of Hague, Netherlands" and received by the Indian Delegation at the time of the Oral Hearing on the Preliminary Objection of the Government of India. In his letter the President of the Varishtha Panchayat wrote:—

"With due respect I take the liberty of forwarding to your Excellency a copy of the resolution unanimously approved at a mass meeting of the people of Nagar Haveli and Dadra on April 14 last in Silvassa, the seat of the Administration, together with a copy of the pledge taken on the same day before the statue of Mahatma Gandhi.

It is the fervent desire of the people of these Territories to see their liberation, which is their birthright, defended by the U.N. Charter, recognized and confirmed.

As the President of the Varishtha Panchayat I appeal to your Excellency to interpret before the world the just sentiments of our People." (Indian Annex E. No. 68.)

237. However, the Government of India has up to the present maintained an attitude of reserve towards those requests. It has limited its contacts with the administration of Dadra and Nagar Aveli to what was inevitable for the solution of day-to-day problems. While in permitting such contacts, it has recognized the existence of the *de facto* administration, it has done so only to the extent of establishing relations with it on a provisional basis through local officials in such matters as police, posts and transport.

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238. After the insurrection in Dadra and Nagar Aveli, and the establishment of a *de facto* local Government there, the Government of India could not, in keeping with its principles in regard to movements for liberation from foreign colonial rule in parts of the Indian continent, take the responsibility of allowing entry on Indian territory to Portuguese armed forces, officials, etc., in order to put down by force people who had freed themselves from Portuguese rule, or in any manner to interfere with the functioning of the institutions set up by these people.

## CONCLUSIONS

239. From the above account of the Maratha period, the British period and the post-independence period, the following facts emerge:—

- (1) the documents of 4th May, 1779, 11th January, 1780 and 17th December, 1779, did not constitute a treaty between the Marathas and the Portuguese;
- (2) these documents did not mention any right of passage between Daman and the enclaves;
- (3) the Marathas never ceded to the Portuguese any part of the territory of the enclaves;
- (4) the Portuguese never received from the Marathas sovereignty over any part of the territory of the enclaves;
- (5) the rights connected with the enclaves granted by the Marathas to the Portuguese were merely rights to receive revenue;
- (6) these rights were revocable at the will of the Marathas;
- (7) these rights were in fact withdrawn by the levy of attachment on no less than three occasions;
- (8) on the eve of their conquest by the British the Marathas had resolved to revoke these rights;
- (9) the British Government entirely declined to recognize as binding upon them any privileges which might have been granted by the Marathas to the Portuguese affecting territory which subsequently became British (in fact, there had never been any such privileges);
- (10) throughout the period of British rule, the Portuguese never claimed any right either of passage for persons or of transit for goods over any British territory (except under the Treaty of 1878, and special agreements of very limited scope mentioned above);
- (11) throughout the period of British rule, the Portuguese frequently acknowledged, by making applications, by seeking concessions and in other ways, that they had no right either of passage or of transit over British territory;
- (12) throughout the period of British rule, the British regarded passage of Portuguese persons and transit of Portuguese goods over British territory as matters lying entirely within their domestic jurisdiction, to be allowed, forbidden or controlled according to considerations of policy;
- (13) the Portuguese acquiesced in this view held by the British;
- (14) after the transfer of power in 1947, the Portuguese did not (until making their application to the Court) claim



any right either of passage or of transit over Indian territory;

- (15) the Indian Government, like the British Government before them, regarded such passage and transit as lying entirely within their domestic jurisdiction, to be allowed, forbidden or controlled according to considerations of policy;
  - (16) the Portuguese continued to quiesce in this view;
  - (17) after the independence of India, the Portuguese introduced a breach in the traditional regime of easy intercourse which existed up to that time between Portuguese possessions and Indian territory;
  - (18) the Portuguese Government compelled the Indian Government to introduce similar restrictions and to tighten up rules and regulations relating to entry into India from Goa and Daman;
  - (19) after the insurrection in Dadra and Nagar Aveli, the Indian Government adopted an attitude of reserve towards requests both of the Portuguese Government for passage of armed forces from Daman to Dadra and Nagar Aveli in order to re-subjugate the people of these enclaves, and the requests emanating from the people of the enclaves that the Government of India should merge the territories of Dadra and Nagar Aveli into the territory of India.
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## PART III

## THE ANALYSIS OF THE PORTUGUESE CLAIM

240. The Portuguese Government, in paragraph 2 of its Application, defined the subject of the present dispute as "the right of Portuguese officials and nationals, as well as foreigners authorized by Portugal, to cross India on their way between the Portuguese territory of Damão (littoral Damão) and the Portuguese enclaved territories of Dadrá and Nagar Aveli, and between each of the two last mentioned territories". In paragraphs 5 to 8, it referred to this alleged right as having been created under the "Treaty of Punem of 1779" as a natural and indispensable complement of Portuguese sovereignty over the enclaves. In paragraph 9 it asserted that this alleged right has been exercised for nearly two hundred years without any difficulties by officials and private citizens of Portugal and by foreigners authorized by Portugal. In paragraph 10 it claimed that the alleged right "contains in particular the faculty of transit for armed forces or other upholders of law and order, to the full extent required for the effective exercise of Portuguese sovereignty"; and it maintained that it was with this broad scope that the alleged right had been exercised throughout the period of nearly two hundred years since the "Treaty of Punem".

241. In paragraph 20 of the Application the Portuguese Government further defined the alleged right as entailing "the right of transit of persons and goods, including armed forces or other upholders of law and order, without restrictions and difficulties and in the manner and to the extent required by the effective exercise of Portuguese sovereignty in the said territories (Dadrá and Nagar Aveli)".

242. In the next paragraph, the Portuguese Government maintained that the alleged right of passage is derived from three distinct legal sources (a) The "Treaty of Punem", (b) custom both local and general and (c) general principles of law. And the Portuguese Government concluded its Application by asking the Court:

"(a) To recognize and declare that Portugal is the holder or beneficiary of a right of passage between its territory of Damão (littoral Damão) and its enclaved territories of Dadrá and Nagar Aveli, and between each of the latter, and that this right comprises the faculty of transit for persons and goods, including armed forces or other upholders of law and order, without restrictions or difficulties and in the manner and to the extent required by the effective exercise of Portuguese sovereignty in the said territories.

(b) To recognize and declare that India has prevented and continues to prevent the exercise of the right in question, thus committing an offence to the detriment of Portuguese sovereignty over the enclaves of Dadra and Nagar Aveli and violating its international obligations deriving from the above mentioned sources and from any others, particularly treaties, which may be applicable.

(c) To adjudge that India should put an immediate end to this *de facto* situation by allowing Portugal to exercise the above mentioned right of passage on the conditions herein set out."

243. At the conclusion of its Memorial the Portuguese Government defined its claim in similar, though not identical terms. It asked the Court to adjudge and declare:

"(a) que le Portugal a un droit de passage sur le territoire de l'Inde en vue d'assurer les liaisons entre son territoire de Damão (Damão du littoral) et ses territoires enclavés de Dadrá et de Nagar Aveli;

(b) que ce droit comporte le transit des personnes et des biens, ainsi que le passage des représentants de l'autorité et des forces armées nécessaires pour assurer le plein exercice de la souveraineté portugaise dans les territoires en question".

It further asked the Court to adjudge and declare that the Government of India must respect this alleged right of passage, must abstain from any act calculated to obstruct or compromise its exercise and must prevent any such act from being committed on Indian territory.

244. The general outline of Portugal's claim is therefore clear. She claims rights of passage over Indian territory between the enclaves and Daman, without restrictions or difficulties, for Portuguese armed forces, police and officials, for Portuguese private individuals, for foreigners authorized by Portugal and for goods to the full extent necessary for the effective exercise of Portuguese sovereignty in the enclaves.

245. In her Application and Memorial, Portugal's claim had been expressed as an unqualified claim to a right of transit "without restrictions or difficulties" in the manner and to the extent required for the effective exercise of Portuguese sovereignty in the enclaves. In her Observations and Submissions on India's Preliminary Objection there was a sharp change in the presentation of the claim. Then it was emphatically asserted that Portugal does not claim any "right of sovereignty" over Indian territory but only a bare right of transit without any immunity from the exercise of India's territorial jurisdiction:—

"The proceedings of which the Court is at present seized are in no wise directed towards securing a recognition that Portugal possesses any sovereign rights over Indian territory and that the territorial sovereignty of India is thereby impaired to the benefit of an alien State." (Observations and Submissions, paragraph 110.)

"On Indian territory, all the attributes of sovereignty and all the powers it comprises—legislative, administrative, judicial—belong therefore to India and to India alone. Portugal does not claim any portion thereof and in no way contests that India has the right to exercise them. But she contends that, in exercising them, India must conform to the obligation not to put obstacles in the way of the necessary communications between the Portuguese enclaves of Dadra and Nagar Aveli or between those enclaves and the Portuguese territory of Damão". (*Ibid.*, paragraph 116.)

"The Portuguese Government has never contended that its nationals and officials had any right of access to Indian territory, or that they could move freely therein.

The right it claims is simply a right of transit across that territory—a right of international transit, since it is a matter of a passage—the starting point and the finishing point of which lie outside the territory crossed—a right of international transit for the purpose of ensuring the communications of enclaved territories which have no other physical possibility of communicating with the rest of the territory of the State to which they belong". (*Ibid.*, paragraph 117.)

These assertions were repeated with minor variations at the oral hearing when it was insisted that Portugal claims no right of sovereignty of any kind over Indian territory but only that India is under an international obligation towards Portugal with respect to the territory. (Oral Proceedings, IV, pp. 174-177.) Moreover, Portugal vigorously protested that she has never at any time claimed anything more than a right not to have her necessary communications with the enclaves blocked by India:—

"Ce que nous demandons, c'est que le Gouvernement indien ne rende pas impossible l'administration des enclaves portugaises en bloquant les voies de communications qui sont indispensables.

Nous n'avons jamais eu d'autres prétentions. Nous n'en avons jamais eu dans le passé, depuis que les enclaves nous appartiennent, c'est-à-dire depuis le dernier quart du 18<sup>m</sup>e siècle. Nous n'en avons jamais eu d'autres, ni à l'époque mahratte, ni au temps où l'administration de l'Inde était aux mains des Britanniques, ni depuis qu'elle appartient à la République indienne. Et nous n'en avons pas d'autre dans le présent litige". (Oral hearings, IV, p. 177.)

246. Portugal's various descriptions of her alleged rights of passage are singularly unconvincing for various reasons. One reason is that Portugal's assertion that right back to the time of the Maratha Rulers she has never claimed anything but a bare right of transit without immunity is in complete contradiction with the historical facts. For example, in a letter of 11th November 1818, the Portuguese Governor of Daman claimed that under the "Treaty of Punem" the transport of articles produced in Nagar Aveli to Daman was "absolutely exempted from all duties and taxes, leviable under all other circumstances". (Indian Annex C. No. 33, I, p. 295.) A similar claim was made as late as 1859 in

a memorandum by the Government of Goa which said that the "Treaty" contained a "clause which establishes the widest exemption and freedom of trade between the Portuguese and Maratha dominions". (Indian Annex C. No. 35, I, p. 344.) Accordingly, although there is not in fact the slightest basis for these claims in the provisions of the "Treaty of Punem", it is totally incorrect to say that Portugal has never at any time claimed any immunities from the exercise of India's territorial sovereignty in connection with the alleged rights of passage.

247. Another reason is that, even if Portugal does today present her claim to the Court as one concerning only simple rights of transit without any exemptions from India's territorial sovereignty, it is impossible to regard these alleged rights of transit as not involving limitation upon or derogation from India's exercise of her sovereign rights over the territory. In her Observations and Submissions (paragraph 107) Portugal in the most formal manner recognized that India alone is competent to exercise the attributes of sovereignty over Indian territory, including the territory lying between Daman and the enclaves. The "attributes of territorial sovereignty" of course comprise such rights as the right to regulate and forbid the entry and exit of persons and goods across the State's frontiers, the right to regulate the movement of persons and goods inside the frontiers, the right to levy customs and other taxes, the right to apply health, currency and police regulations, the right to exercise civil and criminal jurisdiction, the right to adopt neutrality measures in time of war or civil insurrection, the right to expropriate land for public purposes, and many other similar rights. In opposition to these rights of sovereignty possessed by India over the territory between Daman and the enclaves, Portugal claims rights of passage without restrictions or difficulties for Portuguese armed forces, police and officials, for Portuguese private individuals, for foreigners authorized by Portugal and for goods, to the full extent necessary for the effective exercise of Portuguese sovereignty in the enclaves. These alleged rights of passage must evidently impinge upon and derogate from India's sovereign rights over the territory concerned.

248. Portugal, as India emphasized at the oral hearings on the Preliminary Objection, has been singularly vague about the limits, conditions and modalities of her alleged rights of passage over the territory of another State. All that Portugal says is that she claims the rights of passage "to the full extent necessary for the effective exercise of Portuguese sovereignty in the enclaves". The first point that naturally arises is, who is to decide as to what uses of the alleged rights of passage are necessary for the effective exercise of Portuguese sovereignty in the enclaves? Is the final word to lie with India or with Portugal? Unless the decision lies with Portugal, Portugal cannot be considered to be claiming "rights" of passage

at all. But, if Portugal is accorded the right to declare the passage of given persons or goods to be necessary for the effective exercise of Portuguese sovereignty in the enclaves, and to demand that their passage be allowed, it really becomes impossible to say that there is no derogation from India's right to exercise her territorial sovereignty. For India must then in part surrender to Portugal her sovereign right to regulate the penetration of her frontiers by foreign persons and goods. It is simply not true to say, as Portugal said in her Observations and Submissions and at the oral hearing, that India is only placed under an obligation not to put obstacles in the way of Portugal's necessary communications between Daman and the enclaves. If Portugal may demand and insist upon the passage of such persons and goods as she declares to be necessary for the exercise of her sovereignty in the enclaves, it is inescapable that India's exercise of her sovereignty at her own frontiers and within her territory will be subordinated to the sovereign will of Portugal.

249. Suppose for example that Indian legislature decides as a matter of general policy to prohibit the import into Indian territory of arms or of alcoholic liquor or of a particular narcotic drug, and that Portugal then claims the right to transport specified amounts of the prohibited goods to Dadra or Nagar Aveli. No customs frontier is maintained between the enclaves and the surrounding Indian territory, so that once the goods have reached the enclaves there is nothing to hinder their introduction into Indian territory. If Portugal may assert a right of transit for the goods in question, India will be bound to subordinate the execution of her sovereign policies in her own territory to the policies of Portugal with respect to the enclaves.

*Mutatis mutandis*, similar considerations would apply to the export of goods and to the transit of persons to and from the enclaves. Nor is this problem by any means an academic one, since conflicts of policy of this kind have arisen in the past, for example in connection with the transit of arms, dates for distillation of liquor, and of salt. Accordingly, it is a complete fallacy to speak as Portugal does of her alleged rights of passage between Daman and the enclaves as being rights of transit without immunity and involving no derogation from India's rights to exercise her sovereignty over the intervening Indian territory.

250. In the *North Atlantic Fisheries Arbitration*, Counsel on both sides accepted that the power to exclude foreigners from entry into the territorial waters is a right of sovereignty and that a treaty clause restricting that power constitutes a limitation of, and derogation from, the territorial sovereignty of the State in question (see paragraphs 262 and 278 below.) If that is true of entry into territorial waters, it is certainly no less true of entry across land frontier. Portugal's so-called right of transit without immunity

from India's exercise of her territorial sovereignty is, in fact, a contradiction in terms. Either there is no legal right in Portugal or India's sovereign right to control entry through her frontiers is *pro tanto* cut down. It is pure casuistry to argue, as Portugal does, that India is not called upon to accept a limitation upon her territorial sovereignty but merely to refrain from obstructing the transit of Portuguese troops, officials, etc., so far as may be necessary for the effective exercise of Portuguese sovereignty in the enclaves. At the borders of Daman runs the Indian frontier. In principle, control of passage across the frontier is a sovereign right of India and Portugal is claiming to set aside that sovereign right in her own favour for her own purposes. Nor does it in any way alter the case to stress that it is only entry for the purpose of transit that is claimed, not entry for the purpose of access to Indian territory. The limitation of territorial sovereignty at the frontier and on the transit route is still the same.

251. Indeed, Portugal's emphatic denial that she claims any right of access to Indian territory is impossible to accept. For the distinction which she draws between a right to cross the Daman frontier for the purpose of transit to the enclaves and for the purpose of obtaining access to Indian territory is an extremely hollow one in the light of the actual circumstances of the enclaves and of the surrounding Indian territory since the earliest times. As has been pointed out in Part I, the enclaves have always been completely open to the surrounding Indian territory. No fence or other barrier has ever divided the enclaves from Indian territory. No customs or police cordon has ever been maintained around the enclaves and unfenced roads and paths connect them with Indian territory. Moreover, the roads and paths between Daman and the enclaves are equally unfenced and unguarded. A right of transit to the enclaves has therefore always meant in practice a right of access also to Indian territory, and on that account the British and Indian Governments have always treated the enclaves as part of India for administrative purposes.

252. In fact, the open regime always applied to the enclaves and to the roads and paths leading to them from Daman makes the Portuguese claim quite unrealistic in so far as it concerns rights of transit for private individuals (including foreigners authorized by Portugal) and for goods. Daman is a sea-port open to ocean-going as well as to local shipping and the enclaves giving unrestricted access to Indian territory lie a few miles from Daman. In this situation the rights of transit claimed by Portugal are much the same thing as rights for the entry and exit of persons into and from Indian territory and for the passing of goods into and out of Indian territory. How completely intolerable this situation would have been for the British and Indian Governments if Portugal had possessed the rights of transit which she now claims is shown with

the utmost clarity in the official correspondence between the British and Portuguese authorities submitted to the Court in Part II above and in Indian Annexes C and E. The correspondence reveals a constantly recurring cycle of a Portuguese request for a concession in regard to the import or export of some commodity, a British concession, a Portuguese abuse of the concession, a British withdrawal of the concession. It also reveals that the British regarded the abuse of any concession as almost inevitable owing to the facts of the situation. Their only protection against serious losses of revenue lay in their power to withdraw the concession at will by measures taken at the Daman frontier. On some occasions these measures took the form of a reimposition of duty at the Daman frontier; on others they took the form of a total prohibition on the import or export of the commodity concerned. Having regard to the easy travel regime which prevailed for much of the time, the entry and exit of persons across the Daman frontier did not raise the same acute problems as in the case of goods. But in times of crisis, like the Indian Mutiny and the two world wars, the British Government asserted full powers to control, restrict and even prohibit the crossing of the Daman frontier; and from 1914 onwards the British Government, without obtaining the concurrence of the Portuguese Government, increasingly tightened up the regulation of movement across the Daman frontier.

253. In short, the Portuguese claim to the transit of private individuals and goods simply does not correspond to the realities of the situation. The peculiar position of the enclaves within Indian territory a few miles from Daman could only be tolerable to the British if either they maintained a customs and police frontier round the enclaves or they retained full and absolute powers to prohibit and regulate traffic at the Daman frontier. As the British themselves pointed out to the Portuguese authorities, it was far more important to the people of the enclaves that they should have complete freedom of access to the surrounding Indian territory than that they and their goods should be free to cross the Daman frontier. The solution adopted by the British from the earliest times, therefore, was to leave the enclaves open and to assert full and absolute powers to prohibit and regulate traffic at the Daman frontier.

254. The Portuguese claim to rights of transit with regard to private individuals and goods made it even less plausible in relation to the peculiar situation of the enclaves by reason of its extensive and largely undefined character. The transit of foreigners is limited to those authorized by Portugal. Otherwise, no limit appears to be put by Portugal either upon the kind of private individuals or the kind of goods for which transit is claimed as of right. Nor are we told anything of the quantities of the goods for which the right to transit is claimed except that the right is



claimed to the full extent necessary for the effective exercise of Portuguese sovereignty in the enclaves. Who is to decide what this means in terms of the transit of persons and goods to the enclaves? India or Portugal? Nor is anything said about import and export duties, except that no exemptions are claimed by Portugal.

Yet Professor Bourquin said in his Hague Academy lectures in 1924 (*L'Organisation internationale des Voies de Communication, Recueil des Cours*, 1924, Vol. 4, p. 194) that the limitation of the territorial sovereign's power to tax goods in transit is "a precious, and sometimes even indispensable, adjunct of freedom of transit". Thus, to put the matter at its lowest, a regime of liability to import and export duties at the frontier is more consistent with a system in which transit takes place by permission than one in which it takes place as of right. Nor, again, does Portugal say anything about the transit being confined to a particular route or about any other conditions applicable to the transit of either persons or goods. The absence from Portugal's claim of any mention of special conditions or modalities for the exercise of the alleged right of transit for individuals and goods must also be considered as more consistent with a system of permission than legal right, having regard to the extreme danger of abuse resulting from the open character of the routes and of the enclaves themselves.

255. The Portuguese claim is made even less realistic in so far as it concerns the transit of armed forces, police and officials without immunity from the exercise of India's territorial sovereignty. The passage of foreign troops and police, especially in formed bodies, across a State's territory is a matter of the greatest delicacy at any time and the limits, conditions and modalities of a right of transit for foreign troops and police are of the greatest concern both to the territorial sovereign and to the State possessing the right. Yet in the present instance Portugal says virtually nothing about the limits, conditions and modalities of her alleged right. True, she says that she possesses a right of transit across Indian territory for Portuguese armed forces to the full extent necessary for the effective exercise of Portuguese sovereignty. But such a claim may mean very different things. Is the alleged right of transit, for example, confined to sending individual members of the armed forces and police or, at most, small squads, across Indian territory? Or does it extend to sending whole platoons, companies, regiments or corps of troops and police? If transit is indeed claimed for troops and police in large formed bodies, is there any limit to the numbers of soldiers or police who may be in transit at any one time? Are the troops limited to their side arms or does Portugal claim transit for artillery, tanks, armoured cars and ammunition? These are not academic questions. They radically affect the nature of the right claimed,

and the vague, undefined right of transit for her armed forces and police which is apparently claimed by Portugal takes no account of the vital interest of the territorial sovereign in the matter.

256. Nor does Portugal make her claim to transit for her armed forces, police and officials any more realistic by emphasizing that she only claims transit without immunity from the exercise of India's territorial sovereignty. What does this transit without immunity mean in practice? Presumably, it means that they, their baggage and equipment are subject to examination at the Daman frontier and in principle also at the boundaries both of Dadra and of Nagar Aveli? Presumably, it means that their official papers are subject to inspection by Indian security officers. Presumably, it means that their baggage, equipment and supplies are liable to Indian import and export duties at the various frontiers and that their arms and ammunition are subject to the strict provisions of the Indian Arms Act which prohibits import except under licence. Presumably, it means that if a soldier commits a crime or tort against an Indian while in transit, India has jurisdiction. And what of the discipline of the forces in transit? Presumably, transit without immunity means that, if a Portuguese soldier strikes a comrade *en route*, India may exercise jurisdiction? Presumably, it means that, if the Portuguese commanding officer arrests the soldier for breach of discipline, the soldier may bring an action in the Indian Courts for unlawful arrest? Again, all these points are not academic points. They are of direct practical concern to both States, to the territorial sovereign and to the state possessing the right of transit.

257. Portugal's claim to a right of transit for her armed forces without any immunities from India's sovereignty would involve a strange derogation from the customary law concerning the immunities of foreign troops and also from the practice of States in regard to such immunities as it is found in the many treaties dealing with this matter. Under customary law foreign troops are exempt from the supervisory jurisdiction of the local sovereign in regard to their own internal discipline (see Barton, *British Year Book of International Law* (1949) Vol. 26, pages 380-413). What, if any, further immunities from the local jurisdiction are possessed by foreign troops under customary law is a point which is so controversial and the whole question of the legal regime applicable to foreign troops is of such delicacy that it is invariably covered by specific agreements (see Barton, *op. cit.*, and *British Year Book of International Law* (1950), Vol. 27, pages 186-234). The right of transit claimed by Portugal is not one exercisable on a single occasion or only over a brief period. It is a perpetual right of transit exercisable repeatedly as and when Portugal demands. That such a right should exist without definitions in

a treaty is, to say the least, highly improbable. When, in addition, Portugal's formulation of the right departs in a material particular from the recognized position of foreign troops in customary law, it really becomes impossible to credit the existence of the alleged right.

258. The Government of India accordingly submits that, from whatever angle it is viewed, the right of transit claimed by Portugal includes so many alternatives and variations that it is impossible to discover the real nature of the Portuguese claim or what is the real basis for it.

259. The Government of India further submits that the right of transit claimed by Portugal is not capable of application in practice between India and Portugal without its limits, conditions and modalities first being settled. Portugal's simple formulation of her claim as one to a right of transit without immunity for the exercise of her sovereignty in the enclaves is not in reality a claim that the Court should enforce an established and known right. It is a claim that the Court should oblige India to come to terms with Portugal concerning transit between Daman and the enclaves--a claim that the Court should oblige India to negotiate and conclude an agreement with Portugal in regard to the transit of armed forces, police and officials, for private individuals and for foreigners authorized by Portugal and for goods. Even if the Portuguese claims were to be held to be well-founded in principle, all the limits of the alleged right of transit and all the conditions and modalities of its exercise would still remain to be settled; and they can only be settled by a new agreement between the Parties.

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## PART IV

## THE PRESUMPTION AGAINST RESTRICTION UPON THE EXERCISE OF TERRITORIAL SOVEREIGNTY

260. Portugal's claim, as will be shown later, is essentially a claim touching India's territorial sovereignty. It follows, in the submission of the Government of India, that the fundamental legal norm to which the Court must first have regard is the principle of the exclusive competence of the State in regard to its own territory. The comprehensive and fundamental nature of this principle was strongly emphasized by Chief Justice Marshall in the *Schooner Exchange Case* in the Supreme Court of the United States (1812, 7 Cranch 116):—

“The jurisdiction of the nation within its own territory is necessarily exclusive and absolute. It is susceptible of no limitation not imposed by itself. Any restriction upon it, deriving validity from an external source, would imply a diminution of its sovereignty to the extent of the restriction, and an investment of that sovereignty to the same extent in that power which could impose such restriction.

*All exceptions, therefore, to the full and complete power of a nation within its own territories, must be traced up to the consent of the nation itself. They can flow from no other legitimate source.”*

261. The clear implication of the Chief Justice's words is that there is a presumption of law in favour of the exclusive competence of a State in regard to its own territory and that the burden lies upon any State claiming rights over another's territory to prove the specific consent of the territorial State to the grant of the alleged rights.

262. Chief Justice Marshall's opinion that restrictions on a State's territorial competence are only to be established by proof of its specific consent to their creation has frequently been echoed in the jurisprudence of international tribunals. In the *North Atlantic Fisheries Arbitration* (1910, Wilson, The Hague Arbitration Cases, page 134) a Treaty of 1818 between Great Britain and the United States had granted to United States fishermen the right to fish in Canadian bays. The United States had contended that the Treaty amounted to a grant of an international servitude detracting from the sovereignty of Great Britain and limiting her exclusive right to regulate fishing within her waters. The Tribunal, in declining to deal with the case by reference to the doctrine of servitudes,

said that a servitude in international law predicates an express grant of a sovereign right and that the doctrine of servitudes could only be affirmed on the express evidence of an international contract. The United States, however, had also contended that, quite apart from any question of servitude, there must be some point beyond which Great Britain, in making regulations for the Canadian fishery, was not competent to go, or could not properly go, without infringing the rights of United States fishermen under the Treaty. As to this contention the Tribunal said (page 168):—

“A line which would limit the exercise of the sovereignty of a State within the limits of its own territory *can be drawn only on the ground of express stipulation and not by implication from stipulations concerning a different subject matter.*”

This pronouncement, it is to be emphasised, was made simply with reference to a *limitation upon the exercise of territorial sovereignty* and quite independently of the Tribunal's discussion of international servitudes. Its relevance in the present case is obvious. For what else is Portugal doing than claiming to limit the exercise of India's territorial sovereignty in regard to transit between Daman and the enclaves, not on the ground of an express stipulation in the “Treaty of Punem” but by mere implication from stipulations in that alleged treaty concerning a quite different subject matter, namely, a grant of the revenues of certain villages?

263. The famous dictum of the Permanent Court of International Justice in the *S.S. Lotus Case* (1927, Series A, No. 10, page 18), that restrictions upon the independence of a State are not to be presumed, was enunciated with reference to a restriction on the exercise of territorial sovereignty alleged to exist under customary international law. This principle finds expression also in the rule of interpretation of treaties whereby, in case of doubt, a treaty is to be interpreted restrictively so as not to impose a limitation upon the exercise of territorial sovereignty. In the *Free Zones Case* (1930, Series A, No. 24, pp. 11-12), dealing with Switzerland's contention that the establishment by treaty of a free customs zone precluded France from collecting other forms of taxes at the political frontier of the free zone, the Permanent Court said:—

“Whereas, though the settlement to be prescribed by the Court with regard to all the questions involved by the execution of paragraph 2 of Article 435 of the Treaty of Versailles, must respect the rights which Switzerland derives from the provisions of the treaties of 1815 and other supplementary instruments relating to the free zones, this settlement must also respect the sovereignty of France over the territories in question; *as this sovereignty is complete and unimpaired in so far as it is not limited by the aforesaid treaties; as no obligation going beyond these treaties can be imposed on France without her consent;*

“Whereas it is in the light of the foregoing considerations that the question of the so-called “control cordon” (*cordons de surveillance*) must be envisaged; as France’s right to have a police cordon at the political frontier of the zones has hardly been questioned by the Swiss Government; as, on the other hand, the latter disputes the right of France to collect duties and taxes at this frontier, even if these charges are not duties on the importation or exportation of goods, but are duties and taxes which are also levied on the same articles produced or manufactured in France; *as such a restriction does not necessarily follow from the obligation contracted by France under the provisions of the treaties of 1815 and the other supplementary instruments relating to the free zones, and as, in case of doubt, a limitation of sovereignty must be construed restrictively.*”

The Permanent Court had occasion to revert to this principle at a later stage of the same case (1932, Series A/B, No. 46, at page 166) when the Swiss Government challenged the legitimacy of a certain importation tax levied by France on the ground that it infringed the spirit of the free zones agreements. The Court strongly reaffirmed the principle:—

“It follows from the principle that the sovereignty of France is to be respected in so far as it is not limited by her international obligations, and, in this case, by her obligations under the treaties of 1815 together with supplementary acts, that no restriction exceeding those ensuing from these instruments can be imposed on France without her consent. Thus, there is no doubt that the Court is unable to restrain France from establishing at her political frontier a police cordon for the control of traffic, and this moreover does not appear to be disputed by Switzerland. On the other hand, Switzerland disputes the right of France to collect duties and taxes at her political frontier even though these charges are not duties and taxes on the importation or exportation of goods but are duties and taxes also levied on the same articles produced or manufactured in France. Switzerland, in fact, has in her draft decision (Art. 3, para. 2) proposed that imports from Switzerland to the free zones shall be free of any duties and taxes whatever, a suggestion which has met with lively opposition on the part of France.

In this connection, the Court observes that no such limitation necessarily ensues from the old provisions relating to the free zones; *that in case of doubt a limitation of sovereignty must be construed restrictively*; and that while it is certain that France cannot rely on her own legislation to limit the scope of the international obligations, *it is equally certain that French fiscal legislation applies in the territory of the free zones as in any other part of French territory.*”

264. The International Court itself took the same line in the *Asylum Case (I.C.J. Reports 1950, pages 274-5)* where the Colombian Government sought to rely on a treaty provision concerning extradition and the Court said:—

“In the case of diplomatic asylum, the refugee is within the territory of the State where the offence was committed. A decision to grant diplomatic asylum involves a derogation from the sovereignty of that State. It withdraws the offender from the jurisdiction of the territorial State and constitutes an intervention in matters which are exclusively within the competence of that State. *Such a derogation from territorial sovereignty cannot be recognized unless its legal basis is established in each particular case.*”

265. Nor has the Court shown any disposition to apply a different rule in cases concerning claims to rights of transit across another State's territory. On the contrary, the Permanent Court of International Justice held in one case that a right of transit could only result from a special agreement and in another case that, being a limitation upon territorial sovereignty, a treaty right of transit has to be interpreted restrictively in favour of the territorial State.

266. In the Advisory Opinion on *Railway Traffic between Lithuania and Poland* (1931, Series A/B, No. 42, page 108) the Permanent Court was asked whether her international engagements obliged Lithuania to take the necessary measures to open for traffic a section of a railway in her territory, Poland was asserting a right of railway transit over this part of Lithuania for the purpose of linking the Polish railway system to the Estonian railway system. Poland was then in a position to invoke the benefit of a conventional rule which is not now in force, namely, the provision in Article 23 (e) of the Covenant of the League, which reads as follows:

“Subject to and in accordance with the provisions of international conventions existing or hereafter to be agreed upon, the Members of the League:

\* \* \*

(e) will make provision to secure and maintain freedom of communications and of transit and equitable freedom for the commerce of all Members of the League.”

The Court held that under this text specific obligations to provide for freedom of communications and transit could only arise from “international conventions existing or hereafter to be agreed upon”. It then added (page 113):

“If this interpretation is correct it is impossible to deduce from the general rule contained in Article 23 (e) of the Covenant an obligation for Lithuania to open Landwarow-Kaisiadorys railway sector for international traffic or for part of such traffic; *such obligation could only result from a special agreement.*”

The Court thus considered that Article 23 (e) of the Covenant only had the effect of a general directive to Members of the League to make provision for freedom of transit and did not impose on them an obligation to grant a right of transit in each and every case. For a State to be under an obligation to grant transit in a particular case, the Court held that there must be a *specific agreement* laying the particular obligation upon the territorial Sovereign. Admittedly, in this Opinion the Court was only concerned with the international *contractual* engagements of Lithuania in regard to railway transit. The Opinion does, however, strongly confirm that rights of transit over land are a matter of particular agreement in each case.

267. The Permanent Court's judgment in the S.S. *Wimbledon Case* (1923, Series A, No. 1, page 15), which is the other case involving a right of transit, is very much in point for the present case and, in the submission of the Government of India, merits the most careful consideration by the Court. In the S.S. *Wimbledon Case* the question before the Court was whether a British merchant ship, chartered to a French company and carrying war material to Poland, had a right of transit through the Kiel Canal at a time when a state of war existed between Poland and Russia and when Germany's neutrality laws prohibited the carriage of war material to either belligerent across German territory. The Kiel Canal, being a waterway artificially constructed by Germany wholly within her own territory, is in principle a purely internal German traffic route, just as any road or path over Indian territory is in principle a purely Indian internal traffic route. Prior to the Treaty of Versailles no international right of transit existed through the Canal. But by Article 380 of that Treaty it was provided that the Canal and its approaches should be maintained by Germany "free and open to the vessels of commerce and of war of all nations at peace with Germany on terms of entire equality." The general effect of Article 380 plainly is to create an international right of transit over this inland Canal for all vessels, whether of commerce or war, on condition only that they belong to nations at peace with Germany. Counsel for Germany, however, contended that the right of transit amounted to an international servitude which, being a limitation upon the exercise of Germany's sovereignty, must be restrictively interpreted and, therefore, must be construed as not affecting Germany's rights as a neutral. The Court held that, whether Germany's obligation to allow free transit constituted an international servitude or merely a contractual obligation, *it represented an important limitation of Germany's exercise of her sovereign rights over the Canal and that this by itself was a sufficient reason for applying the principle of restrictive interpretation.* The relevant passage from the Court's judgment reads as follows (at page 24):—



"In order to dispute, in this case, the right of the S.S. "Wimbledon" to free passage through the Kiel Canal under the terms of Article 380, the argument has been urged upon the Court that this right really amounts to a servitude by international law resting upon Germany and that, like all restrictions or limitations upon the exercise of sovereignty, this servitude must be construed as restrictively as possible and confined within its narrowest limits, more especially in the sense that it should not be allowed to affect the rights consequent upon neutrality in an armed conflict. The Court is not called upon to take a definite attitude with regard to the question, which is moreover of a very controversial nature, whether in the domain of international law, there really exist servitudes analogous to the servitudes of private law.

Whether the German Government is bound by virtue of a servitude or by virtue of a contractual obligation undertaken towards the Powers entitled to benefit by the terms of the Treaty of Versailles, to allow free access to the Kiel Canal in time of war as in time of peace to the vessels of all nations, *the fact remains that Germany has to submit to an important limitation of the exercise of the sovereign rights which no one disputes that she possesses over the Kiel Canal. This fact constitutes a sufficient reason for the restrictive interpretation, in case of doubt, of the clause which produces such a limitation.* But the Court feels obliged to stop at the point where the so-called restrictive interpretation would be contrary to the plain terms of the article and would destroy what has been clearly granted."

268. The above passage leaves no possible room for doubt that the Court considered the principle of restrictive interpretation in favour of full sovereignty to apply generally to limitations on the exercise of sovereignty and not merely to a limitation amounting to an "international servitude" or to a "dismemberment of sovereignty". The passage also shows that the Court did not apply the presumption in favour of full sovereignty in that case because, and only because, it held that the terms of Article 380 of the Treaty of Versailles were clear and categorical in imposing an obligation on Germany to grant a right of transit to all vessels of nations at peace with her.

269. The principle that a restriction on the exercise of territorial sovereignty of the kind claimed by Portugal is not to be presumed but has to be established by clear proof of the specific consent of the territorial State to the particular restriction is also underlined in the writings of many jurists. There is, indeed, a large body of learned opinion which holds that rights of transit, such as Portugal claims, and other permanent restrictions on territorial sovereignty in favour of another State must have their origin in a treaty grant. Extracts from some of the modern writers who express this view—Oppenheim—Lauterpacht, Sibert, Crusen, Vali and Reid—were given in paragraph 164 of India's Preliminary Objection and these extracts occur in passages where those writers were discussing so-called international servitudes. The theory of international

servitudes has, it is true, been the subject of some confusion and controversy on the part of writers who have tried to reproduce too literally the principles of Roman private law in the quite different context of inter-State relations. Portugal, as the Court is aware, has attempted, in her Observations and Submissions and in the oral argument on India's Fifth Preliminary Objection, to use these doctrinal differences to shield herself from the impact of the principle that a permanent right to the restriction of another State's territorial sovereignty such as she claims against India must have its origin in a treaty grant. The principle does not, however, rest on the adoption of any particular theory of international servitudes and, as will now be shown, Portugal's whole argument on this point goes very wide of the mark.

270. Portugal's argument, which appears in paragraphs 108 to 120 of her written Observations and Submissions, may be summarised as follows: The theory of servitudes is controversial but "widely-held opinion, supported by eminent authorities" takes as a distinguishing feature of a servitude the attribution to the beneficiary State of a "right of sovereignty, with consequently a dismemberment of the territorial sovereignty". Portugal claims only a "bare right of transit without immunity from India's territorial sovereignty". This claim does not, she contends, involve the attribution to her of any part of India's territorial sovereignty, is not a "dismemberment of sovereignty" and is not to be classed as a servitude. By this kind of reasoning Portugal tries to make out that her claim is not within the principle which raises a presumption against a limitation upon territorial sovereignty. That Portugal's description of the legal nature of her claim cannot be accepted as correct will be demonstrated later. At present the Government of India is only concerned to show that the principle on which India relies does not have the narrow basis suggested by Portugal.

271. In her Observations and Submissions (paragraph 115) the Portuguese Government claimed Sir Hersch Lauterpacht and Professor Bastid as authorities for its proposition that "dismemberment of sovereignty is an essential characteristic of a servitude". Thus, Sir Hersch Lauterpacht is quoted as having said in his lectures at the Hague Academy in 1937 (*Recueil des Cours*, 1937, IV, p.328):

"What distinguishes servitudes from any other limitation of territorial sovereignty is that they imply the grant of a right of jurisdiction and a right of sovereignty. They imply a division of sovereignty."

And Professor Bastid is quoted as saying in her University lectures that situations described as servitudes involve a dissociation of territorial jurisdiction. The Government of India again emphasizes that the principle on which it relies concerns permanent restrictions on the exercise of territorial sovereignty, regardless of

whether these fall within any particular definition of international servitudes. But, if need be, it would also certainly maintain that the rights of transit claimed by Portugal fall within the meaning given to "servitudes" by the majority of writers who employ this term. The question whether such rights are or are not to be classified as servitudes is largely a question of terminology. The real point is what kinds of "limitation of sovereignty"—or "division of sovereignty"—do writers have in mind when they speak of "servitudes", or of "restrictions on the exercise of territorial sovereignty", which are only to be established on the basis of an express treaty grant?

272. As Portugal has cited a dictum of Sir Hersch Lauterpacht, it is of interest to look at the treatment of servitudes in Oppenheim-Lauterpacht, *International Law*, Vol. I, eighth edition, 1955, pages 536-541:—

*"State servitudes are those exceptional restrictions made by treaty on the territorial supremacy of a State by which a part or the whole of its territory is in a limited way made perpetually to serve a certain purpose or interest of another State. Thus a State may by a convention be obliged to allow the passage of troops of a neighbouring State, or may in the interest of a neighbouring State be prevented from fortifying a certain town near the frontier.*

Servitudes must not be confused with those general restrictions upon territorial supremacy which, according to certain rules of the Law of Nations, concern all States alike. These restrictions are named 'natural' restrictions of territorial supremacy (*servitudes juris gentium naturales*), in contradistinction to the conventional restrictions (*servitudes juris gentium voluntariae*) which constitute State servitudes in the technical sense of the term. Thus, for instance, it is not a State servitude but a 'natural' restriction on territorial supremacy that a State is obliged to admit the free passage of foreign merchantmen through its territorial maritime belt.

The majority of writers and the practice of States accept the conception of State servitudes, although they do not agree upon its definition or extent, and are often divided as to whether a particular restriction upon territorial supremacy is or is not a State servitude. Some passages in the award of the Permanent Court of Arbitration in the case of the *North Atlantic Fisheries* (1910) created the impression that the Court rejected the conception of servitudes. In fact, the Court was prepared to accept it, but, for reasons which gave rise to some criticism, it demanded an express grant to that effect. It is now being increasingly recognized that whatever may be the terminological objections militating against the use of the term 'servitude', neighbourly adjustments in the shape of restrictions of sovereignty in the economic or even military sphere often constitute a better means of obviating international friction than cessions of territory pure and simple. Purely territorial changes frequently create as many difficulties as they remove.

"Since the object of State servitudes is the territory of a State, such restrictions upon the territorial supremacy of a State as do not make a part or the whole of its territory itself serve a purpose or an interest of another State are not State servitudes. The territory

as the object is the mark of distinction between State servitudes and other restrictions on the territorial supremacy. Thus the perpetual restriction imposed upon a State by a treaty not to keep military, naval or air forces, or not to keep an army, navy or air force beyond a certain size, is certainly a restriction on territorial supremacy, but is not, as some writers maintain, a State servitude, because it does not make the territory of one State serve an interest of another. On the other hand, when a State submits to a perpetual right enjoyed by another State of passage of troops, or to the duty not to fortify a certain town, region, place, or island, or to the claim of another State for its subjects to be allowed a right of fishing within the former's territorial belt, in all these and similar cases the territorial supremacy of a State *is* in such a way restricted that a part or the whole of its territory is made to serve an interest of another State, and such restrictions are therefore State servitudes."

And then Oppenheim-Lauterpacht gives a number of examples of servitudes. Amongst the military servitudes it lists *the right to send troops across another State's territory*. Amongst economic servitudes it lists the right to fish in foreign territorial waters, a right of free navigation on a river, a right to construct a railway or run a cable across another State's territory "and the like".

273. The Government of India does not propose to multiply citations from the works of jurists on the subject of "servitudes" or "rights analogous to servitudes". It repeats that it takes no position in this case on the question whether international law recognizes a distinct doctrine of servitudes, or whether rights of transit without immunity such as Portugal claims are or are not properly to be termed "servitudes". The Government of India only thinks it necessary to stress that in the works of those writers who discuss the question of international servitudes, rights of transit and especially of military transit are amongst the most common of the rights given as examples of servitudes. The Government of India like the Portuguese Government in its Memorial is content to leave aside the doctrine of international servitudes. The position which it takes in this case is simply that rights involving permanent restrictions on the exercise of the territorial sovereignty of another State of the kind claimed by Portugal can only be established by proof of the express grant or specific consent of the territorial State. This position in its submission is fully established by the judicial decisions and the opinions of writers which it has cited above and in paragraphs 161-168 of its Preliminary Objection.

274. The Government of India does not overlook the fact that in paragraphs 108 and 109 of her Observations and Submissions Portugal sought to invoke the *Wimbledon Case* and the *North Atlantic Fisheries Arbitration* in support of her contention that a bare right of transit without immunity falls outside the above-mentioned principle. The Portuguese attempt to make use of

these cases is singularly unconvincing, if only because in both cases the Court was in fact concerned with an express treaty grant. At the Oral Hearings the Government of India did pass some comments on the Portuguese distortion of a passage from the judgment in the *Wimbledon Case* and a closer examination of the two cases shows that they are completely and utterly opposed to the Portuguese contention.

275. The judgment in the *Wimbledon Case*, it is said, brings out that there is an essential difference between a limitation of the exercise of sovereign rights and an abandonment of sovereignty. The reference is to the well-known dictum (Series A, No. 1, page 25):—

“The Court declines to see in the conclusion of any Treaty by which a State undertakes to perform or refrain from performing a particular act an abandonment of its sovereignty. No doubt any convention creating an obligation of this kind places a restriction upon the exercise of the sovereign rights of the State in the sense that it requires them to be exercised in a certain way. But the right of entering into international engagements is an attribute of State sovereignty.”

Every dictum has, however, to be read in the context in which it was made and the Permanent Court was discussing “abandonment of sovereignty” from an entirely different point of view from that of the Portuguese Government.

276. In that case, it had been represented on behalf of Germany that there are some imprescriptible rights of sovereignty in regard to which a State *cannot be legally bound even by an express undertaking in a treaty*, and that amongst these are its rights in regard to neutrality in time of war. That was the context in which the Court “declined to see in the conclusion of any Treaty by which a State undertakes to perform or refrain from performing a particular act an abandonment of its sovereignty”. In saying those words, the Court was concerned only to reject completely the thesis that some forms of treaty undertaking are not binding in law at all because they must be considered to constitute an abandonment of sovereignty. The context makes it clear that the phrase “abandonment of sovereignty” was used by the Court in the sense of “abandonment of its status as an independent State”. No doubt, in that particular context the Court did make a sharp distinction between restrictions upon the exercise of sovereign rights and abandonment of sovereignty. But that has no bearing on the quite different question before the Court in the present case, namely, the question whether rights involving restrictions upon the exercise of another State’s territorial sovereignty are only to be derived from its express grant or specific consent.

277. In point of fact, when closely examined, the dictum in the *Wimbledon Case* which is relied on by Portugal goes dead against

her own argument. The conclusion which she is asking the Court to draw from the case is that an obligation to allow transit "without immunity" is a mere restriction upon the exercise of sovereignty vitally different from an obligation to allow transit "with immunity", which she implies must be classed as an "abandonment of sovereignty". But what was the right of transit in the *Wimbledon Case* which the Court declined to consider "an abandonment of sovereignty"? It was a right of transit "with immunity". For Articles 382-384 of the Treaty of Versailles provide that (1) no charges may be levied on vessels using the Canal or its approaches other than "such as are intended to cover in an equitable manner the cost of maintaining in a navigable condition, or of improving, the Canal or its approaches, or to meet expenses incurred in the interests of navigation", and (2) goods in transit may be placed under seal or in the custody of customs agents. In other words the Treaty provided for transit across German territory with complete immunity from customs duties and any other kind of fiscal tax or charge. Thus, far from making the vital distinction suggested by Portugal between transit with and without immunity, the Court saw no "abandonment of sovereignty" in the acceptance of a treaty obligation allowing transit with immunity. In fact, Portugal's citation from the *Wimbledon Case* really knocks the bottom out of her own argument.

278. As to the *North Atlantic Fisheries Arbitration*, it is instructive to compare what was said by Counsel on both sides with what Portugal now says about her right of transit without immunity not constituting a dismemberment of sovereignty. In that case there was an express treaty grant by Great Britain to the United States of fishing rights in Canadian waters for United States citizens. The United States contended that this right was a servitude and, as such, carried also the right for the United States to participate in the regulation of the fisheries in Canadian waters. This contention led to long discussion not only of international servitudes but also of the effect of the grant of the fishery upon Great Britain's territorial sovereignty over the waters. In the course of the argument of Sir William Robson, the British Attorney-General, a member of the Tribunal (Judge Gray) observed that the grant would not be a transfer of sovereignty unless the right to fish was to be regarded as a sovereign right. The following exchanges then occurred between the Attorney-General and the Judge (Proceedings, Volume II, page 1686):—

"*Sir W. Robson*: Of course the right to fish is not a sovereign right. The right of exclusion is a sovereign right, and that right is limited, in fact *quoad* particular persons it is abandoned; I limit my sovereignty to the extent of saying I will not exclude you. That is a limitation, but of course that is not inconsistent with the full exercise of the local jurisdiction when the favoured alien has come in.

*Judge Gray*: Then it becomes, in that view of it, confining yourself to what you have just said, a question of the extent of the limitation upon sovereign power? .

*Sir W. Robson*: Yes. Of course every contract is a limitation, as I have so frequently said. I am not standing here to say that Great Britain has not subjected herself to any restriction or limitation. Of course she has."

Later on in the hearings, Senator Elihu Root, replying for the United States, said (*Ibid.*, page 2015):—

"Now, a further proposition upon which we are all agreed is that this grant did limit British sovereignty. That is agreed by counsel on both sides, and I suppose I need not spend any time over it. Originally, Great Britain had the right to reserve to her own subjects the exclusive use of that portion of the earth's surface which we call the treaty coast for fishing purposes. She had the right to exclude all other persons from it. She had the right to dispose freely as sovereign of the opportunity for the entire use among her own subjects, to condition its exercise, and to say that they shall do so and so, that these may go there, and that those may not. She had the right to admit such aliens as she saw fit to the beneficial use. She had the right to say to the people of Massachusetts: You may come here and fish, and to the people of Maine and New Hampshire: You may not, or that the people of New York may go and fish and the people of Massachusetts may not. But when she made the grant she parted to a material extent with the power to do those acts of sovereignty."

Senator Root went on to argue that where there is a grant of sovereign rights, the transferred sovereignty of the grantee has, as it were, precedence over the sovereignty of the grantor and that a reservation of sovereignty in favour of the original sovereign cannot therefore be implied in the grant. On this rather involved argument the President of the Tribunal, Dr. Lammasch, observed (*Ibid.*, page 2016):—

"If it can be said on one side that there can be no implied reservation of sovereignty, can it not be said on the other side that there can be no implied abdication of sovereignty? The consequence would be that one must stick to the words of the treaty, and consider that it confers only that right which is expressed by the *ipsisimis verbis* of the treaty."

And in the end, "stick to the words of the treaty" is exactly what the Tribunal did on this question; it declined to read into the grant of fishing rights an additional restriction upon Great Britain's sovereignty not expressed in the *ipsissima verba* of the treaty.

*Conclusions to be drawn from the Cases and Opinions of Jurists discussed above:*

279. From the cases and opinions of jurists discussed above two clear rules of general international law emerge which are,

the Government of India submits, of fundamental importance for the decision of the present case. These rules are:—

- (1) There is a strong presumption of law in favour of a State's full power to exercise the normal rights of sovereignty within its own territory and against the existence of limitations upon that power.
- (2) This presumption in favour of the territorial State is only to be displaced in any given case by clear and unambiguous proof of its specific consent to the particular limitation to which its power to exercise its sovereignty is alleged to be subject.

280. The cases and opinions of jurists discussed above also entirely confirm and establish the proposition advanced in Part III, that a right of transit over another State's territory constitutes a limitation upon—a derogation from—the exercise of that State's territorial sovereignty. Moreover, they establish that this is so regardless of whether the right of transit is with or without immunity from the local law, and regardless of whether it should or should not be properly termed "an international servitude" or "a dismemberment of sovereignty".

281. Accordingly, the Government of India submits that a heavy burden of proof lies upon Portugal to establish by clear and unambiguous evidence the specific consent of the sovereigns of the territory lying between Daman and the enclaves to the rights of transit claimed by Portugal in this case.

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## PART V

THE ABSENCE OF ANY RESTRICTIONS ON SOVEREIGNTY  
IN GENERAL LAW WITH REGARD TO  
RIGHTS OF PASSAGE BY ROAD

282. When Counsel for the Government of India came to prepare this part of the Counter-Memorial a preliminary question arose. In what order were they to examine the claims invoked by the Portuguese Government? At first sight they felt inclined—if only to suit the Court's convenience—to adopt the order followed in the Portuguese Memorial, to which it was their duty to reply, and examine one after the other the treaties, custom and general principles of law. This, however, meant that our examination would bear first upon the alleged special claims of Portugal, special treaties and their application (or what Portugal will subsequently be calling local custom). It seemed, on the contrary, desirable that the express or implied expressions of the intention of the Parties or of their predecessors should be set within the framework of general law in the matter.

Professor Bourquin is therefore to be commended for having, in his oral statement to the Court on the afternoon of 3rd October, 1957 (Oral Proceedings, IV, p. 180) expressed his preference for first examining the claims arising out of general international law. On the other hand, we see no valid reason for inverting, as he did, the order followed in Article 38 of the Court's statute and for putting custom after the general principles of law or what it may be decided to regard as such.

283. Search for the general rules of law which may apply to the question of the alleged right of passage claimed by Portugal seems likely to be made easier if we first place on record that this right of passage between parts of the territory of a State and certain other parts included in the territory of another State is a right of international transit (we shall see that, in fact, and in the circumstances of the case, it leads inevitably a great deal further). Such, moreover, is the character which the Portuguese Government accords to this right in paragraph 117 of its Observations: the right claimed is "*simplement un droit de transit sur le territoire ...*" and which is defined as the right "*d'effectuer un trajet dont le point de départ et le point d'arrivée se trouvent situés en dehors du territoire traversé*". Need it be added that this right of transit necessarily implies the entry into the territory of the persons and goods that benefit by it, and that the statement to the contrary contained in the above-mentioned paragraph of the Portuguese Observations is hard to understand? Be that as it may, although the existence of enclaves is an exceptional situation, international transit from one

territory through another territory to the territory of a third State is a common phenomenon, so that it appears legitimate, if not essential, also and before all else to investigate the rules and principles governing transit.

284. Now there are no treaties, nor is there any unwritten rule of international law, either customary or deriving from general principles of law, which imposes upon States the duty of permitting the transit by land routes of persons and property coming from and proceeding to other States.

We think it unnecessary to revert to the observations already exchanged regarding the right of passage by air or sea. We would only mention that, as regards land territory, the single case of a right of passage cited by Professor Bourquin in reply to the arguments of Professor Guggenheim is that of diplomatic agents who have to pass through the territory of another State in order to rejoin their posts (Oral Proceedings, IV, p. 178). The Court will remember that this statement by Professor Bourquin was refuted on the strength of an opinion of Sir Cecil Hurst (Oral Proceedings, IV, p. 223), but the Court will no doubt think it unnecessary to dwell upon this particular question, since it obviously does not alter the fact that there are no general rules granting States a right to transit by land and it is a question, moreover, which finds its answer in a sense differing from that argued by Professor Bourquin.

285. The non-existence of a general rule for transit is the more remarkable because such a rule had been recognized as desirable as long ago as 1919 when the Covenant of the League of Nations, in Article 23, enjoined upon member States to take the necessary measures to secure the safeguarding and maintenance of the freedom of communications and transit. As already mentioned in paragraph 167 of the Preliminary Objection of the Government of India, the Permanent Court in its Advisory Opinion on *Railway Traffic between Lithuania and Poland* held that Article 23 of the Covenant was not enough to create an obligation upon Poland to grant the right of transit to Lithuania. Moreover, Article 23 of the Covenant was not reproduced in the Charter.

It is true that an attempt was made at Barcelona in 1921 to give substance to this principle, at any rate so far as it concerned waterways and railways. But the mere fact that this Conference was called emphasizes the gap in international law in this field. Professor Bourquin mentioned it in his lectures to the Academy of International Law in 1924 (*Recueil des Cours*, IV, p. 192) in the following terms:—

“Depuis plus d'un siècle, on admet que la mer territoriale se trouve grevée d'une servitude de passage, c'est-à-dire de transit, au profit de tous les pavillons. Depuis plus d'un siècle, on admet

également que le riverain d'amont d'un fleuve international possède un droit de transit à travers les sections inférieures de la voie d'eau.

Mais, jusqu'ici, aucune règle de droit, ni coutumière, ni conventionnelle, n'étendait au delà de ces limites relativement restreintes le principe de la liberté du transit. La convention de Barcelona se propose de combler, partiellement tout au moins, cette lacune."

As regards the limitation of the Convention to transit by waterways and railways we find in the same study the following explanation:—

"Si l'acte de Barcelona a limité l'objet de ses prescriptions aux transports ferroviaires et aux transports fluviaux, s'il s'est abstenu d'y soumettre les transports par routes et les transports aériens ce n'est point dans des raisons de principe qu'il faut en rechercher la cause, mais dans des raisons d'opportunité. La question du transit international par routes — c'est-à-dire, en fait, par automobiles — soulève, au point de vue douanier notamment, des difficultés assez complexes, et comme les transports internationaux par automobiles ne sont pas encore très développés, la Conférence de Barcelone a estimé que la solution du problème pouvait être différée sans inconvénient".

Finally, it should be recalled that, as already mentioned (see paragraph 160 above), even as regards transit by waterway and railway, the British and Portuguese Delegations present at the Barcelona Conference expressly agreed that the rules to be adopted would not extend to enclaves owing to the peculiar complexity of this problem. In any case, there can be no doubt at all that rules of custom concerning transit by road, do not exist.

286. What are we to conclude from this? We can only conclude that in the absence of special agreements or unwritten rules concerning particular cases, transit, and notably the granting or refusal of transit across the territory of a State, are matters coming within the exclusive sovereignty, i.e., the discretionary jurisdiction, of that State.

287. The Portuguese Government has, it is true, attempted to reject this conclusion by having recourse in its Observations (paragraphs 108-110) to certain subtle distinctions between *limitations to the exercise* of the right of sovereignty and the *abandonment* or *dismemberment* of sovereignty. As the only limitations in the Application submitted to the Court would be limitations of Indian sovereignty over the territory separating the enclaves from the Portuguese port of Daman, there would in the view of the Portuguese Government be no contradiction between the subject-matter of this case and the principle of exclusive territorial jurisdiction laid down in the arbitral award by Judge Huber (*Island of Palmas Case*) and in the decision given by Chief Justice Marshall (*Schooner Exchange Case*).

Expounding the same idea, Professor Bourquin said at the morning hearing of 3rd October, 1957 (Oral Proceedings, IV, p. 174)

that the exercise of a State's right as territorial sovereign to enact laws and regulations applicable to foreigners in its territory is subject to a smaller or larger extent to international obligations which may result from treaties concluded with foreign States, but which may also follow from rules of custom and general principles of law.

288. However interesting the proposed distinction and the comments on it may be, nothing in it affects the arguments of the Indian Government that transit through a State comes under the territorial sovereignty of that State, that, without a doubt, that territorial sovereignty may be waived, restricted or limited or regulated in its exercise by rules or obligations arising out of general or special agreements based on custom or general principles of law, but that it is nowhere asserted that as regards *transit* any such limitations, restrictions and regulations exist in general international law. In the absence, therefore, of proof of the existence of special titles (special agreements or usage), territorial sovereignty is an obstacle to the granting of a claim to transit by a Court which pronounces on the basis of law.

289. Which being said, there is no doubt that, although every State is in principle free to refuse the transit of foreign persons or goods by land or to allow it only within certain limits, there do in fact exist a very large number of treaties in which this right is waived. Even in the absence of such undertaking, most States, as a rule, authorize transit in time of peace subject to a few restrictions. It should also be repeated that international jurisprudence has not seen in this practice anything which shows the existence of a rule of custom, in the manifest absence of an *opinio juris*, the essential character of which is recognized in Article 38 (b) of the Court's Statute.

290. Such being the state of international law regarding transit in general, are there any rules which recognize the right of passage when the starting point and destination are situated in the territory of the same State, especially when one of the two points is part of an enclave?

The Portuguese Government has tried to show that such rules exist. There is, of course, no mention in its Memorial of any general treaty applicable in the matter. But paragraph 51 of its Memorial alleges—and the point is repeated in paragraph 149 and 151 of the Observations—that the existence of a general custom can be deduced from the practice existing in “a very large number of enclaves”.

This claim strikes us at once as peculiar, for when it is considered that the enclaves cited number six in all (excluding the case now in issue) and concern nine countries, it is difficult to suppose that any “general” practice can follow which may serve as a basis for a custom.

291. It is true that the Portuguese Government has annexed to its Observations a study by Professor Bauer on the system of enclaves and the right of passage subsequent to the Treaties of Westphalia. A strange study this, in which the author has collected all the clauses in treaties establishing rights of passage in favour of certain states against other states—Munster, the Pyrenees, Aix la Chapelle, Nymegen, Ryswyck, Raestad, the Paris Treaty of 1814, and the Final Act of Vienna of 1815, the 1919 Treaty of Versailles, and Germano-Polish agreements concerning freedom of transit signed in Paris and Breslau. Not a *single* case is quoted, in which the writer has been able to discover the existence of a right of transit in the absence of an agreement. How then can we infer the existence of a custom, especially when the provisions referred to are essentially different, some being limited to the movement of armed forces (e.g. Munster, I, p. 764 of the Annexes to the Portuguese Observations), others excluding armed forces (e.g. Breslau, I, p. 791) or providing for the transport of unarmed troops only, which have to travel separately (e.g. Paris, I, p. 788), while the more recent agreements cover only transport by rail?

292. It is noticeable, moreover, that Professor Bauer cites indiscriminately, as cases of enclaves, treaty texts referring to relations between a State and one of its enclaves separated from it by the territory of another State, these relations—very much alike moreover—establishing a right of communication between two States (USSR and Norway) across the territory of a third State (Finland) (I, p. 795) or even relations granting to continental States access to the sea (I, p. 763), such as the Treaty of Belgrade which favours communication between Yugoslavia and Salonica (I, p. 794), but these are quite obviously simple cases of transit where everyone agrees that there is no general rule of international law. If the fact of special agreements concluded in regard to transit—and their number is legion—is not enough to deduce from it the existence of a custom, why should it be otherwise in the case of enclaves proper?

293. A careful study of the material produced to support the cases of enclaves proper cited in the Memorial and repeated in the Observations only confirms this negative conclusion.

When we consider these cases and the rules governing the right of passage through the enclaves to other parts of the national territory, no general conclusion can be drawn which would confirm the existence of a general custom, as defined in Article 38, 1(b), i.e., "international custom, as evidence of a general practice accepted as law", and such as emerges from the Court's jurisprudence (P.C.I.J. Series A, No. 10, p. 28; I.C.J., Colombo-Peruvian Case, *Reports* 1950, pp. 276 etc.) No proof has been furnished of the existence of any *general* custom from which can be derived a right of passage from one enclave to another part of the national territory, parti-

cularly in view of the fact that the right of passage is always governed either by an agreement or, in some cases, by local usage which may be assimilated to an agreement because it is based upon more or less tacit consent. A quick look at the more important enclaves will support this conclusion.

(a) Let us take the case of Llívia, a small Spanish enclave in the French Pyrenees. Article 42 of the Pyrenees Treaty between France and Spain dated 7th November, 1659, and the Treaty of Llívia dated 12th November, 1660, regulated the right of passage by agreement. The Treaty of Llívia provided that goods should circulate freely exempt from all duties between Llívia and Puycerda (in Spain) and across the enclave, and that the same right of passage should be granted to persons of French or Spanish nationality. A treaty of 26th May, 1866, reorganizing the frontiers between France and Spain, confirms the right of passage granted in 1660 and specifies the route to be followed for the purpose (Article 21). Article 23 confirms the right of civilians to use the footpaths in this mountainous district; the police and the army are expressly excluded from enjoyment of that facility. Once again, then, the regulations are all embodied in agreements.

(b) The Italian enclave of Campione, a small area entirely surrounded by Swiss territory, forms part, however, of Swiss customs and monetary territory and is governed by the agreement of 5th October, 1861, between Switzerland and Italy concerning delimitation of the frontier between Lombardy and the Canton of Ticino for the purpose of certain matters in dispute. The right of passage in peacetime is regulated by the Convention on Navigation on Lake Maggiore and the Lake of Lugano concluded on 22nd October, 1923, which came into force on 5th November, 1927 (see especially Article 2). Switzerland has never authorised the passage of Italian troops across Swiss territory<sup>1</sup>.

(c) With regard to the German enclave of Busingen, in the Canton of Schaffhausen, its relations with Switzerland are also governed by treaty. The chief text is the agreement between Switzerland and the German Empire concerning the Baden Commune of Busingen, dated 21st September, 1895<sup>2</sup>, Article 1 of which provides for certain customs facilities and Article 2 of which regulates the transport of criminals over Swiss territory; there is also the exchange of notes 13th/14th November, 1928, concerning the movement of military personnel and members of the police over certain railway lines and certain frontier roads between Baden and Switzerland<sup>3</sup>. As no railway line passes through Busingen, the only provisions which apply are Chapters 3 to 7 which authorize the

<sup>1</sup> See Becker, *Die Rechtsverhältnisse an der Schweizergrenze*, Zurich, Theses 1931, 23.

<sup>2</sup> *Systematic Collection of Laws and Decrees of the Confederation*, 13, 683 etc.

<sup>3</sup> *Systematic Collection*, 13, 287.

passage over foreign territory of military and police personnel when they are few in number <sup>1</sup>. For the rest, Busingen enclave is regarded as part of the frontier zone and subject to the special regulations laid down for that zone <sup>2</sup>, in particular, the persons concerned must be in possession of identity papers (frontier card) which are required in order that they may benefit from the facilities granted to this traffic. There are no special facilities for the traffic of goods between Busingen and Germany; Busingen is excluded from German customs territory, but is theoretically incorporated in Swiss customs territory; in practice customs control between Switzerland and Busingen has been suspended. Accordingly we find that, in regard to Busingen, all questions relating to its special situation are governed by agreements; local usage does not enter into the matter even as a secondary consideration.

(d) In regard to the Dutch-Belgian enclaves of Bar-le-Nassau and Bar-le-Duc, their status is governed by an agreement between Belgium and the Netherlands dated 1842, and especially by its Article 14. Freedom of access to the two enclaves, of which Belgian Bar-le-Duc is surrounded by Dutch territory, while Bar-le-Nassau (Dutch) is situated within a Belgian enclave, is thus guaranteed by an international convention supplemented by local usage. Sovereignty over certain portions of land is disputed and has been brought as a case before the International Court of Justice (see *Reports 1957*, p. 194 etc.). During the First World War, the Netherlands successfully asserted their rights and duties as neutrals to forbid the passage through the enclave of German troops occupying Belgium.

294. To sum up, the facts and documents mentioned by the Portuguese Government, far from leading to the acknowledgment of the existence of a general custom recognizing the right of passage between the main territory of a State and its enclaves, lead to the conclusion that the solutions found for the problem by the States concerned were, as a rule, incorporated in special agreements and vary according to circumstances, which excludes all possibility of deducing from them any general rule of custom.

Perceiving this, the Portuguese Memorial seeks to buttress its short paragraph attempting to demonstrate the existence of a general custom (paragraph 51) by alleging general principles of law, the statement of which occupied the whole of the last part of the Memorial (paragraph 52-57), and to which first place was granted in the final recapitulation of the claims upon which the Portuguese Application was supported.

The Portuguese Observations were not content with recognizing this order of priority; they complied with it in the setting out of

<sup>1</sup> In an "Observation" interpreting Chapter 4, we read that the normal service for which passage is authorized does not extend to the suppression of disorder.

<sup>2</sup> German Swiss Convention of March 9, 1939, on frontier traffic. (*Systematic Collection of Laws and Decrees*, 13, 287).

their statement, dealing with general principles before setting forth the facts which they allege indicate a general custom.

295. Before replying to the concrete principles invoked by Portugal, the Government of India thinks that it should once again protest against the obvious absurdity committed by the Memorial when it claims to place the principles of public international law within this third source defined in the Court's Statute as

"the general principles of law recognized by civilised nations".

To the authorities already cited in paragraph 19 of the Preliminary Objections and in the oral hearings (Oral Proceedings, IV, p. 94 *et seq.* and p. 221 *et seq.*) one very important one has to be added. Commenting on the words "general principles of law", Professor Bourquin in his course of lectures delivered at The Hague in 1931 remarked as follows (*Recueil des Cours*, vol. 35, p. 73-74):

"les institutions juridiques dont le caractère universel est attesté par la *conformité des législations internes*. Celles-ci n'ont pas compétence assurément pour faire naître des normes internationales. Au regard du droit des gens, elles ne sont pas des *sources créatrices*. Mais leur *coïncidence* est tenue pour le *signe révélateur* d'une norme et constitue ainsi une source du droit des gens, si par source on entend simplement un moyen de *constatation*."

296. The point could not be better made. When it requests the Court to substitute, as a *source* of law to be applied by the Court, for the general principles of municipal law so defined, the principles of public international law as suggested in the Memorial, or to add them thereto, as proposed in its Observations, the Portuguese Government not only ignores the spirit of the Court's Statute, but endangers the positive character of international law by which disputes have to be settled if legal security is not to be imperilled.

For the "sources" are by definition manifestations and expressions of the law to be upheld by the Court, in the guise of treaties, customs or concordant municipal laws. But if we grant that this law comprises "principles" along with rules, where can we discover the existence of those principles except in treaties, customs and rules common to municipal laws? The Memorial itself recognizes in paragraph 123 that the rules of custom and treaty to which Portugal can also appeal are, in fact, only concrete manifestations of a general principle which they supplement by certain definitions. In other words, it is admitted that the general principles of public international law have no other content than that which arises out of rules of custom and treaty. It is impossible then to overlook the grave imprudence of building up these off-shoots of custom into independent, subjective and therefore, variable factors and of allowing them then to encroach upon the facts of international practice from which they originate and of modifying the legal import of those facts.



297. Does that mean that the Government of India disputes the existence of general principles of public international law such as M. Bourquin mentioned in his speech on the afternoon of 3rd October, 1951 (Oral Proceedings, IV, p. 182), and of the rights and duties of States to which the Portuguese Memorial refers in its paragraph 52? By no means. The Government of India does not dream of disputing that these notions play an important part in doctrine and in international life or that they express essential tendencies of the law, fundamental feelings and ideas which determine its growth. But quite obviously, they are only part of positive law to the extent that their application is attested by consultation with one or other of the sources in Article 38. Thus, the principle of State sovereignty mentioned by M. Bourquin is a rule of custom; so is the obligation upon the State, recalled by the Court in the Corfu case,

“not to allow its territory to be used for the purpose of acts contrary to the rights of other States”

whereas the principle of effectiveness, also invoked by Professor Bourquin, is only an indispensable element which ensures that every rule of international law shall be applied with due regard for political and legal realities. In none of these cases is there a general principle of law as provided for in Article 38 of the Statute nor an autonomous outcome of doctrine to which the Statute rightly assigns a role as an auxiliary source among the sources mentioned in Article 38 of the Statute, either by assimilating them to general principles of law or otherwise. By such a procedure, Portugal ascribes to these principles a value they do not possess and claims to deduce from them legal rules as being their corollary, arguing on grounds of pure logic without the least regard for facts.

298. That, nevertheless, is clearly the reasoning adopted by the Portuguese Government in paragraphs 52 *et seq.* of the Memorial and repeated in paragraphs 123 *et seq.* of the Observations. It begins by proclaiming the right of every State to existence, which nobody dreams of denying, and the Memorial adds in paragraph 56 a corollary which is not repeated in the Observations, and is in fact, superfluous, that “the exercise of sovereignty is limited by respect for the rights of others”; and from those premises it draws the quite gratuitous inference that right to existence includes the right to everything required by the existence of such a State, such as freedom of its communications between its principal territory and its enclaves.

This obviously begs the question. History is full of claims by governments of States which seek the satisfaction of vital interests; right of access to the sea, right to raw materials, right to markets, right of immigration, right to living space, and, before 1940, right to colonies, and similar political claims. Very often, partial satisfaction has been given to neighbouring States along lines compatible

with the country's own interests. These claims are the origin of numerous agreements which accepted them within well-defined limits. But when has it ever been suggested that they could usefully be advanced before an arbitral or judicial body to be judged on the basis of law?

299. There remains the hesitating and intermittent endeavour by the Portuguese Government to have recourse to the general principles of law proper.

Brief mention of this is made in one line of the Application, under paragraph 21 (c) where the principle of the right of passage is said to be

“dédruit des législations internes, qui donne un droit d'accès au titulaire d'une propriété enclavée”.

Not a word is said about this in the Memorial. Moreover, it had appeared to the Government of India that paragraph 42 had no other purpose than to sever all connection between its claims and the so-called theory of an international servitude “more or less analogous to those of private law”.

In the Observations, however, this argument is repeated, though briefly (paragraph 134), and supported by a consultation with Dr. Max Rheinstein, who analyses the laws of 62 States and finds in them the existence of the compulsory right of passage in favour of any holder of an enclaved property as against all or some of the neighbouring lands.

We must therefore reply to this argument.

300. Sir Frank Soskice has already given in his speech of 27th September, 1957 (Oral Proceedings, IV, p. 86 *et seq.*) the reasons why a servitude of private law cannot be transferred to the international plane. There is no real analogy between an individual's ownership of private property and the sovereignty of a State over its territory, this latter being regarded in our days as the space within which the organs of the state are authorized by international law to exercise their jurisdiction within the limits and according to the rules which the law imposes upon them (cf. W. Burckhardt, *Die Organisation der Rechtsgemeinschaft*, 369; Schoenborn, “*La nature juridique du territoire*”, *Academy of International Law, Recueil des Cours*, 1929, V, 91 etc.).

Nor can any legal effects be drawn from such an assimilation; in particular it would be incautious to decide that an obligation upon a State to suffer or to refrain from something under an international convention or in virtue of usage which could be assimilated to a tacit agreement should subject the territory to its authority and automatically be binding upon successor States.

Summing up, rules inspired by private law can only usefully be applied to promised acts of abstention or toleration when the establishment of the servitude has been expressly mentioned in an international agreement.

No doubt it was this last consideration which led Sir Hersch Lauterpacht and others to confine the use of the notion of servitude in international law to restrictions of sovereignty resulting from a treaty (servitudes *juris gentium voluntariae*), excluding "natural" restrictions of territorial sovereignty (servitudes *juris gentium naturales*).

301. Limited in this way, the notion of servitude altogether ceases to be the subject of a general principle of law, but can only serve to interpret international agreements in which there is a reference to it, which reference must be regarded as expressing the common agreement of the Parties to have recourse to private law in order to determine the nature and effects of the advantage granted by one of the parties to the other.

Professor Bourquin, however, at the end of his rejoinder (Oral Proceedings, IV, pp. 266 to 268) attempted to give an ingenious explanation of the two successive changes of front which Counsel for India had noted in the attitude of their opponents in the matter of servitudes. The Portuguese Government in its Memorial had solemnly repudiated all appeal to this notion; but, in doing so, it said, it rejected only the technical use of the notion of international servitude, while retaining recourse to a general principle which in the various laws of countries is described as a servitude.

Such a declaration is said to be in no contradiction with the opinion expressed by Sir Hersch Lauterpacht, who upholds on this point the doctrine accepted by his predecessor, Professor Oppenheim. These lawyers had confined the use of the term "servitude" to cases in which express or tacit reference to it was contained in an international agreement. They never intended to exclude the general transfer to the plane of international law, apart from any international agreement, of rules known to private law as "servitudes" and to which the name of "servitude" should not be preserved in international law.

In a word, we are told, this is merely a question of terminology, the Portuguese Government having intended to adopt the terminology accepted by the above-mentioned British lawyers without there being any reason to deduce from it the legal consequences which Counsel for India had deduced.

302. However clever this explanation, it does not seem to us to be compatible either with the terms of the Memorial or with the works we cited in our Preliminary Objection, for, when it rejected the theory of servitudes, the Memorial was careful to describe it "as more or less analogous to those of private law". But in every country which is familiar with the notion of servitudes—and they constitute the majority of the States whose laws were analysed by Dr. Rheinstein—the compulsory right of passage is regarded before all others as a servitude "established by law". It is therefore not plausible to suppose that, at the moment when the Portuguese Government denied all intention of taking its stand upon the

notion of international servitude and rejecting all analogy between the right of passage claimed and the similar right known to municipal law as a servitude, it intended to retain that analogy as the foundation of the right it was claiming, but under another name.

303. The same applies to the thesis put forward by Sir Hersch Lauterpacht in his treatise. When he limits the notion of international servitude to certain restrictions of sovereignty resulting from agreements, excluding restrictions arising from the general rule of law, no matter what the analogies may be in private law, we cannot view this as a terminological whim which would accept the analogy as justifying the inclusion of the rule of private law in international law at the same time that it rejects the term servitude common in private law, a term which is elsewhere accepted. The reason apparently is that only an express or implied reference in a treaty to the establishment of servitudes in private law seems to Sir Hersch Lauterpacht to justify recourse to its rules. This, at any rate, appears to follow clearly from the arguments contained in the book "Private Law Sources and Analogies of International Law", pp. 121 & 122, where attention is drawn to "the grave consequences attaching to the construction of an international obligation as a servitude" and to the necessity of resorting to it only "when there is no doubt that the parties intended it to be a permanent relation independently of who is the sovereign of the entitled or encumbered territory".

This is practically the point of view sanctioned by the arbitral award given in the case of the *North Atlantic Fisheries*.

304. Does it follow that there are no other restrictions upon territorial sovereignty than those laid down in agreements? Not at all, and Professor Guggenheim was careful in his oral statement before the Court to recall the restrictions upon maritime navigation, whose basis in custom is beyond all doubt. What we deny is that such limitations can be derived from general principles of law in favour of highly questionable analogies with servitudes recognized in private law.

305. We have to state that the Portuguese Government has cited in support of its case no writings by a publicist nor any decision of the courts, while it was careful to make no comment at all upon the extracts from Sibert, Crusen, Vali, Reid, or on the extracts from arbitral or judicial decisions reproduced in paragraphs 164 to 168 of the Preliminary Objection.

306. Summing up, it appears to us to follow clearly from the foregoing that no compulsory right of passage can be inferred from the general principles of law either in favour of States possessing enclaves or in favour of continental States desiring access to the sea.

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## PART VI

THE ABSENCE OF ANY OBLIGATION WITH REGARD TO  
RIGHTS OF PASSAGE DERIVING FROM SPECIAL  
TREATIES OR SO-CALLED LOCAL CUSTOM

307. Portugal also puts forward in her Application and Memorial as particular legal bases of her claim, certain alleged treaties and an alleged local custom said to result from an ancient, continuous and uniform usage with respect to transit between Daman and the enclaves. She maintains that the alleged local custom amounts to a historic title to the rights which she claims but she concedes that it really makes no difference whether this alleged basis of her claim is treated as raising a case of "historic title" or simply "local custom". Essentially, therefore, the particular legal bases on which Portugal relies are treaty and local custom and there is no need for the Government of India to make any special reference to Portugal's claim to a historic title.

308. When considering in detail the evidence and arguments of the Portuguese Government in regard to the alleged treaty right and local custom, it is necessary to keep in mind the two rules of general international law concerning limitations upon the exercise of territorial sovereignty which are set out in paragraph 279 above. Under those rules there is a strong presumption against the existence of a limitation upon India's full power to exercise the normal rights of sovereignty within her own territory. Under these rules Portugal can only displace this presumption which exists in favour of India by *submitting clear and unambiguous proof of the specific agreement* of the territorial sovereign to the rights of transit claimed by Portugal. It follows that both the alleged treaty right of transit and the alleged local customary right must clearly and irresistibly appear from the evidence submitted to the Court.

Portugal finds the origin of both her particular bases of claim—both the alleged treaty right and the alleged local custom—in transactions of the Maratha period. Later transactions are represented simply as applications and developments of the situation created by the "Treaty of Punem of 1779" and by the "Sanads" giving effect to that Treaty. In the view of the Government of India, it is a fatal flaw in the alleged treaty right and in the alleged local custom that they are stated to have their origin in the Maratha period. For the whole Portuguese argument in regard to the transactions of the Maratha period is founded on a fundamental misconception concerning the legal relation which then existed between the Maratha Rulers and Portugal with respect to the enclaves. This misconception is the mistaken assumption by Portugal that

the "Treaty of Punem" and the "Sanads" operated as a cession of the sovereignty of the enclaves to the Crown of Portugal. As has been pointed out in Part II above, under these instruments Portugal obtained merely a feudal tenure of the revenues of the enclaves and a tenure which was revocable at the will of the Maratha Rulers. The feudal and revocable nature of this tenure, as is explained below, is totally incompatible with Portugal's thesis that during the Maratha period she possessed under the alleged treaty and by local custom rights of transit for the exercise of Portuguese *sovereignty* in the enclaves. In short, Portugal's misconception as to the nature of the tenure altogether invalidates her particular bases of claim—both treaty and local custom—in the Maratha period. The point has such far reaching consequences for the whole Portuguese case on treaty and local custom that it seems logical to discuss first Portugal's position during the Maratha period in regard both to treaty and local custom.

#### THE MARATHA PERIOD (1774-1818)

##### *Treaty*

309. In its Application (paragraphs 6-8), the Portuguese Government claimed that its title to rights of transit between Daman and the enclaves of Dadra and Nagar Aveli was "acknowledged" (*reconnu*) in the "Treaty of Punem of 1779" "between Portugal and the sovereign of Punem, who at the time had dominion over the territories of Dadra and Nagar Aveli". "It emerges from the said Treaty", the Application continues, "that the Parties to it, in addition to agreeing on the transfer of sovereignty over the territories in question, had the intention of creating and actually created a right of passage between the Portuguese territory of Damão (littoral Damão) and the enclaves ceded and from each of these enclaves to each other. Such right has thus belonged to Portugal since that date, as a natural and indispensable complement of its sovereignty over the enclaves."

310. In fact, the document of 17th December, 1779, which is described by the Portuguese Government as the "Treaty of Punem", does not contain any reference whatever to a grant of rights of passage in favour of Portugal. The Portuguese Government is therefore compelled to argue that the permanent rights of passage between Daman and the enclaves, to which it now lays claim, are derived by implication from the so-called "Treaty of Punem", and the Portuguese claim to a treaty right is expressly put in this way in paragraphs 13 to 16 of the Memorial. The Portuguese Government there asserts that in Article 17 of the "Treaty" the Maratha Ruler undertook to cede to Portugal the *sovereignty* of villages to the value of 12,000 rupees and that afterwards it was the villages of the Pargana of Nagar Aveli and the village of Dadra which were

so ceded in full sovereignty to Portugal. It then contends that, by necessary implication from these alleged grants of the villages of the enclaves to Portugal in full sovereignty, she was given rights of transit between Daman and the enclaves under the Treaty "as an indispensable condition of the exercise of her sovereignty".

311. The fallacious character of the Portuguese argument clearly appears from the careful analysis of the contents of documents of 4th May, 1779/11th January, 1780, and the 17th December, 1779, the various translations made of these documents, the negotiations which preceded the drafting of these documents and of the grants subsequently made by the Marathas. There is more than one serious objection to Portugal's thesis that she obtained the alleged rights of transit under a treaty as a necessary inference from a grant of the sovereignty of the villages of the enclaves. The first is that the documents of 17th December, 1779, and 4th May, 1779/11th January, 1780, did not constitute a treaty between the Marathas and the Portuguese. Quite apart from the fact that the Portuguese never formally accepted or approved the Maratha document of 17th December 1779, they did not even know what was in that document; the Parties were not *ad idem*. Further, the text of Article 17 as it obtains in the Marathi original of the document of 17th December, 1779, and the Portuguese original of the document of 4th May, 1779/11th January, 1780, makes it clear that what that Article 17 contemplated was merely a grant of revenue of 12,000 rupees per annum from villages under Maratha sovereignty and continuing to be under Maratha sovereignty, and the grant of the revenues was to be in a tenure known as Saranjam or Jagir, which was a grant revocable and terminable at the discretion of the Maratha Ruler. This means that it is impossible to presume from Article 17 that the Maratha Ruler intended, as a necessary implication from his grant, that Portugal should have rights of transit for *troops, police, officials, individuals, including foreigners, and goods to the full extent necessary for the effective exercise of Portuguese sovereignty in the enclaves*. Portugal, in basing her claims on the "Treaty of Punem", places great weight on the principle of "effectiveness" as a principle of the interpretation of treaties. But, even if full value is given to that principle in the interpretation of the "Treaty of Punem", it does not follow at all that Portugal is entitled to the rights of transit which she now claims. The principle of effectiveness does not extend beyond reading into a treaty ancillary provisions which are essential to the effectiveness of rights actually and expressly granted in the treaty. It would be completely unwarranted application of this principle to imply from the grant of *revenues*, the extensive transit rights for the exercise of *sovereignty* which Portugal now claims.

312. The second objection to the Portuguese argument is that, assuming a treaty existed between the Portuguese and the Marathas,

it is absolutely clear that the villages the revenues of which were actually assigned in 1783 and 1785 were not in the contemplation of the Parties in 1779: no villages were mentioned in Article 17; and the abortive grant of 1780 related to the revenue of villages which were contiguous to Daman and not away from it.

The third great objection to the Portuguese thesis is that the grants made to Portugal in 1783 and 1785 were grants in Saranjam tenure, a revenue tenure which is revocable at will. The revocable nature of these grants is abundantly proved by the evidence examined in paragraphs 84 to 106 above and in particular by the fact that on three separate occasions the Maratha Ruler did in fact exercise his sovereign rights and temporarily attached the Saranjam for the purpose of paying himself a debt owed to him by the Portuguese (paragraph 99 to 101 above). It is further proved by the fact that in 1817, immediately before the Marathas lost their power to the British, the Maratha Government had actually resolved upon revoking the Saranjam of Nagar Aveli on the ground that "of late no services had been rendered by the Portuguese to the Ruler". (See paragraph 105 above.)

313. In the submission of the Government of India, the revocable nature of the tenure granted to the Portuguese, the periodic attachment of the revenue and the resolution to revoke the tenure establish beyond any possibility of question that in 1779 the Maratha Ruler did not intend to, and did not in fact, cede the sovereignty of the enclaves to Portugal. They thus provide a third, overwhelming reason why it is impossible to imply in favour of Portugal the rights of transit which she claims "to the full extent necessary for the effective exercise of her sovereignty over the enclaves".

The revocable nature of the Portuguese tenure and the resolution of the Marathas actually to revoke it in 1817 are also inconsistent with Portugal's thesis from another point of view. Portugal claims that under the "Treaty of Punem" she obtained by necessary implication permanent rights of transit over the intervening territory which would be binding on the Powers which afterwards succeeded to the sovereignty of that territory. In the submission of the Government of India, there is no possible legal basis for implying from a *revocable* grant of *revenue, permanent* rights for the purpose of exercising *sovereignty*.

314. In its Memorial (paragraph 45), the Portuguese Government also relied on another so-called convention of 1785, the text of which it set out in Portuguese Annex 8. This instrument is apparently described in the Portuguese official register as an agreement for the handing over of the Pargana of Nagar Aveli by the Maratha Ruler to Portugal and for insuring that it should be maintained in the condition fixed by the terms of the agreement. Article 11 of the instrument provided that the Portuguese were forbidden to build any post or fortress in the Pargana and were under an obligation to



suppress any rebellion by Kolis in the Pargana. Portugal contends that the latter provision confirms that the grant of the sovereignty of the enclaves to Portugal in the Treaty of 1779 included a right of military transit, for the despatch of military forces would be essential for the maintenance or re-establishment of order.

315. This interpretation of Article 11 is, however, founded on the false premise that Portugal had acquired the sovereignty of the enclaves and that it was rebellion against Portuguese sovereignty with which Article 11 was concerned. This instrument has to be read in the light of the fact that the enclaves had been granted to Portugal not in sovereignty but in a feudal tenure. Article 11 required the Portuguese, as the feudal service to be rendered to the Maratha Ruler, to repress any rebellion in the enclaves against the Marathas, not against Portugal. The Portuguese were forbidden to construct any post or fortress, since these would constitute a Portuguese threat to Maratha sovereignty in the enclaves. Accordingly, the instrument of 1785 provides no basis for saying that the Maratha Ruler had granted the Portuguese a right of military transit between Daman and the enclaves for the effective exercise of Portuguese sovereignty.

#### *Local Custom*

316. The burden of proof which lies upon Portugal, it may be repeated, is to show by clear evidence the specific acceptance by the Maratha Rulers of an obligation to allow the transit of Portuguese armed forces, police, officials etc., for the effective exercise of Portuguese sovereignty in the enclaves. Accordingly, any usage with respect to transit during the Maratha period is only relevant to the extent that it proves the specific agreement of the Maratha Rulers to submit to the transit rights alleged by Portugal. Mere proof of usage is not enough; the usage must provide unequivocal evidence of the agreement of the Marathas to accord to Portugal a right of transit for the effective exercise of Portuguese sovereignty in the enclaves. Nor is it, strictly speaking, a question of showing an *opinio juris* on the part of the Marathas when allowing transit; it is a question of proving their specific agreement to grant Portugal a right of transit. The Government of India does not dispute that during the Maratha period Portugal had agents in Dadra and Nagar-Aveli for the collection of the revenues granted to her. The extracts from the Maratha account books and other important documents submitted to the Court in Indian Annexes C and E are clear enough evidence of that fact. But this evidence is at the same time completely fatal to Portugal's contention that during the Maratha period a local custom was established recognizing that she possessed rights of transit for troops, police, persons (including foreigners) and goods between Daman and the enclaves of her sovereignty.

317. The reason is that, as previously stressed, the evidence proves conclusively that during the Maratha period Portugal's position in the enclaves was not that of a sovereign but of a grantee of revenue under a feudal tenure revocable by the Maratha Ruler. The Maratha Rulers not only themselves retained revenue rights in the enclaves but at times intervened in Portugal's collection of revenue in the enclaves, sending their own agents to attach the revenues for themselves. In short, it is clear from the evidence that such activity as there may have been by Portuguese agents in the enclaves at this period was carried out under the authority of the Maratha Rulers and merely for the collection of revenue. This fact excludes the possibility of a local custom at this time under which Portugal exercised rights of transit for the effective exercise of *Portuguese* sovereignty in the enclaves.

318. Under the intertemporal law Portuguese acts with respect to the enclaves must be interpreted by reference to the legal regime in force at the time. Since Portugal did not have sovereignty in the enclaves, there could be no question of rights of transit for the exercise of such sovereignty. Any transit between Daman and the enclaves that may in fact have occurred would be explicable by reference to the revenue rights in the enclaves which Portugal held under limited and revocable tenure from the Marathas. Any Portuguese agent making the transit would do so in the quality of one engaged in business under the jurisdiction of the Maratha Government and having its authority to enter Maratha territory for such business. The very facts of the situation and the legal relation between Portugal and the Marathas are totally incompatible with any intention on the part of the Marathas to grant to Portugal rights of transit for the exercise of *Portuguese* sovereignty in the enclaves. Individual cases of transit at that time could not, therefore, provide any evidence of an agreement by the Maratha Rulers to grant to Portugal rights of transit of the kind which she now claims.

319. In the Memorial Portugal did not produce any instance of military passage from Daman to Nagar Aveli during the Maratha period. She claimed that a military right of passage was illustrated in letters from a Portuguese official to a Maratha official in which the Portuguese official had threatened to take military action against the Marathas. However, even that correspondence fails to show any assertion of a legal right of passage on part of the Portuguese official, or the acknowledgment of such right by the Maratha official. A threat to take military action against the territorial State does not amount to asserting a legal right to enter its territory or to pass over it. Moreover, a Treaty of 1741 expressly forbade the entry of Portuguese armed forces into Maratha territory.

THE DISPLACEMENT OF THE MARATHA RULERS BY THE BRITISH AND  
THE ASSUMPTION BY PORTUGAL OF THE SOVEREIGNTY  
OF THE ENCLAVES

320. If the Government of India is correct in its submission that, by reason of the feudal and revenue character of the Portuguese tenure of the enclaves, no rights of transit for the exercise of sovereignty in the enclaves could arise in favour of Portugal during the Maratha period, then it clearly follows that, on the termination of Maratha rule in 1818, the British and Portuguese started with a clean slate with respect to the question of transit. If formerly Portugal had no right of transit, either by treaty or local custom, across Maratha territory to the enclaves, she certainly would not acquire one by the mere fact of the conquest and annexation of Maratha territory by the British. If formerly the Marathas were under no obligation, either by treaty or local custom, to accord rights of transit to Portugal, there could be no question of a British succession to a Maratha obligation.

321. The British conquest of the Maratha Ruler and annexation of his territories in 1818, it must be emphasised, resulted in a fundamental change in the sovereignty of the enclaves as well as in that of the territory over which Portugal now claims rights of transit. On defeating the Maratha Ruler, the British compelled him to execute a formal cession to the British Crown of all his territories in the Northern Konkan which, in principle, included Dadra and Nagar Aveli no less than the territory lying between them and Daman. The British, apparently unaware of the limited nature of the Maratha grant to the Portuguese and under the impression that the Portuguese had captured the enclaves, made no attempt to oust the Portuguese agents from them. The Portuguese, on their side, seem simply to have suppressed the fact that they held the enclaves only in Saranjam tenure and to have misrepresented themselves as entitled to them in full sovereignty. At any rate, they unobtrusively assumed the sovereignty of the enclaves as against the British.

322. In 1818, therefore, the position was that both Portugal and the British, though in different ways, had succeeded by annexation to territory formerly under the sovereignty of the Marathas. An entirely new situation had arisen with respect to the sovereignty both of the enclaves and the territory over which Portugal now claims rights of transit. This new situation was altogether incompatible with Portugal having rights against the British for the exercise of Portuguese sovereignty in the enclaves. For the assertion of Portuguese sovereignty in the enclaves was a usurpation of the rights of the British obtained by annexation and cession from the Maratha Ruler.

323. Accordingly the Government of India submits that in 1818:  
(1) No obligation of any kind rested on the British to allow transit

to Portuguese armed forces, police, officials, etc. between Daman and the enclaves for the exercise of Portuguese sovereignty in the latter; (2) any subsequent exercise of Portuguese sovereignty in the enclaves was in opposition to the British title to the enclaves and could not, therefore, form the basis of a Portuguese claim to transit across British territory.

#### THE BRITISH AND POST-BRITISH PERIOD

324. Portugal, therefore, is in the position that she can only succeed in establishing a particular basis for her claim by proving that she acquired the rights of transit which she claims either in a particular treaty or by local custom after 1818. And she can only do so by clear and unambiguous proof of the specific agreement of the British or Indian Governments to grant her those rights. The facts set out in Parts I and II above show that for a long time after 1818 a regime of easy travel and intercourse prevailed throughout India and that from a spirit of neighbourliness concessions and privileges were from time to time allowed to the Portuguese with respect to transit. They also show that from time to time reciprocal administrative arrangements were made to smooth the day-to-day commerce and administration of the respective British and Portuguese territories. It cannot, however, be too strongly emphasized that in law there is a wide gulf fixed between such neighbourly concessions and arrangements and the legal rights which Portugal claims in this case. Every State from time to time makes such concessions or arrangements for the benefit of a neighbouring State without having any intention of conferring rights, and least of all permanent rights, on the latter. It would have a most damaging effect on the day-to-day relations between States if they could not safely make such concessions or enter into such friendly working arrangements without afterwards being held to have created permanent restrictions on their sovereignty. There is a vast difference between an intention to make a concession or to enter into working arrangement for mutual convenience and an intention to submit to a permanent restriction of territorial sovereignty.

325. Accordingly, it is not enough for Portugal merely to point to a number of occasions when transit was allowed or to a number of working arrangements in force from time to time. Portugal has to make out from the evidence to the satisfaction of the Court that on some occasion or occasions or in some particular agreement or agreements, the British or Indian Governments evinced a clear intention to confer the permanent rights of transit on Portugal which she claims. Mere invocations of examples of transit or of a working arrangement do not, in the view of the Government of India, advance the Portuguese case at all.

326. In fact, as the analysis of the evidence given below shows, the concessions and agreements made during the British period

with respect to transit were all of the neighbourly practical kind into which States freely enter without in any way intending to accept permanent limitations of their sovereignty. Neither the particular "treaties" adduced by Portugal nor the particular examples of transit afford proof of any agreement by the British to confer permanent rights of transit on Portugal for the exercise of her sovereignty in the enclaves.

### *Treaty*

327. In the period between 1818, when British sovereignty was established, and 1879, when the Anglo-Portuguese Treaty of Commerce and Extradition came into force, only two arrangements were made relating in any way to communications between Daman and the enclaves. These were the arrangements of 1819 (paragraph 118 above) and 1861 (paragraph 129 above), both dealing with the import into Daman of produce of Nagar Aveli.

328. The correspondence by means of which the arrangement of 1819 was made shows clearly that this arrangement did not constitute any permanent ground of a right of passage between Daman and the enclaves. The arrangement applied only to products of Nagar Aveli being sent to Daman. It did not apply to any goods moving in the opposite direction. And when the Portuguese asked, in 1844, that articles exported from Daman to Nagar Aveli might be exempt from British customs duties, the British refused to agree (paragraph 123 above). Thus, all that the British authorities granted by the arrangement of 1818 was an exemption from customs duties on certain goods passing out of British India into Daman. This exemption, moreover, was granted on a reciprocal basis, for at the same time the Portuguese authorities agreed that the inhabitants of the British district of Bagwara should be allowed to remove certain goods from Nagar Aveli without payment of any duties. It is also to be noted that the arrangement did not confer upon the Portuguese any absolute right to send any articles through British territory. Its effect was simply that certain articles, if allowed to pass through British territory, should not be subjected to customs duties.

329. Not only was this arrangement of a very limited character, and quite unlike the general right of transit for goods between Daman and the enclaves claimed by Portugal in her Memorial, it also lacked the character of permanence. This appears perfectly clearly from the fact that the British authorities in fact terminated it as soon as they discovered that it was being abused. As has been seen, the arrangement was brought formally to an end in May, 1849. It is obvious from the correspondence that the British Government had no doubt of their right to terminate the arrangement whenever they chose. The Portuguese Government, too, seems to have shared

this opinion, for there is no trace in the correspondence of any protest or complaint by them at the termination of the arrangement.

330. Thus, the arrangement of 1819 was typical of the friendly arrangements made for convenience by neighbour states without any intention of creating, and without, in fact, creating, any permanent or irrevocable rights.

331. The arrangement made in 1861 was an exact repetition of that of 1819. It applied once more only to produce of Nagar Aveli being imported into Daman; it was necessary, as it had been under the arrangement of 1819, for the goods to be certified as produce of Nagar Aveli by the Governor of Daman; and all that was conferred was an exemption from customs duty, not an absolute right of transit. The observations made about the arrangement of 1819 are therefore even more applicable to that of 1861.

332. In 1878 was made the Anglo-Portuguese Treaty of Commerce and Extradition. This treaty did establish, by Article 1, "reciprocal freedom of commerce, navigation and transit between the Indian dominions of" Great Britain and Portugal. It also contained other provisions which have been summarized in paragraph 139 above. As a source of the rights which Portugal now claims, however, the treaty can be dismissed at once because by its express provisions it was only a temporary arrangement. Article 22 provided that it should remain in force for 12 years, after which either party might give notice of terminating it, and only if no such notice were given, was it to continue for a further period. The British Government in fact gave notice of terminating the treaty at the earliest opportunity, i.e., at the end of the first period of 12 years. The treaty, therefore, ceased to have any effect in January, 1892. Whatever rights the treaty may have created during the period of its validity, it has not conferred any rights or imposed any obligations since 1892.

333. The treaty having thus lapsed, another arrangement relating to the transit of goods was made, but this time of very much more limited operation than the arrangements of 1819 and 1861. After the termination of the treaty, the Portuguese authorities asked for free transit through British territory of all products passing in either direction between Daman and the enclaves. This the British Government refused to grant. They did, however, allow rice produced in Nagar Aveli to enter Daman free of duty. It is hardly necessary to point out that this concession bore no resemblance whatever to a special right of transit, and had nothing whatever to do with the maintenance of Portuguese sovereignty in the enclaves. Moreover, it was once more only a temporary arrangement, terminable at the will of the British Government. As soon as 1895 it became clear that the concessions had been inevitably subject to abuse, and the British authorities promptly withdrew it.

334. No other agreement or arrangement was ever made granting to the Portuguese any right to send goods, or any exemption from customs duty of goods sent, between Daman and the enclaves. There were various occasions on which the Portuguese tried in vain to obtain such concessions, and some of these will be mentioned below for the light which they throw on the Portuguese allegation of the existence of a local custom giving rise to the rights which Portugal now claims.

335. There were certain arrangements made at different times between the British and Portuguese Governments for the entry of police of either power into the territory of the other. An examination of these arrangements shows plainly that they never gave rise to any such general right as is now claimed under which Portuguese police in any numbers could cross British territory simply for the purpose of maintaining Portuguese sovereignty in the enclaves. On the contrary, these arrangements were in each case either temporary or of a most carefully limited scope.

336. The first such arrangement was made in 1913. Difficulties having arisen because four armed British policemen passed through Goa escorting two prisoners without previous notice to the Portuguese authorities, the two Governments arrived at a reciprocal arrangement. By this arrangement, police of either party were allowed to pass through territory of the other when it was necessary for them to do so in discharge of their duties. It is to be observed that the negotiations leading to this arrangement arose out of an incident concerning merely four policemen escorting two prisoners. It is clear from the correspondence that what the parties had in mind was the passage of such small bodies of police in the ordinary discharge of their duty. They did not contemplate anything like the passage of a large body of police for the purpose of quelling a popular insurrection. This inference is supported by the fact that the British Government in agreeing to the arrangement expressly stipulated that it did not extend to armed troops.

337. An agreement about the entry of British police officers into Portuguese territory and vice versa, was made between the Government of Bombay and the Government of Portuguese India in 1920. This agreement provided that armed police of either party might enter the territory of the other in actual pursuit of an offender, but might not otherwise enter the territory of the other party while escorting prisoners without first obtaining that other party's permission. It also laid down conditions on which the police of either party might enter the territory of the other for the purpose of carrying out duties or investigating offences. It did not confer upon either party any right of sending police into the territory of the other simply for the purpose of transit. It is thus irrelevant to the claims made by Portugal in the present proceedings. The last of the arrangements relating to the police was made in 1940. This was an

agreement for transit. However, it referred only to the main road between Daman and Nagar Aveli; it was a reciprocal arrangement, this road passing more than once into and out of the territory of either power; it permitted the passage only of parties of police not exceeding ten in number and it required twenty-four hours notice to be given. It is quite clear, therefore, that this arrangement also fell far short of the granting of a right for the purpose of the full exercise of Portuguese sovereignty in the enclaves. Moreover, the records of the Governor of Bombay do not indicate that the Portuguese authorities ever tried to make any use of this arrangement.

338. One other arrangement which should be noticed was that made in 1908 for the carriage by British and Portuguese officers of their personal arms through Portuguese or British territory, respectively. The two Governments agreed that British officers passing through Goa on their way from one part to another of British territory should be allowed to carry their firearms without let or hindrance, and a similar concession should be allowed to Portuguese officers passing directly through British territory from one part of Portuguese territory to another. This arrangement, it will be noted, did not apply to any consignments of firearms but only to the personal arms carried by officers. It therefore had nothing to do either with the maintenance of communication between Daman and Nagar Aveli or with the exercise of Portuguese sovereignty.

339. Throughout the period from the origin of British sovereignty in 1817 to the insurrection in the enclaves in 1954, no agreement was ever made conferring upon the Portuguese Government any right at all to send military forces into British territory. Article 18 of the treaty of 1878 did, as has been seen, provide that the armed forces of one party might enter the Indian dominions of the other at the request of that other, or for rendering mutual assistance under the terms of the treaty, or for the purposes specified in former treaties (which have been shown to be irrelevant to the present case). Apart from these special cases, Article 18 provided expressly that the armed forces of one party should not enter the Indian dominions of the other. Since 1817, therefore, there has never been any arrangement or agreement upon which the Portuguese Government could rely for a right to send troops from Daman to the enclaves or vice versa.

#### *Local Custom*

340. In considering the evidence of local custom during the British period, it is necessary first, to recall that Portugal, in order to establish her claim, must show not a mere usage, but something amounting to a specific agreement by the British authorities, granting to Portugal a right of transit. Very little need be added



to the summary already given of the history of the territory for the purpose of showing that no such agreement was ever made.

341. As regards the transit of goods, the very agreements which have already been discussed are, themselves, evidence of the absence of any local custom such as that upon which Portugal relies. These agreements were not made for the purpose of regularizing or, as it were, codifying the existing practices. Rather, on each occasion the Portuguese complained of existing circumstances and asked that an agreement be made to change them. In 1848, and again in 1895, when the British Government terminated such arrangements, they did so expressly because the arrangements having been abused, they desired to revert to the different position which in each case had obtained before the arrangement was made. It is clear, therefore, that this is not a case in which express agreements can themselves be put forward as evidence of the existence of a custom. Moreover, the same conclusion is supported by the many attempts which were made by the Portuguese after 1895 to obtain a re-grant of the exemption from duty of rice grown in Nagar Aveli, and, also from the series of proposals put forward by them between 1909 and 1923 in the negotiations arising out of the smuggling of liquor from Portuguese territory into British territory and the steps taken by the British Government to prevent it. Had a local custom existed by which the Portuguese were entitled to free transit of goods between Daman and the enclaves, they would have had no reason to ask the British Government, as they repeatedly did on the occasions just mentioned, to grant either particular or special exemptions. The position, indeed, is even clearer than this. As has been shown, there were numerous occasions on which the British Government prevented transit of certain goods between Daman and the enclaves. Most of these prohibitions were directed to stop the distilling of liquor in Portuguese territory, an operation which for the Portuguese Government was financially very important. On none of these occasions, however, did the Portuguese Government even allege that there was any local custom which the British embargo was violating.

342. With respect to passage of troops, passage of police (subject to the particular agreement of 1920 already noticed), and transit of arms, the position is the same. In order to establish this claim, the Portuguese Government would have to show the existence of a local custom amounting to the grant to them of a right. So far from this, the evidence which has been cited shows that when parties of troops, or even individual soldiers, wished to pass through British territory, permission was invariably asked. Permission was similarly asked for the despatch of consignments of arms, and even for one or two sporting guns. The language in which these applications were made shows that the Portuguese Government recognized that on each occasion they were asking for something which the British

Government was free either to grant or to refuse. It is inconceivable in the submission of the Government of India that the Portuguese authorities should so have conducted themselves, if all the time they possessed a right to send through British territory such troops, police and arms as were needed for the maintenance of Portuguese sovereignty in the enclaves, and the mere making of these repeated applications shows that no local custom amounting to the grant of a right ever existed. It is particularly to be noted, moreover, that the Portuguese authorities never drew any distinction between communication with the enclaves and communication between other Portuguese territories. If it was desired to send troops or arms to the enclaves, permission was asked in exactly the same way as it was asked when troops or arms were being sent (e.g.) through Bombay on the way from Goa to Daman. In other words, the geographical position of the enclaves was never made by the Portuguese Government a basis for any claim of special rights. Such a claim is made for the first time in these proceedings. In the whole period between 1817 and 1954 it is impossible to find any agreement or local custom by which such a claim might be justified.

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## PART VII

THE IMPACT ON THE PASSAGE CLAIMED OF THE  
EVENTS WHICH HAVE TAKEN PLACE IN  
DADRA AND NAGAR AVELI

343. The Government of India contends that, even if before the insurrection Portugal did in fact possess the rights of transit which she claims, these rights were not applicable in the case of the general insurrection of the people of the enclaves.

344. The actual circumstances of the insurrection in Dadra and Nagar Aveli whereby the peoples of the enclaves freed themselves from Portuguese rule have been set out in Part II above. The rights which Portugal claims in her Application and Memorial are rights of transit over Indian territory for Portuguese armed forces, police and officials etc. "to the extent required for the effective exercise of Portuguese sovereignty in the enclaves". Even if Portugal could satisfy the Court that she possessed these rights in virtue of some treaty, custom, or general principle of law, it does not at all follow that they would hold good in the circumstances of a general insurrection of the people of the enclaves. On the contrary, there are four separate reasons why India cannot be held to have been under any obligation to grant transit to Portuguese armed forces, police and officials for the purpose of suppressing the insurrection in the enclaves.

345. First, transit for the purpose of the normal day-to-day exercise of sovereignty in an enclave is a very different thing from transit for the purpose of suppressing an insurrection of the whole population and of keeping the people of the enclave forcibly in subjection. A right of transit for the latter purpose would require the State, across whose territory the transit was made, to become an accomplice in the operations to suppress the insurrection and it would gravely embarrass the territorial State. There would be a very strong probability that the people in insurrection would oppose the entry into the enclave of the armed forces, police or officials sent to reduce them into subjection. There would for that reason be a great risk of hostilities or riots at the borders of the enclaves and even within the territory of the State granting transit. This risk would be all the greater in the case of enclaves which, like Dadra and Nagar Aveli, have no frontier posts or barriers of any kind between them and the surrounding territory. Portugal's claim to rights of transit for armed forces, police, officials, etc., for the purpose of suppressing a general insurrection is therefore a claim of an entirely different order from a claim to rights of

transit for the purposes of normal day-to-day administration. In the view of the Government of India, a right of transit for the effective exercise of sovereignty could not be considered to embrace transit for the purpose of suppressing a general insurrection without the clearest proofs that such was the case. In the present instance, however, Portugal has recognized in the most express terms that any rights of transit she may have are without immunity from India's jurisdiction and, therefore, subject to the requirements of India's public order in the territory over which the transit is made.

346. Accordingly, the Government of India submits that any rights of transit which Portugal may be held to have possessed "for the effective exercise of Portuguese sovereignty in the enclaves" cannot be held to require India to grant transit facilities to Portuguese armed forces, police and officials for the purpose of reimposing Portuguese rule in the enclaves.

347. Secondly, few principles of international law are better established than the principle that a State in a civil war or insurrection may adopt an attitude of complete reserve and neutrality as between the Government and the rebels. The most familiar application of this principle is the right of a State, if the extent of the hostilities and the circumstances of the rebels justifies it, to accord the latter the status of a lawful belligerent in war. That this principle is not confined to the extreme case of a recognition of belligerency is very clear. In the case of *The Three Friends*, for example, the United States Supreme Court held that recognition of a condition of political revolt, as distinct from recognition of belligerency, operated to bring United States neutrality laws into play. The general principle is that stated in Judge Lauterpacht's book, *Recognition in International Law*:

"With regard to the acts of the insurgents on land, when such acts do not cause injury to foreign States or their subjects but are merely manifestations of a revolt against the constituted authority, outside States have no reason to express an opinion or to adopt an attitude. *They are not bound or entitled to co-operate in the suppression of the treasonable acts of the insurgents against the lawful authority.*"

In the view of the Government of India, any rights of transit that a State may be held to possess across foreign territory for the purpose of exercising its sovereignty, in an enclave is subject to the right of the sovereign of the intervening territory to adopt a policy of neutrality in case of a general insurrection in the enclave. In other words, it is subject to the right of the sovereign of the intervening territory to refuse transit facilities for the purpose of "the suppression of the treasonable acts of the insurgents".

348. In this connection, it is significant that in the case of the *Wimbledon* it was only the specific provision in the Treaty of

Versailles that the Kiel Canal should be free and open to all vessels of all nations at peace with Germany which made the right of transit prevail over Germany's right under general international law to impose a policy of neutrality with respect to passage through the Canal. The Court held the clear and unambiguous meaning of this provision to be that the right of transit should always be exercisable by the vessels of all nations not themselves at war with Germany and that this precluded a refusal of transit for reasons of neutrality in a war between two other States. Even so, despite the express grant of transit to *the vessels of all nations at peace with Germany*, two very distinguished members of the Court, Judges Huber and Anzilotti, held that Germany's right under general international law to be neutral in a war between two other States prevailed over the rights of transit granted in the Treaty.

349. Accordingly, the Government of India submits that on this ground also any rights of transit which Portugal may be held to have possessed "for the effective exercise of Portuguese sovereignty in the enclaves" did not oblige India to allow the transit of Portuguese armed forces, police and officials for the purpose of suppressing a general insurrection in the enclaves.

350. Thirdly, whatever views may be held as to the precise scope of the obligations imposed upon Members of the United Nations by one or more provisions of the Charter, it cannot be doubted that they must not lend their aid or have any part in or give any assistance to any action calculated to suppress by force the efforts of people who either seek to establish or have in fact established their liberty. It follows, therefore, that in the present case, having regard to the successful endeavours of the people of these enclaves to free themselves from foreign rule and to assert their rights to freedom, a Member of the United Nations is entirely justified under at least a moral obligation according to the Charter not to take or permit any measures for the transit of troops, police or officials of a foreign power across its territory against the people who have so established their freedom.

351. For the consideration of the Court the Government of India submits that on this further ground, even if it be argued that there were any rights of transit which Portugal may be held to have possessed "for the exercise of Portuguese sovereignty in the enclaves", they do not oblige India to grant, or justify her in granting, facilities for the transit of Portuguese armed forces, police and officials across its territory, all the more so when the claim of Portuguese sovereignty in the territory to which ingress is sought is challenged by the efforts of the people in their assertion of their political and human rights.

352. Finally, the Government of India contends that in any event account has now to be taken of the existence in the enclaves of a

*de facto* local government. The steps by which the peoples of the enclaves set up a local authority have been explained in Part I of this Counter-Memorial. There now exists in the enclaves an Administrative Council, an Assembly of the People, and a Judiciary, which have been functioning for over three years with all the regularity and effectiveness of a government. This government administers the enclaves on a *de facto* basis independently of both Portugal and India.

353. The Government of India has limited its contacts with the *de facto* local government to the minimum required for the day-to-day conduct of local relations. Such contact as there is between the Government of India and the authorities of the enclaves is through local officials and in such day-to-day matters of administration as police, posts, transport, etc. The measure of recognition given by the Government of India to the authorities of the enclaves is not therefore recognition as a government of a State; it is only a limited recognition of those authorities as a *de facto* and provisional administration in effective control of the territory of Dadra and Nagar Aveli.

354. That insurgents may set up a governmental authority in the areas which they effectively control and that the authority so set up may receive from other States a measure of recognition as a *de facto* provisional government is well settled. The Government of India refers in this connection to Chapters 16 and 17 of Judge Lauterpacht's book on *Recognition in International Law*, where a number of precedents are examined. The legal nature of such *de facto* local governments has recently been discussed by Professor G. Morelli in his lectures at the Hague Academy in 1956. Professor Morelli said:

“Outre les États et les entités dépendant de ceux-ci que l'on vient de considérer et qui ne sont pas toujours des États, il y a d'autres groupes sociaux organisés qui sont pourvus de la personnalité juridique internationale.

Tel est le cas d'un parti insurrectionnel qui a abouti à une certaine organisation territoriale, c'est-à-dire à une organisation qui contrôle de fait une partie du territoire d'un État, empêchant, en cet espace, l'exercice des pouvoirs de la part du même État. Que le parti insurrectionnel ait un but séparatiste, qu'il vise, en d'autres termes, à détacher une province de l'État contre lequel l'insurrection est dirigée, ou bien qu'il vise, par contre, à s'emparer du gouvernement de l'État dans son ensemble, tout cela n'a aucune importance. Ce qui importe, ce n'est pas le but de l'insurrection, mais seulement le rapport de fait qui, à un moment donné, existe entre l'organisation insurrectionnelle et une portion du territoire de l'État; il faut, en d'autres termes, qu'il se soit établi ce que l'on appelle un *gouvernement de fait local*, par opposition au gouvernement de fait général.”

355. The Government of India submits that the existence of an established *de facto* government in the enclaves is an additional

consideration which further justifies India in maintaining that any rights of transit possessed by Portugal are not exercisable in the situation which now obtains in the enclaves. It is no longer a question of rights of transit for the purpose of exercising Portuguese sovereignty in the enclaves. It is a question of rights of transit for the purpose of ousting a rival government in the enclaves and of reimposing Portuguese rule.

356. It is manifest that Portugal's claim to transit across Indian territory for her armed forces, police and officials for the purpose of exercising sovereignty in the enclaves is of vital concern to the *de facto* local government. The Portuguese claim has no other object than to obtain entry into the enclaves for the purpose of re-imposing Portuguese rule and putting an end to the *de facto* local government. This is not therefore a case which simply concerns Portugal and India. It is a case which concerns Portugal, India and the *de facto* government and the judgment for which Portugal asks is one which the Court cannot give without encroaching directly on the rights of the *de facto* local government, which is not itself before the Court.

357. In the submission of the Government of India, the existence of the *de facto* local government in the enclaves is yet another ground precluding the Court from holding that India is under an obligation to permit the transit of Portuguese armed forces, police and officials from Daman to the enclaves.

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PART VIII  
THE CONCLUSIONS

358. The Government of India believes that it has proved:—

1. that the claim presented by the Portuguese Government is of such a vague nature that it is susceptible of many different and opposite interpretations, that it appears impossible for them all to be proved to be legally well-founded, and that even the admission of the claim would leave the Parties in doubt as to their rights and duties (Part III);

2. that the right or rights of passage claimed by Portugal do not find any legal basis in any general convention or on any general custom or general principle of law (Part V);

3. that no proof has been given by Portugal of any local usage having a binding character on the Parties and that the special conventions mentioned by Portugal neither contain nor imply stipulations about the claimed rights of passage (Part VI); and

4. that even if proofs had been given of the existence of such rules of law or specific obligations none of them would have any connection with or application in the very special circumstances which have lately prevailed in the enclaves and which would in themselves suffice to justify an exception to any such rules (Part VII).

359. If the Court accepts these contentions how will the decision be framed?

The Court may at its discretion reject the claim as ill-founded or it may declare itself incompetent either because the object of the claim falls under the exclusive jurisdiction of India (Fifth Preliminary Objection) or because the situation out of which the dispute arose already existed before the compulsory jurisdiction of the Court had been accepted by India (Sixth Preliminary Objection) or because the claim does not fall under any of the categories of dispute for which the Court has received jurisdiction from the Parties or because the decision which it is asked to give is not one upon which the Court is empowered by the terms of the Statute to adjudicate.

360. None of these points require further development at this stage with the exception perhaps of the last one which when advanced by Professor Guggenheim at the Oral Hearings was met by Professor Bourquin with the objection that it could not be retained by the Court as it had not been presented in the Preliminary Objection (Oral Proceedings, IV, p. 186).

361. Even supposing the Portuguese answer was correct when the debate was limited to the preliminary objections it could not



possibly be valid here since the objection appears to be intimately connected with the other objections already formulated by the Government of India as well as with her defence on the merits. Indeed in a matter which normally falls within the sovereignty of a State when a claim asking for an exception from or limitation of sovereignty is declared ill-founded, it amounts to nothing more than to recognize the fact that the object of the claim has remained under the exclusive jurisdiction of the State, and at the same time the fact that the Parties not having agreed to give to the Court the power to decide *ex aequo et bono* the dispute lacks any of the legal aspects which would have made it justiciable and that accordingly the Court has no jurisdiction.

362. But there is more: in the present case it appears doubtful that even if the Parties by a common declaration might have allowed the Court to give a decision *ex aequo et bono* on the Portuguese claim, the Court would have been able to accept this invitation (which of course has not even been contemplated in the present case). Indeed as was indicated by Sir Frank Soskice in his address on 26th September, 1957 (Oral Proceedings, IV, p. 74) and fully developed in Part III above, the vagueness of the claim is such that even an affirmative decision would leave the Parties in doubt as to the extent of the obligations resulting therefrom for India.

Nothing less than elaborate regulations would be needed to determine what in future would be the rights and duties of the Parties. Now it has been contended by Judge Kellogg in the famous opinion he gave in the case of the *Free Zones* (Order A 24) that it was not within the power of the Court to draft regulations. The Government of India has every reason to believe that this interpretation of the mission of the supreme judicial organ of the League of Nations recommends itself also to the present Court.

363. For the above reasons may it please the Court to declare that it has no jurisdiction to decide on the claim presented by the Portuguese Government, and, in the alternative, to declare the claim ill-founded.

(Signed) JOHN ALOYSIUS THIVY.  
Agent of the Government  
of India.

March, 1958.

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**Annexes to the Counter-Memorial of the Government of India**

**ANNEX A**

*[Reproduced after the Preliminary Objection of the Government of India, Vol. I, pp. 189-213]*

**ANNEX B**

*[Reproduced after the Preliminary Objection of the Government of India, Vol. I, pp. 215-222]*

**ANNEX C**

*[Reproduced after the Preliminary Objection of the Government of India, Vol. I, pp. 223-564]*

**ANNEX D**

*[See next page]*

## Annex D. No. 1

No. 7563

To

The Secretary to Government

Bombay, 15 Dec. 1875.

Sir,

I have the honour to submit the following report and proposals for the re-organisation of the establishment on the Dumaun frontier.

2. It is the duty of this establishment to prevent the illicit importation of salt, and to collect Land Customs on dutiable goods passing into and out of Dumaun. It will be convenient to consider the Estabt with respect to its collecting and preventive duties separately. I will take its collecting duties first, and will ask Govt. to look at the sketch map annexed which shows the lie of the country and the positions of the frontier posts.

3. It will be observed that the Dumaun territory consists of two tracts—the purgannas of Damaun and Nagar Havailee—which are separated from each other by a strip of British territory, part of which pertain to the Pandi taluka of Surat, and part to the Sanjan taluka of the Tanna district. The cordon of Customs posts is drawn round the Dumaun purganna only—Nuggar Havailee lies inland and has no salt water or navigable water communication with the sea, and is left unguarded. Land Customs are collected at the nine posts marked in red letters on the map: the other posts are closed posts, and no goods are allowed to pass them.

4. Statement No. I shows the gross average collections at each post for the last 10 years, and the estimated realization at the new Tariff rates. Statement No. II contains similar info<sup>n</sup>; with details of the actual and estimated realization on each dutiable article. Including salt the gross collections at old Tariff rates amount to Rs. 9567, while under the new Tariff they will yield but Rs. 4762. The gross estimated collections at each post are shown in the margin. A glance at these figures shows

	Rs.	a.	p.
1. Kunta . . . . .	2434.	6.	5
2. Koluk . . . . .	82.	4.	9
3. Rosa . . . . .	17.	7.	8
4. Hatiawas . . . . .	49.	0.	0
5. Challa . . . . .	503.	7.	5
6. Pathin punjal . . . . .	1246.	9.	1
7. Palsat . . . . .	341.	0.	3
8. Rambhayat . . . . .	16.	5.	6
9. Kalai . . . . .	71.	10.	10
	<hr/>		
	4762.	3.	11

that it is unnecessary to maintain all these posts. Kunta and Challa are both on the made road between the town of Damaun and the Railway station, and tho' both posts must be maintained a single collecting estabt will serve for both of them. Palsat and Pathurpunja are only half a mile apart, and the concentration of the duty paying traffic on one of the two posts can cause no

inconvenience while the duty paying traffic at all the other posts is insignificant, and will not repay the cost of collection. I propose therefore to abolish all the duty posts except those at Kunta-Challa and Pathurpunja. Dutiable goods can also be allowed to pass at Kolak and Kalai, the duty being collected by the Sea Customs estabt. stationed at those places. The Dumaun purganna is only about 9 miles long (N to S) about 5 miles wide (E to W) none of its villages, except Dumaun itself have any

trade to speak of, and the three open posts proposed are sufficient to accommodate the traffic in duty paying goods without inconvenience. The traffic that comes by way of Rambhayat will have to make a very small detour if sent round by way of Patharpunja, while that which passes by way of Hatiwar and Rosa all goes on to the main road and can pay duty equally conveniently at Kunta.

5. The total of our Land Customs demands on Dumaun trade is so insignificant and out of proportion to the expense of collections, that I should have submitted for consideration the propriety of remitting the duties altogether, were it not for the necessity of maintaining frontier establishments to control the importation of salt.

6. As regards salt, matters are much more serious. Dumaun, with an area of only 22 square miles, and a population numbering 28,000 persons, has some 40 small salt works (their positions are shown on the map) wh. produce at least 100,000 mds a year. I have visited these works myself, and my Asst. Mr. Faulkner has also examined them very carefully, and I have no doubt that this estimate is within the mark. The legitimate recorded importation of Dumaun Salt along the whole Western Coast from Kattywar to Ceylon average only 27,462 mds. I rather think that some of the importation into Travancore wh. are recorded as Dumaun salt are really Goa Salt. The duty paid importations of Salt across the land frontier are only Incl. mds. 500. The people of Dumaun cannot consume more than 7000 mds., and supposing 20,000<sup>1</sup> mds. to be used in fish curing, some 50,000 mds. remain unaccounted for, except on the hypothesis that they are smuggled.

7. There is no doubt that smuggling on an extensive scale is carried on across the land frontier. The salt is mostly carried in head-loads by bands sometimes numbering as many as 100 men. In May last 19 of our sepoy met a band of about 200 men, and captured 6 prisoners and 215 head loads of salt. On an average 40 seizures are made on the frontier every month, and the average number of head loads to each seizure is about 10. The proximity of Nagar Aveli and Dharampore and Print territory to the Dumaun frontier (vide map) conduces to smuggling. The smugglers are mostly Warlis Dublas, hired for the occasion by persons who dispose of the contraband Salt.

8. The Dumaun frontier estab<sup>t</sup> has never borne a good name. It was believed a few years ago that our own men bought salt in Dumaun, and reported it as seized on the frontier, in the expectation of being rewarded from the sale proceeds. And though I have endeavoured to stop this practice by refusing to give rewards except in cases where smugglers as well as salt are seized. I cannot help thinking that a Dubla is now and then hired to impersonate a smuggler and take his punishment. This is not so improbable as it might seem, because the Mgtes. who try frontier smuggling cases seldom award more than a few days simple impt. against smugglers, and a day or two confinement in a lock-up with no work and good food is no punishment at all to a half wild Dubla.

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<sup>1</sup> I much doubt if so much as 20,000 mds. is used for this purpose, as no fish salting is carried on at Dumaun itself. The Dumaun fishermen catch and salt fish off Diu in Kattywar, and much of the salt they use is the produce of the water at Diu and in its neighbourhood.

9. I am sure that the smuggling will not be put down without a strong effort, nor without European supervision. It is the experience of the Inland Customs Dept. that European Patrols are necessary in such cases to lead the men and get proper work out of them. I beg accordingly to recommend the appt. of two European Inspectors, one on Rs. 300, the other on Rs. 200 a month. Each will have a beat of about 12 miles to look after. With their assistance and a small increase in the number of men, I have every confidence that from Rs. 50,000 to Rs. 100,000 will be added to the revenue every year.

10. But it is also necessary that the Mgtes should award deterrent punishments against convicted smugglers. The Sub Mgtes at Nubargaon and Pardi who try the cases from the Dumaun Frontier very seldom give a man more than 10 days imprisonment, and their sentences are usually as low as a fine of Rs. 2 or in def. 3 days simple impt. Smuggling across the Ind. Custom line is punished much more heavily. It appears from the Coast. Land Custom report that the average punishment inflicted in the 1722<sup>1</sup> cases disposed of last year was 45 days imprisonment, and 12 Rs fine. The salt Act contemplates punishments extending 6 mths. rig. impt. and Rs. 500 fine. In reviewing my Adm.n. report last year the Govt. expressed a hope that Mgstes should punish Salt smugglers with increased severity, but this expectation has certainly not been realised so far as the Pardi and Numbargaon Mgtes are concerned.

11. The duties of the frontier Sepoys are as onerous, and as dangerous, as those of the Police, and their pay, which at present is Rs. 5½ and Rs. 6<sup>2</sup>, should I think be raised to that of the Surat Police, along with whom they have to work on the frontier. They should also be armed and accounted and put thro' a course of drill—as smugglers when in large bands not infrequently show fight, and hurts and wounds are by no means unknown among our men on the Damaun frontier.

12. The length of line to be guarded is about 25 miles—I would recommend that the posts be placed about ¾ of a mile apart; that each be manned by 4 sepoy; that a Havildar or Naik be apptd. to the charge of each set of three posts; and that 3 Jemadars be apptd. to assist the European Patrols, and to take subordinate charge of the three sections of the line. A number of new Chaukies will have to be built, and accommodation must also be provided for the European Officers. But in view of the contemplated Commercial & Salt Treaty with Portugal for her Indian settlements I would not recommend the immediate constructions of permanent buildings. A grant of Rs. 2000 will suffice for temporary constructions that with small repairs will last for several years, and to an expenditure of that amount I solicit sanction.

13. The collecting and prev. establishments should be distinct and independent of each other. But the preventive men will check goods at the frontier posts that have been passed at the duty posts.

14. Statement No. III shows details of the strength and cost aggregating Rs. 14,087 a year, of the present estabt. Statement No. IV shows similar details for the re-organized estabt. herein proposed. Its total cost is Rs. 30038-8 a year, but of this amount of Rs. 6600 is on account

<sup>1</sup> Smuggling salt across the Inland Custom Line.

<sup>2</sup> A free mess at Rs. 5 & Rs. 7.

of European Supervision. The total increase of expenditure solicited is Rs. 15957-8 a year, and I am very confident that this increase of expenditure will result in realization of revenue of very much greater amount.

15. With the permission of Govt. I will abolish the duty posts at Palsat, Rambhayat, Hatiawar and Rosa from the 1st January next and from the same date reduce the whole frontier collecting Estabdt. to the strength proposed in Statement No. IV.

I have etc.

(Signed)

Collector of S.R.

No. 7571 of 1875.

Copy fwd to Mr. Faulkner for inf:

No. 890 of 1876

To,

A. D. Carry, Esquire,  
Acting Collector of Salt Revenue  
Bombay Presidency.

Camp Kunta,  
14th May, 1876.

Sir,

With reference to correspondence noted in the margin, I beg to submit the following report on the re-organisation of the Damaun Frontier, Preventive Establishment.

Collector's letter to Government No. 7563, of 15th December 1875. Govt. Reso: No. 861 of 22nd July, 1876, and Collr's endorsement thereon No. 1254 of 26th idem. Govt. Reso: No. 1762 of 20th March 1876, and Collr's endorsement thereon No. 1679 of 22nd idem. Collr's letter No. 1731 of 23rd March 1876.

2. The annexed map shows the whole extent of Portuguese Territory guarded by the Frontier, and the portions of British territory surrounding it. The green color indicates Portuguese, and the red British territory situated on the left bank of the Daman Ganga river, is in the Surat Collectorate, Pardi Taluka; and that on the right, in the Punna Collectorate, in the Umergaun Taluka.

3. The black dots indicate the sites of the old Nakas; and the red ones the sites of the new, which have been established since the 1st Instant. The number of old Nakas was 23, and the number of the new ones 10, thus making a total of 33 Nakas under the new arrangement. The sites of the old Nakas were on the whole, not badly selected, but I am of opinion that, they should be all removed, and brought out further in the plains, and thus form one connected Cordon round the Frontier. When thus placed, the Nakas will be in sight of each other, and the peons stationed at them, will be able to keep up a communication throughout the Frontier. The Blue line on the map, with the blue dots on it, indicate the positions of the proposed line, and sites of the Nakas.

4. The whole Frontier is divided into two distinct Divisions, separated by the Damaun Ganga river; which are generally spoken of as the Bagwara and Umergaun *Surhuds*. Under the new arrangements, each of the

Inspectors will have independent charge of one of these Divisions. The Bagwara Division is composed of two lines, lying due North and East. The Northern line commences at Kolak Pur Naka, and ends at the Bagwara Ferry Naka, a distance of about 6 miles, and runs along the banks of the Kolak or Bagwara river. The Eastern line lies parallel with the line of railway, and extends from Bagwara Ferry Naka to Golee-Amboo Naka, on the left bank of the Damaun Ganga river, a distance little short of 7 miles. I have established 9 Nakas in the Northern, and 12 in the Eastern lines, thus giving 21 Nakas over a distance of nearly 13 miles. Under the old arrangement, there were only 6 Nakas in the Northern and 7 in the Eastern lines. All the Nakas are pretty equi-distant; but care has been taken to place them in such positions, as to command the most favorite runs of smugglers across the Frontier. The disposition of the peons, Umalders, etc., in respect to all the Nakas on the Frontier, will be given in detail, further on in this report.

5. The Umergaun Division consists of two lines also. First a slip of land lying between the Damaun Ganga and Kalai rivers, commencing from Rambayat Naka, and ending at Peeplee Naka, a distance of about 2½ miles; and the Second line, extending from Amba-Varoo Naka to Kalai-Par Naka, along the banks of Kalai river, a distance of about 3½ miles. I propose manning those two lines, the former the "Mohun", and the latter the "Kalai" lines. Five Nakas have been established in the "Mohun", and seven in the "Kalai" line; or a total of 12 Nakas over a distance of about 6 miles—under the old arrangement there were 4 Nakas in the "Mohun", and 6 in the "Kalai" lines. All these Nakas are also nearly equi-distant, and are so situated, as to guard the most frequented routes of smugglers.

6. Besides the Nakas round the Frontier, above mentioned, I have considered it necessary to maintain 3 Posts, with one peon each, about the village of Kunta, where the Sirkarcoons's Cutcherry is situated. The first post, *Surruk*, is on the high road, a little distance from the office. The duty of the peon there is to examine Carts, laden and empty, passengers, etc., proceeding to and from Damaun; the Second, *Rijnee*, commands the back way into and out of Damaun, where the peon has similar duties to perform, as the one stationed at the *Surruk* post: and the third, *Nandwa*, is below the village, in a position almost between the other two, and serves the same purpose as they do. These posts, being close to the Cutcherry, I propose placing them in charge of the Sirkarcoons, as the duties of the Sepoys will be more in the examining and searching, than in the Preventive line.

7. From what has been stated above it will be seen that, the Damaun Frontier consists of two Divisions, viz. the Bagwara and Umergaun, with two lines in each, the former being nearly 13 miles, and the latter about 6 miles in extent, or a little short of 20 miles over the whole Frontier, with a Cordon of 33 Nakas. I had the Frontier carefully measured last January, from Naka to Naka, and went over the whole ground myself, and although the above distances may be taken as pretty correct, still, for patrolling purposes, the sweep of the frontier cannot, I think, be put down at less than 30 miles. The object of defining the Divisions, lines, and extent of the Frontier, will be more apparent, when I come to that part of my report, where I speak of the distribution of the Preventive Force.

8. Under the old arrangement, there were 9 open Nakas, including *Kunta*, for passing dutiable and free goods across the Frontier. These are now reduced to five, three in the Bagwara Division, viz., (1) Kolak; (2) Chulla, and (3) Kunta: and two in the Umergaun Division, viz., (1) Pathurpoonja, and (2) Kalai. At the Kolak and Kalai Nakas, the Customs Carcoons receive duty on goods passing the Frontier, in addition to their own work.

9. The sanctioned Preventive Force consists of two European Inspectors, three Jamadars, 4 Havildars, 7 Naiques, 44, 1st Class, 44, 2nd Class, and 44, 3rd Class Sepoys. The patrol party, and Cutcherry peons are distinct. In disposing of the Force, I have arranged that there shall not be less than four men at each Naka; and the Havildars and Naiques have been so placed, as to give each Umuldar charge of, from two to three posts. The three Jamadars will each have charge of about 6 miles of the Frontier line, with control over the posts within such limits. The Senior Inspector I have placed over the Bagwara, and the Junior Inspector over the Umergaun Division.

10 The names of the Nakas, and the disposition of the whole Preventive Force, have been made as follows. The names written in red ink, are the new posts.

*Bagwara Division*

Senior Inspector

- 1 Jamadar Northern line.
- 1 Jamadar Eastern line.

*Northern Line*

1 Kolak Par . . . . .	3 Peons and 1 Havildar
2 Kolak . . . . .	4 Peons
<sup>1</sup> 3 Kambeoo . . . . .	4 Peons
4 Sanklu Kante . . . . .	4 Peons
5 Patullea . . . . .	3 Peons and 1 Naique
6 Wuruakeea . . . . .	4 Peons
<sup>1</sup> 7 Dookee Doovan . . . . .	4 Peons
8 Rosa . . . . .	4 Peons
<sup>1</sup> 9 Bagwara Ferry . . . . .	3 Peons and 1 Naique.

9 Nakas, 33 Peons, 2 Naiques, 1 Havildar, and 1 Jamadar. This line runs along the banks of the Bagwara river, and is about 6 miles in length. These new Nakas have been established on it.

*Eastern Line*

10 Chadia . . . . .	4 Peons
<sup>1</sup> 11 Barra Khind . . . . .	4 Peons
12 Hatteear . . . . .	4 Peons and 1 Naique
<sup>1</sup> 13 Danyawar . . . . .	4 Peons

<sup>1</sup> in red ink.



<sup>1</sup> 14	Pullowree . . . . .	4	Peons
15	Chulla . . . . .	4	Peons and 1 Naique
16	Puddia . . . . .	4	Peons
17	Luckundeo . . . . .	4	Peons
<sup>1</sup> 18	Luckundeo Pal . . . . .	4	Peons and 1 Naique
<sup>1</sup> 19	Mussan Kinkee . . . . .	4	Peons
20	Nambda . . . . .	4	Peons and 1 Havildar
<sup>1</sup> 21	Golee Amboo . . . . .	4	Peons

12 Nakas, 48, peons, 3 Naiques; 1 Havildar and 1 Jamadar.

This line runs parallel with the B.B.C.I. Railway, and is nearly 7 miles in extent.

Five new Nakas have been established in it.

The total number of Nakas in the Bagwara Division, as above shown, is 21, manned by 81 Sepoys, 5 Naiques, 2 Havildars, and 2 Jamadars, supervised by the Senior Inspector.

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*Umergaum Division*

Junior Inspector

1 Jamadar.

Mohim Line

22	Rambhayat . . . . .	4	Peons and 1 Naique Two peons to act as Cullassees, in charge of of the boat there.
23	Jurree . . . . .	4	Peons
24	Kalee Amboo . . . . .	4	Peons
25	Pulsut . . . . .	4	Peons and 1 Havildar
<sup>1</sup> 26	Peeplee . . . . .	4	Peons.

5 Nakas, 20 peons, 1 Naique and 1 Havildar.

This line, about 2½ miles in length, lies between the Damaun Ganga and Kalai rivers. One new Naka has been established on it.

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Kalai Line

27	Amleebaroo . . . . .	4	Peons
28	Pathurpoonja . . . . .	4	Peons and 1 Naique
29	Kurrumlee . . . . .	4	Peons
30	Kadavya . . . . .	4	Peons
31	Makurya . . . . .	4	Peons
32	Kalai . . . . .	4	Peons and 1 Havildar
<sup>1</sup> 33	Kalai Par . . . . .	4	Peons

7 Nakas, 28 Peons, 1 Naique, 1 Havildar, and 1 Jamadar.

This line runs along the bank of the Kalai river, and is about 3½ miles in length. It has one new Naka.

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<sup>1</sup> In red ink.

The total number of Nakas in the Umergaum Division is 12, manned by 48 Sepoys, 2 Naiques, and 2 Havildars, with one Jamadar over the whole, Supervised by the Junior Inspector.

The whole Preventive Force has been distributed over the Frontier as above shown, except three men, who have been posted to the "Surruck", "Raynee", and "Meaudeva" Chowkies, in the village of Kunta, as pointed out in the 6 para of this report.

I would here mention that, at Rambhyat, which is on the right bank of the Damaun Ganga river, a Canoe has always been maintained, to examine all boats proceeding up and down the river with firewood, field produce, etc. A careful watch has to be kept over these vessels, as they will smuggle salt from Damaun whenever they can. I have retained this Marine post, and shall, in a short time, substitute a good sized boat for the Small Canoe now there. The hire of the boat is paid from the Contingent Fund. Two of the five men at this Naka are Cullassees, employed to work it.

As Fourteen Nakas, including the new ones, have no buildings, Chowkies for the accommodation of the peons stationed at them are therefore required. I beg to submit a plan and estimate. Each Chowkey will be 30 by 10 feet, and will accomodate four men, one room 10' x 7' being allotted to each. The style of building is what is in general use, viz., Bamboo walls, plastered with mud, supported by teak posts, etc. with single tiled roof. A man here has tendered to erect the Chowkies for Rs. 140/— each. I have gone into details of materials and pieces, and find the estimate very fair. He is prepared to commence on their erection at once, and promises to have all ready within two months. I would respectfully solicit your early sanction to these proposals, if they meet with your approval. The Nakas at which the new Chowkies are required, are, (1) Kolak Par, <sup>1</sup> (2) Kambeoo, (3) Sanklee Kantoo, <sup>1</sup> (4) Dobeo Doowan, <sup>1</sup> (5) Bagwara Ferry, <sup>1</sup> (6) Burra Khind, <sup>1</sup> (7) Pulloree, (8) Luckundoo, <sup>1</sup> (9) Luckundoo Pal, <sup>1</sup> (10) Musson Kurkee, <sup>1</sup> (11) Golee Amboo, (12) Rambhayat, <sup>\*</sup> (13) Peeplee, <sup>1</sup> (14) Kalai Par. The names in red ink indicate the new Nakas; at the others the peons resided either in the villages close by, or in temporary huts erected by themselves.

It will be observed that, the cost (Rs. 1960-0-0) of the 14 new Chowkies, will absorb the sum of Rs. 2000 sanctioned; and that nothing will be left for the construction of the Inspectors' quarters, and the removal of the old Chowkies to the proposed new line of the Frontier (vide para 3), and adapting them to accommodate the increased number of Sepoys now appointed to each Naka. Some of old Chowkies have only room for 2 men each, and as 4 men is the lowest number attached to each Naka, under the new arrangement, such Chowkies will, in addition to the cost of removal, have to be enlarged. As the removal and enlargement of the old Chowkies, and the erection of the Inspectors' quarters, cannot well be undertaken until after the rains, I shall defer sending in an estimate for these works, until I receive your instructions as to the course I shall follow.

As regards the ground on which the Chowkies are to be erected, I beg to state that, I have had up before me the Tullattees of the villages bordering on the Portuguese Frontier, and examined all their maps and *Kathas*, and find that the plots of ground needed for the Chowkies can

<sup>1</sup> In red ink.

be obtained, as they are on either *Purthul* or pasturage lands. I have written to the Collector of Surat, and have asked him to allow me to take them up, pointing out their localities, and size of each, viz., 60 by 50 feet.

In regard to the selection and appointment of the Sepoys, I have been most careful. I have had every man of the old Frontier and Cutcherry Establishments up before me, and have personally taken down a statement of each separately, noting his name, caste, place of residence, period of servitude, number of seizures of Salt and Smugglers made, age, pay, rank and character, with my own remarks, and decision in each case. In grading the Sepoys, I have given the preference to those who have done the best service in making seizures of men and Salt, and who, from their build and physique, are noted as good runners, and plucky in seizing Smugglers. I have entirely set aside the claim of seniority, as were such a principle to be followed, we should continue to be burdened with a body of inferior men in the best paid grades. A number of new men have been taken on, mostly *Omeidwars*, who have been working on the Frontier with our Sepoys, in hope of getting rewards, and ultimate employment. Most of them have made seizures, and having a knowledge of the Frontier, I have selected them in preference to utter strangers. I make appointments, after seeing each candidate. There has been no lack of them, chiefly from the Concan, but very few of these have been taken on, as they were chiefly raw youths, fresh from their villages, and possessing neither experience nor stamina. Men with local interests and associations have been avoided. As it is of importance that all the appointments should be filled up as speedily as possible, I have entertained a number of men in the 2nd Class (the 3rd Class being filled) but on 3rd Class pay, telling them that their promotion will depend entirely on their good conduct and activity in making Seizures. All appointments in the force, I have made probationary for the present. In appointing men to the different Nakas, I have sent a mixture of Castes to each, and thus there are Rajputs, Mahamedans, Mahrattas, Purdassees, etc., associated together.

In the re-organisation, I have found it necessary to dismiss <sup>1</sup> men for general incompetency or habitual drunkenness; and <sup>1</sup> more men having completed their time for Pension, have been directed to retire and apply for the same. Three Naiques have been reduced to 1st Class Sepoys, as they are altogether unfit to hold such positions, being any thing but active men, and unable to exercise any control over the Sepoys under them.

As the Frontier Force is to be armed and drilled, I have written to the Superintendents of Police at Surat and Broach, to let me have some smart and intelligent men (to take up the positions of Havildars and 1st Class Peons), who will not only be able to drill the Sepoys, but maintain discipline among them. I have been successful in obtaining the services of a Pensioned Subadar of H. M. 22nd Regiment—N.I. to act as a Jamadar; and also a few Military and Police Sepoys who say that they have not quite forgotten their drill. When I obtain the men from the Police, the peons will be prepared to commence learning their drill, I would therefore respectfully ask to be supplied with the requisite

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<sup>1</sup> The numbers will be given.

arms and accoutrements, at an early date, which I presume will be obtained from the Commissary of ordinance at Bombay.

As regards the clothing of the Preventive Force, I think the style should be the same as that adopted by the Military Police; but instead of the blue or Indigo dye, I would recommend the ordinary shikar color, which is readily obtained from the Babool and Cassella bark. It is a useful one, and is most appropriate for Frontier work, both by day and night, as being less perceptible than blue. The three Jamadars, will, I presume be clothed, and armed like officers of the same rank in the native army, with Waist belt, sidesling, and swords with steel scabbards. In respect to the two Inspectors; I would solicit your instructions as to the style of their uniforms. They might perhaps be graded as 1st and 2nd Class Police Inspectors, and adopt a corresponding style of dress. On receiving your instructions on this subject, I shall adopt measures to clothe the Force accordingly. The sum of Rs. 962-8-0 has been sanctioned for this purpose.

In respect to the duties of the two newly appointed Inspectors, I have pointed out to them in writing, that while exercising great vigilance, and an energetic control over their men, it is their *special duty* to suppress smuggling across the Frontier, and that they are expected to take an active part in seizing contraband Salt and smugglers. I have also informed them, that Smuggling is not restricted to any time or place, and that they should therefore be careful in seeing that all their posts are maintained in a state of efficiency both by day and night; but that as a rule, smuggling is chiefly carried on at night, especially the dark ones; and that at such times, they should so arrange their plans, as to intercept and seize Smugglers; and this I have told them, can only be done effectually by their presence among their men at such places, where there is reason to believe, Smugglers will attempt to make a run across the Frontier.

I have also informed them that, it is no difficult matter to obtain information as to the number of Smugglers who come into Damaun for Salt, and a clue to their intended movements; and with a view to obtain such information, I have directed the Inspectors to send some of their reliable men in disguise or undress to the Portuguese Salt works, Toddy shops, and other places, where smugglers are known to collect, before making a run across the Frontier, and bring to *Khubar*; and that with such information in their possession they should always be able to check-mate the Smugglers, and seize them.

All seizures of Salt and Smugglers made in the Bagwara Division, are taken to the SirKarcoon at Kunta, who takes down the depositions of the Captors, etc., weighs the Salt, takes charge of, and ultimately disposes of the same, prepares the case in due form for submission to the Asstt. Collector, and when there are Smugglers, commits them for trial to the Sub-Magistrate of Pardi. Seizures made in the Umergaum Division are similarly treated by the Mookeya Karcoon of Pathurpoonja Naka, where the Salt is sorted until sold. As the Inspectors have each a Karcoon allowed them, I think the work of preparing cases should be entrusted to them, after they have gained some experience in Frontier work. But while making this suggestion, I must state that, I am fully alive to the undesirability of burdening Executive Officers with clerical work; who probably being out all night after the Smugglers, find the day barely sufficient for repose and refreshment.

The planting of a hedge of Bheir trees round the Frontier was tried last monsoons, and proved an entire failure. A quantity of seed was supplied to the Inspector, with instructions to plant them round the Chowkies, very few of them came up, although they were carefully tended and watered. The soil does not seem adapted to them. A thick Cactus hedge could, I think, be established round the Frontier; but I doubt whether it would be of much use, as it is so easily cut down, that a passage through it could be made in a few minutes by Smugglers.

As already stated, the arrangements pointed out in this Report, were introduced on the 1st Instant. A great deal, however, still remains to be done, to carry out the details of the new scheme for re-organizing the Frontier. It will therefore be necessary for me to remain here for some time longer to see them all completed, the more so, as there is an entire change of Inspectors, SirKarcoon, and others, who are quite new to their work, and who require to be initiated into their duties. The Senior Inspector took charge on the 1st and the Junior Inspector on the evening of the 10th Instant. The SirKarcoon has not yet joined.

As matters progress, further reports will be sent in, detailing the same.

I have the honor to be,

Sir,

Your most obedt Servant

(Signed) . . . . .

Assistant Collector of Salt Rev:

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#### Annex D. No. 2

### RULES AND ORDERS UNDER BOMBAY ACT XXIX OF 1857

#### BOMBAY LAND-CUSTOMS

#### *Fixing routes for the passing of goods into or out of the Portuguese possession of Goa and Daman*

Notn. No. 7644, R.D., 26th Sept. 1892, B.G., 1892, Pt. I, p. 983, as amended by Notn. No. 8398, R.D., 25th Oct. 1892

In exercise of the power conferred by section 6 of Act XXIX of 1857, and in supersession of the Notifications mentioned in the margin, the Governor in Council is pleased to prescribe the undermentioned as the only routes by which goods will be allowed to pass into or out of the Portuguese possession of Goa and Daman, respectively, namely:—

(I) Into or out of Goa:—

From or to the Ratnagiri and Belgaum Districts:—

1. By the Bandra Naka.
2. By the Dodamarg Naka.

From or to the Belgaum District:—

3. By the Kelghat.

From or to any part of British India by rail:—

4. By the Castle Rock Naka on the Southern Maratha Railway.

From or to the Kanara District:—

5. By the Digi Ghat.
6. By the Mazali Naka.

(2) Into or out of Daman:—

From or to the Surat District:—

1. By the Kunta Naka.
2. By the Chala Naka.
3. By the Kolak Naka.

From or to the Thana District:—

4. By the Patharpunja Naka.
5. By the Kalaipar Naka.

Notn. No. 5136, R.D., 8th July 1895, B.G., 1895, Pt. 1, p. 763

In exercise of the powers conferred by section 6 of Act XXIX of 1857, the Governor in Council is pleased to direct that the following additions be made to the routes prescribed under the said section by Notification No. 7644, dated 26th September 1892, published in the Bombay Government Gazette for 1892, Part I, page 983, as the only routes by which goods will be allowed to pass into or out of the Portuguese possession of Goa, that is to say:—

Into or out of Goa:—

- (1) From or to the Ratnagiri and Belgaum Districts:—  
By the Kirnapani Naka.
- (2) From or to the Belgaum District:—  
By the Chorla Naka.
- (3) From or to the Kanara District:—  
(a) By the Tinai Ghat (Anmod),  
(b) By the Kundal Ghat (Kundal).

Notn. No. 6157, P.D., 15th Aug. 1900, B.G., 1900, Pt. 1, p. 1756

In exercise of the powers conferred by section 6 of Act XXIX of 1857, His Excellency the Governor in Council is pleased to direct that the following addition be made to the routes prescribed under the said section by Notifications Nos. 7644 and 5136, dated respectively the 26th September 1892 and 8th July 1895, published in the Bombay Government Gazette, Part I, of 1892, and 1895, page 983 and pages 763 and 764, as the only routes by which goods will be allowed to pass into or out of the Portuguese possession of Goa, that is to say:—

Into or out of Goa:—

From or to the Savantvadi State and Ratnagiri and Belgaum Districts:—  
By the Satarda Naka.

*Prescribing additional route for passing goods by land into or out of Daman  
from or to Surat District*

Notn. No. 8572, R.D., 11th Sept. 1911, B.G., 1911, Pt. 1, p. 1650

In exercise of the power conferred by section 6 of Act XXIX of 1857 and in modification of Government Notification in the Revenue Department, No. 7644, dated the 26th September 1892, the Governor in Council is pleased to prescribe the undermentioned as an additional route by which goods will be allowed to pass by land into or out of the Portuguese possession of Daman from or to the Surat District, namely:—

By the Bagwada Naka (Near Chowkey No. 9 of the Daman Frontier, Bagwada Beat).

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**Annex D. No. 3**

No. 1729

Fort William

Home Department.

The 24th November 1856.

Notification

It has been brought to the notice of the Government of India that Magistrates and other authorities, Civil and Political, are in the habit of granting Passports, or Certificates and other documents in the nature of Passports, to persons travelling or intending to travel from one part of India to another.

This practice being quite unnecessary and liable to much abuse, is hereby strictly prohibited. Hereafter no Passports or documents of any kind will be granted to any persons travelling or intending to travel in India either in the territories subject to the Government of the East India Company or in Native States.

Persons intending to travel from India to foreign Countries can as heretofore obtain Passports on application to Government in the proper Department.

By order of the Right  
Hon'ble the Governor General of  
India in Council

(Signed) Cecil BEADON

Secretary to the Govt. of India.

Ordered that a copy of this letter and of the notification referred to, be forwarded to the Foreign Department for such further orders as may be necessary.

True Extract

(Signed) Cecil BEADON.

Secretary to the Govt. of India.

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## Annex D. No. 4

ACT. No. XXXIII OF 1857

PASSED BY THE LEGISLATIVE COUNCIL OF INDIA

(Received the assent of the Governor General on the 5th December 1857.)

AN ACT to make further provision relating to Foreigners.

WHEREAS it is expedient to make further provision to enable the several Governments of the British Territories in India to prevent the subjects of Foreign States from residing or sojourning therein or from passing through or travelling in the same without the consent of the said Governments: It is enacted as follows:—

Preamble.

I. Every Foreigner shall, on his arrival in any part of the Territories in the possession and under the government of the East India Company from any Port or place not within the said Territories, or from any Port or place not subject to the provisions of this Act, forthwith report himself to the Commissioner of Police, if he shall arrive at any of the Presidency Towns: or, if he shall arrive at any other place, to the Magistrate or to such other Officer as shall be appointed to receive such reports by the Governor General in Council, or (in places within their respective jurisdictions) by the Executive Government of any Presidency or place, or by the Chief Commissioner of the Punjab, the Chief Commissioner of Oude, or the Commissioners of Mysore, Coorg, Nagpore, Scinde, Pegu, and the Tenasserim and Martaban Provinces respectively. Provided that nothing contained in this Section shall extend to any Foreigner being the Master or Commander of a ship or vessel, or employed therein.

Every Foreigner to report his arrival in India.

Except a Foreigner being the master of a vessel or employed therein.

II. The report shall be in writing; and shall be signed by the person reporting himself; and shall specify his name or names, the nation to which he belongs, the place from which he shall have come, the place or places of his destination, the object of his pursuit, and the date of his arrival in the said Territories: and the report shall be recorded by the Officer to whom it is made.

What to be stated in the report.

III. If any person included in the proviso to Section I shall remain in any part of the said Territories after he shall have ceased to be employed in a ship or vessel, he shall forthwith report himself in manner aforesaid.

Foreigners being masters of vessels or employed therein, to report themselves when they cease to be so employed.

IV. If any Foreigner shall neglect to report himself as required by this Act, he may be dealt with in the manner hereinafter provided in respect of Foreigners travelling without a license.

Foreigners neglecting to report themselves to be dealt with in like manner as Foreigners travelling without a license.

V. No Foreigner shall travel in or pass through any part of the Territories in the possession and under the government of the East India Company without a license.

No Foreigner to travel in India in India without a license.

VI. Licenses under this Act may be granted by the Secretary to the Government of India in the Foreign Department; or by the Chief Secre-

License by whom to be granted.



tary to the Governments of Fort St. George and Bombay respectively; or by the Chief Commissioner of the Punjab, the Chief Commissioner of Oude, or the Commissioners of Mysore, Coorg, Nagpore, Scinde, Pegu, and the Tenasserim and Martaban Provinces respectively; or by such other Officers as shall be specially authorized so to do by the Governor General of India in Council, or by the Executive Government of any Presidency or place, or by any of the Chief Commissioners or Commissioners aforesaid.

What to be stated in license.

VII. Every such license shall state the name or names of the person to whom the license is granted, the nation to which he belongs, the district or districts through which he is authorized to pass, or the limits within which he is authorized to travel, and the period (if any) during which the license is intended to have effect.

License may be granted subject to conditions and may be revoked.

VIII. The license may be granted subject to such conditions (if any) as the Governor General in Council, or the Executive Government of any Presidency or place, or (as regards their several jurisdictions) any of the said Chief Commissioners or Commissioners, may by any general order direct; or as the Officer granting the license may deem necessary; and the license may be revoked at any time by the Governor General in Council, or by the Executive Government of any Presidency or place, or by the Officer granting the same.

Foreigner travelling without or contrary to the conditions of license may be apprehended.

IX. If any Foreigner travel in or attempt to pass through any part of the said Territories without such license as aforesaid, or beyond the districts or limits mentioned therein, or after such license shall have been revoked, or shall violate any of the conditions therein specified, he may be apprehended without warrant by a Magistrate, Deputy Magistrate, or Assistant to a Magistrate, or by any European Commissioned Officer in the Service of Her Majesty or of the East India Company, or by a Member of a Volunteer Corps enrolled by authority of Government whilst on duty, or by any Police Officer.

Procedure upon apprehension.

X. If any person be apprehended by a person not being a Magistrate or a Police Officer, he shall be delivered over as soon as possible to a Police Officer, and carried before a Magistrate; and whenever any person shall be apprehended by or taken before a Magistrate, such Magistrate shall forthwith report the case to the Government to which he is subject, and shall cause the person brought before him to be discharged, or to be conveyed to one of the Presidency Towns, or to be detained pending the orders of such Government.

Magistrate to report to Government.

Persons apprehended may be admitted to bail.

XI. All persons apprehended or detained under the above-mentioned provisions of this Act, may be admitted to bail by a Magistrate or by any of the Officers authorized to grant licenses, and shall be put to as little inconvenience as possible during their detention in custody.

Removal of persons apprehended.

XII. The Governor General in Council, or the Executive Government of any Presidency or place, may order any such person to remove himself from the said Territories by sea or by such other route as the Government may direct; or the Government may cause him to be removed from the said Territories by such route and in such manner as to the Government shall seem fit.

XIII. The Governor General in Council, or the Executive Government of any Presidency or place, or any of the Chief Commissioners or Commissioners mentioned in Section VI of this Act, may by writing order any Foreigner within his jurisdiction to remove himself from the Territories in the possession and under the government of the East India Company, or to remove himself therefrom by a particular route to be specified in the order.

Government may order any Foreigner to remove himself.

XIV. If any Foreigner ordered to remove himself from the said Territories, or ordered to remove himself therefrom by any particular route, shall neglect or refuse so to do; or if any Foreigner, having removed himself from the said Territories in consequence of an order issued under any of the provisions of this Act, or having been removed from the said Territories under any of the said provisions, shall wilfully return to the said Territories without a license in writing granted by the Governor General of India in Council or by the Government of Officer under whose order he shall have removed himself or been removed such Foreigner may be apprehended and detained in safe custody, until he shall be discharged therefrom by order of the Governor General in Council, or of the Executive Government, or of one of the said Chief Commissioners or Commissioners mentioned in Section VI of this Act, within whose jurisdiction he shall be so apprehended or detained, upon such terms and conditions as the said Governor General in Council, Executive Government, Chief Commissioner, or Commissioner shall deem sufficient for the peace and security of the British Territories, and of the allies of Her Majesty and of the East India Company, and of the neighbouring Princes and States.

Foreigner refusing to remove or returning without license after removal may be apprehended and detained.

XV. The Governor General in Council, or the Executive Government of any Presidency or place, or any of the Chief Commissioners or Commissioners mentioned in Section VI of this Act, may by order prohibit any person or persons, or any class or classes of persons, not being a natural-born subject or subjects of Her Majesty within the meaning of Section LXXXI, 3 and 4 William IV, c. 85, from travelling in or passing through any part of the said Territories, or from passing from any part of India to another, without a license to be granted by such Officer or Officers as shall be specified in the order; and if such person shall wilfully disobey such order, he may be apprehended without warrant by any of the Officers specified in Section IX of this Act, and carried before a Magistrate and dealt with under the provisions of Section X, in the same manner as if he were a Foreigner; and the Government may order such person to be detained in safe custody, or under the surveillance of the Police, so long as it may be deemed necessary for the peace and security of the British Territories.

Government may prohibit persons, not being natural-born subjects, from travelling or passing through any part of India without a license.

XVI. It shall be lawful for the Commissioner of Police, or for a Magistrate, or his Assistant, or for any Officer appointed to receive reports as mentioned in the first section of this Act, or for any Police Officer under the authority of such Commissioner or Magistrate, to enter any ship or vessel in any Port or place within the Territories in the possession and under the control of the East India Company, in order to ascertain whether any Foreigner bound to report his arrival under Section I of this Act, is on board of such ship or vessel; and it shall be lawful for such Commissioner of Police, or other Officer as aforesaid, to adopt such means as may be reasonably necessary for that purpose; and the Master

Police Officer may board vessel to ascertain whether Foreigners are on board.

Master of vessel to furnish list of passengers, and to give information respecting them.

or Commander of such ship or vessel shall also, before any of the passengers are allowed to disembark, if he shall be required so to do by such Commissioner of Police, or other Officer as aforesaid, deliver to him a list, in writing, of the passengers on board, specifying the Ports or places at which they embarked, and the Ports or places of their disembarkation or intended disembarkation, and answer, to the best of his knowledge, all such questions touching the passengers on board the said ship or vessel, or touching those who may have disembarked in any part of India, as shall be put to him by the Commissioner of Police, or other Officer as aforesaid. If any Foreigner on board such ship or vessel in any part of India shall refuse to give an account of his objects of pursuit in India, or if his account thereof shall not be satisfactory, the Officer may refuse to allow him to disembark, or he may be dealt with in the same manner as a Foreigner travelling in India without a license.

Foreigner refusing to give account of himself not to be allowed to disembark.

Obstructing Officers.

XVII. Whoever intentionally obstructs any Officer in the exercise of any of the powers vested in him by this Act, shall, upon conviction before a Magistrate, be liable to a fine not exceeding one thousand Rupees, or to imprisonment for any term not exceeding six months, or to both.

Neglect by master of vessel to comply with requisitions of Act.

XVIII. If the Master or Commander of any ship or vessel shall wilfully neglect or refuse to comply with the requisitions of this Act, he shall, on conviction before a Magistrate, be liable to a fine not exceeding two thousand Rupees.

Penalty for false answer or report.

XIX. Whoever shall wilfully give a false answer to any question which by this Act he is bound to answer, or shall make any false report, shall, upon conviction before a Magistrate, be liable to imprisonment for a period not exceeding two years, and shall be liable to a fine not exceeding one thousand Rupees.

Interpretation of "Foreigner".

XX. The word "Foreigner" in this Act shall be deemed to mean a person not being either a natural born subject of Her Majesty within the meaning of Section LXXXI, 3 and 4 William IV, c. 85, or a native of a place in the possession and under the Government of the East India Company. The word "Magistrate" shall include every person exercising the full powers of a Magistrate, and a Justice of the Peace.

"Magistrate"

Proof of being a Foreigner.

XXI. If a question shall arise whether any person alleged to be a Foreigner and to be subject to the provisions of this Act is a Foreigner or not, or is or is not subject to the provisions of this Act, the onus of proving that such person is not a Foreigner or is not subject to the provisions of this Act, shall lie upon such person.

Duration of Act. Act not to extend to Aden or the Straits' Settlement unless so declared.

XXII. This Act shall continue in force for two years; and it shall not extend to the Settlement of Prince of Wales' Island, Singapore, and Malacca, or to the Territory of Aden, unless the same shall be especially declared applicable to such Settlement or Territory by the Governor General of India in Council.

Exceptions and exemptions.

XXIII. The foregoing provisions of this Act shall not extend to any Foreign Minister duly accredited by his Government, nor to any Consul or Vice-Consul, nor to any person under the age of fourteen years, not to any person in the service of the British Government. The Governor General in Council, or (as regards their respective jurisdictions) the Executive Government of any Presidency or place, or any

of the Chief Commissioners or Commissioners mentioned in Section VI of this Act, may exempt any person, or any class of persons, either wholly or partially, or temporarily or otherwise, from all or any of the provisions of this Act; and may at any time revoke any exemption.

XXIV. Any Officer of Government or other person who, prior to the passing of this Act, may have done any thing which would have been justified by this Act if it had been in force at the time, is hereby indemnified for so doing; and no action or other proceeding shall be commenced or prosecuted in respect of any thing so done. Indemnity.

### Annex D. No. 5

ACT No. III OF 1864.

PASSED BY THE GOVERNOR-GENERAL OF INDIA IN COUNCIL

(Received the assent of the Governor-General on the 12th February 1864.)

AN ACT to give the Government certain powers with respect to Foreigners

WHEREAS it is expedient to make provision to enable the Government to prevent the subjects of Foreign States from residing or sojourning in British India, or from passing through or travelling therein without the consent of the Government; It is enacted as follows:— Preamble.

The following words and expressions in this Act shall have the meanings hereby assigned to them, unless there be something in the subject or context repugnant to such construction, that is to say:— Interpretation.

1. The words "British India," shall denote the Territories which are or may become vested in Her Majesty by the Statute 21 and 22 Victoria, Chap. 106, entitled "An Act for the better Government of India": "British India".

The words "Local Government", shall denote the persons authorized to administer the Executive Government in any part of British India, or the Chief Executive Officer of any part of British India under the immediate administration of the Governor-General of India in Council, when such Chief Executive Officer shall, by an order of the Governor-General of India in Council published in the Gazette of India, be authorized to exercise the powers vested by this Act in a local Government: "Local Government".

The word "Foreigner" shall denote a person, not being either a natural-born subject of Her Majesty within the meaning of the Statute 3 and 4 William IV, LXXXV, Section 81, or a Native of British India: "Foreigner".

The words "the Magistrate of the District", shall denote the Chief Officer charged with the Executive administration of a District and exercising the powers of a Magistrate, by whatever designation the Chief Officer charged with the Executive administration is styled, or, in the absence of such Officer from the Station at which his Court is usually held, the Senior Officer at the Station exercising the powers of a Magistrate as defined in the Code of Criminal Procedure: "Magistrate of the District".

The word "Vessel" shall include any thing made for the conveyance by water of human beings or property: "Vessel".

- Number.** Words importing the singular number shall include the plural number and words importing the plural number shall include the singular number:
- Gender.** Words importing the masculine gender shall include females.
- Proof of being a Foreigner.** II. If a question shall arise whether any person alleged to be a Foreigner and to be subject to the provisions of this Act is a Foreigner or not, or is or is not subject to the provisions of this Act, the onus of proving that such person is not a Foreigner, or is not subject to the provisions of this Act, shall lie upon such person.
- Government may order any Foreigner to remove himself.** III. The Governor-General of India in Council may, by writing, order any Foreigner to remove himself from British India, or to remove himself therefrom by a particular route to be specified in the order; and any local Government may, by writing, make the like order with reference to any Foreigner within the jurisdiction of such Government.
- Foreigner refusing to remove, or returning without license after removal, may be apprehended and detained.** IV. If any Foreigner ordered to remove himself from British India, or ordered to remove himself therefrom by a particular route, shall neglect or refuse so to do; or if any Foreigner, having removed himself from British India in consequence of an order issued under any of the provisions of this Act, or having been removed from British India under any of the said provisions, shall wilfully return thereto without a license in writing granted by the Governor-General of India in Council or by the local Government under whose order he shall have removed himself or been removed, such Foreigner may be apprehended and detained in safe custody, until he shall be discharged therefrom by order of the Governor-General of India in Council, or of the local Government within whose jurisdiction he shall be so apprehended or detained, upon such terms and conditions as the said Governor-General of India in Council or local Government shall deem sufficient for the peace and security of British India, and of the Allies of Her Majesty, and of the neighbouring Princes and States.
- Governor-General may order all the provisions of this Act to be in force in British India, or in any part thereof.** V. Whenever the Governor-General of India in Council shall consider it necessary to take further precautions in respect of Foreigners residing or travelling in British India or any part thereof, it shall be lawful for the Governor-General of India in Council, by a Notification published in the Gazette of India, to order that the provisions of this and the subsequent Sections of this Act shall be in force in British India, or in such part thereof as shall be specified in such Notification, for such period as shall be therein declared; and thereupon, and for such period, the whole of this Act including this and the subsequent Sections shall have full force and effect in British India or such part thereof as shall have been so specified. The Governor-General of India in Council may from time to time, by a Notification published as aforesaid, cancel or alter any former Notification which may still be in force, or may extend the period declared therein. Provided that none of the provisions of this or the subsequent Sections of this Act shall extend to any Foreign Minister duly accredited by his Government; to any Consul or Vice Consul; to any person under the age of fourteen years; or to any person in the service of Her Majesty.
- Proviso.** VI. Every Foreigner on arriving in any part of British India in which all the provisions of this Act are for the time being in force under an order issued as provided in the last preceding Section, from any port

or place not within British India, or from any port or place within British India where all the provisions of this Act are not in force, shall if he arrive at a Presidency Town forthwith report himself to the Commissioner of Police, of such Town, or, if he arrive at any other place then he shall forthwith report himself to the Magistrate of the District, or to such other Officer as shall be appointed to receive such reports, by the Governor-General of India in Council or by the local Government of such place.

Every  
Foreigner to  
report his  
arrival in India  
in certain cases.

VII. The report shall be in writing, and shall be signed by the person reporting himself, and shall specify his name or names, the Nation to which he belongs, the place from which he shall have come, the place or places of his destination, the object of his pursuit, and the date of his arrival in such Presidency Town or other place. The report shall be recorded by the Officer to whom it is made.

What to be  
stated in the  
report.

VIII. The provisions of the last two preceding Sections shall not extend to any person being the Master or Commander of a vessel or employed therein, but if any such person shall be in any part of British India in which all the provisions of this Act are for the time being in force, after he shall have ceased to be actually employed in a vessel, he shall forthwith report himself in manner aforesaid.

Foreigners,  
being Masters  
of vessels or  
employed  
therein, to  
report them-  
selves when  
they cease to be  
so employed.

IX. If any Foreigner shall neglect to report himself as required by this Act, he may be dealt with in the manner hereinafter provided in respect of Foreigners travelling without a license.

Foreigners  
neglecting to  
report them-  
selves, may be  
dealt with in  
like manner as  
Foreigners  
travelling  
without a license.

X. No Foreigner shall travel in or pass through any part of British India in which all the provisions of this Act are for the time being in force without a license.

No Foreigner  
to travel in  
India without  
a license.

XI. Licenses under this Act may be granted by the Governor-General of India in Council or by any of the local Governments, under the signature of a Secretary to the Government of India or to such local Government as the case may be, or by such other Officers as shall be specially authorized to grant licenses by the Governor-General of India in Council, or by any of the local Governments.

License by  
whom to be  
granted.

XII. Every such license shall state the name of the person to whom the license is granted, the Nation to which he belongs, the District or Districts through which he is authorized to pass or the limits within which he is authorized to travel, and the period (if any) during which the license is intended to have effect.

What to be  
stated in  
license.

XIII. The license may be granted subject to such conditions as the Governor-General of India in Council or the local Government may direct, or as the Officer granting the license may deem necessary. Any license may be revoked at any time by the Governor-General of India in Council, or by the local Government of any part of British India in which all the provisions of this Act are for the time being in force and in which the Foreigner holding the same may be, or by the Officer who granted the license.

License may be  
granted subject  
to conditions  
and may be  
revoked.

Foreigner travelling without or contrary to the conditions of license, may be apprehended.

XIV. If any Foreigner travel in or attempt to pass through any part of British India without such license as aforesaid, or beyond the Districts or limits mentioned therein, or after such license shall have been revoked, or shall violate any of the conditions therein specified, he may be apprehended without warrant by any Officer exercising any of the powers of a Magistrate, or by any European Commissioned Officer in the service of Her Majesty, or by any member of a Volunteer Corps enrolled by authority of Government whilst on duty, or by any Police Officer.

Procedure upon apprehension.

XV. If any person be apprehended by a person not exercising any of the powers of a Magistrate and not being a Police Officer, he shall be delivered over as soon as possible to a Police Officer, and forthwith carried before the Magistrate of the District. Whenever any person shall be apprehended by or taken before the Magistrate of the District, such Magistrate shall immediately report the case to the local Government to which he is subordinate, and shall cause the person brought before him to be discharged, or to be conveyed to one of the Presidency Towns, or pending the orders of such Government to be detained.

Magistrate to report to Government.

Persons apprehended may be admitted to bail.

XVI. Any person apprehended or detained under the provisions of this Act, may be admitted to bail by the Magistrate of the District, or by any Officer authorized to grant licenses, and shall be put to as little inconvenience as possible during his detention in custody.

Removal of persons apprehended.

XVII. The local Government of any part of British India in which all the provisions of this Act are for the time being in force, may order any person apprehended or detained under the provisions of this Act to remove himself from any such part of British India, by sea or by such other route as the said local Government may direct; or the said local Government may cause him to be removed from such part of British India by such route and in such manner as to such local Government shall seem fit. The Governor-General of India in Council may exercise all the powers given by this Section to any local Government.

Governor-General may prohibit persons not being natural-born subjects from travelling or passing through any part of India without a license.

XVIII. The Governor-General of India in Council may by order prohibit any person or any class of persons not being natural-born subjects of Her Majesty within the meaning of the Statute 3 and 4 William IV, chap. LXXXV, Section 81, from travelling in or passing through any part of British India in which all the provisions of this Act may for the time being be in force, and from passing from any part thereof to another without a license to be granted by such Officer or Officers as shall be specified in the order: and if any person so prohibited shall wilfully disobey such order, he may be apprehended without warrant by any of the Officers specified in Section XIV of this Act, and carried before the Magistrate of the District, and dealt with under the provisions of Section XVII in the same manner as if he were a Foreigner: and the Governor-General of India in Council may order such person to be detained in safe custody or under the surveillance of the Police so long as it may be deemed necessary for the peace and security of British India or any part thereof.

Also the local Governments within their respective jurisdictions.

XIX. The local Government of any Presidency or place in which all the provisions of this Act may for the time being be in force, may by order prohibit any person or any class of persons not being natural-born subjects of Her Majesty within the meaning of the Statute 3 and 4 William IV, chap. LXXXV, Section 81, from travelling in or passing

through such Presidency or place or any part thereof, and from passing from any part thereof to another, without a license to be granted by such Officer or Officers as shall be specified in the order; and if any person so prohibited shall wilfully disobey such order, he may be apprehended without warrant by any of the Officers specified in Section XIV of this Act, and carried before the Magistrate of the District, and dealt with under the provisions of Section XVII in the same manner as if he were a Foreigner; and the local Government may order such person to be detained in safe custody or under the surveillance of the Police so long as it may be deemed necessary for the peace and security of British India or any part thereof.

XX. It shall be lawful for the Commissioner of Police, or for the Magistrate of the District, or for any Officer appointed to receive reports as mentioned in the sixth Section of this Act, or for any Police Officer under the authority of such Commissioner or Magistrate, to enter any vessel in any port or place within British India in which all the provisions of this Act may for the time being be in force, in order to ascertain whether any Foreigner bound to report his arrival under the said Section VI of this Act is on board of such vessel; and it shall be lawful for such Commissioner of Police, Magistrate, or other Officer as aforesaid, to adopt such means as may be reasonably necessary for that purpose; and the Master or Commander of such vessel shall also, before any of the passengers are allowed to disembark, if he shall be required so to do by such Commissioner of Police, Magistrate, or other Officer as aforesaid, deliver to him a list in writing of the passengers on board, specifying the ports or places at which they embarked, and the ports or places of their disembarkation or intended disembarkation, and answer to the best of his knowledge all such questions touching the passengers on board the said vessel, or touching those who may have disembarked in any part of British India, as shall be put to him by the Commissioner of Police, Magistrate, or other Officer as aforesaid. If any Foreigner on board such vessel in any part of British India shall refuse to give an account of his objects of pursuit in India, or if his account thereof shall not be satisfactory, the Officer may refuse to allow him to disembark, or he may be dealt with in the same manner as a Foreigner travelling in British India without a license.

Certain Officers may board vessels to ascertain whether Foreigners are on board.

Master of vessel to furnish list of passengers, and to give information respecting them.

Foreigner refusing to give account of himself, not to be allowed to disembark.

XXI. If the Master or Commander of a vessel shall wilfully give a false answer to any question which by Section XX of this Act he is bound to answer, or shall make any false report, he shall be held to have committed the offence specified in Section 177 of the Indian Penal Code.

Penalty for false answer or report.

XXII. If the Master or Commander of any vessel shall wilfully neglect or refuse to comply with the requisitions of this Act, he shall, on conviction before the Magistrate of the District or a Justice of the Peace, be liable to a fine not exceeding two thousand Rupees.

Penalty for neglect by Master of vessel to comply with requisitions of Act.

XXIII. Whoever intentionally obstructs any Officer in the exercise of any of the powers vested in him by this Act, shall be held to have committed the offence specified in Section 186 of the Indian Penal Code.

Penalty for obstructing Officers.

XXIV. All fines imposed under this Act may, according as they shall have been imposed for offences committed within or for offences committed beyond the limits of the Towns of Calcutta, Madras and Bombay, be recovered by a Magistrate of Police or by the Magistrate of the Dis-

Fines imposed under this Act how to be recovered.



strict in the manner prescribed in Section XXVI of Act XLVIII of 1860 (to amend Act XIII of 1856 for regulating the Police of the Towns of Calcutta, Madras, and Bombay, and the several Stations of the Settlement of Prince of Wales' Island, Singapore, and Malacca).

Persons may be exempted from provisions of this Act.

XXV. The Governor-General of India in Council, or the local Government of any part of British India in which this Act may for the time being be in force, may exempt any person, or any class of persons, either wholly or partially, or temporarily or otherwise, from all or any of the provisions of this Act contained in any of the Sections subsequent to Section V, and may at any time revoke any such exemption.

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### Annex D. No. 6

*Part I The Gazette of India, August 15, 1914. 1329.*

#### HOME DEPARTMENT.

#### Notifications.

Simla, the 8th August, 1914.

No. 577.—WHEREAS the Governor-General in Council considers it necessary to take further precautions in respect of foreigners residing in or travelling in British India.

Now therefore, in exercise of the powers conferred by section 5 of the Foreigners Act, 1864 (III of 1864), the Governor General in Council is pleased to order that the provisions of section 5 and of all the subsequent sections of the said Act shall, for a period of six months from the date of this notification, be in force in British India, including British Baluchistan, the Sonthal Parganas and the District of Angul.

No. 578—In exercise of the powers conferred by section 25 of the Foreigners Act, 1864 (III of 1864), the Governor General in Council is pleased to exempt—

- (a) from the provisions of section 5 and all the subsequent sections of the said Act, all foreigners being Asiatics, and
  - (b) from the provisions of sections 10 to 19 of the said Act, all non-Asiatic foreigners not being of German or Austrian nationality.
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## Annex D. No. 7

Part I. *The Gazette of India, August 22, 1914.*

1351.

## LEGISLATIVE DEPARTMENT

## Notifications

Simla, the 20th August, 1914.

An Ordinance to provide for the exercise of more effective control over foreigners in British India.

Ordinance No. III of 1914

WHEREAS an emergency has arisen which makes it necessary to provide for the exercise of more effective control over foreigners in British India;

Now, therefore, in exercise of the powers conferred by section 23 of the Indian Councils Act, 1861, the Governor General is pleased to make and promulgate the following Ordinance.

1. (1) This Ordinance may be called "The Foreigners Ordinance, 1914". Short title and extent.

(2) It extends to the whole of British India including British Baluchistan, the Sonthal Paraganas, the district of Angul, the Shan States and the Pargana of Spiti.

2. In this Ordinance—

Definitions.

(a) "foreigner" has the same meaning as in the Foreigners Act, 1864.

(b) "prescribed" means prescribed by rules made under this Ordinance.

3. (1) The Governor General in Council may by order—

Power to prohibit or regulate entry departure and residence of foreigners.

(a) prohibit, or regulate and restrict in such manner as he thinks fit, the entry of foreigners into British India and their departure from British India; and

(b) regulate or restrict in such manner as he thinks fit the liberty of foreigners residing or being in British India.

(2) In particular and without prejudice to the generality of the foregoing power orders under sub-section (1) may provide—

(a) that no foreigner shall enter into or depart from British India, save within such period and by such route, or by such port or place as may be specified in such order;

(b) that foreigners shall be prohibited from entering or remaining in any specified area in British India or shall only be permitted to enter or remain in British India or any specified area therein subject to such conditions and restrictions as the Governor General in Council may impose; and

(c) that foreigners residing or being in British India shall remove themselves to and remain in any specified area, or if such an order is necessary for the public safety, or in the interests of the State, that such foreigners shall be arrested and interned or confined in such manner as the Governor General in Council may think fit.

4. Any foreigner who contravenes or attempts to contravene the provisions of any order made under section 3, shall be punished with Penalties.

imprisonment of either description for a term which may extend to three years or with fine or with both.

Householder to report residence of any foreigner in his house to prescribed authority in specified areas.

5. (1) The Governor General in Council or any Local Government may, by notification in the Gazette of India or the local official Gazette, as the case may be, direct that within any area specified in such notification, every householder in whose house a foreigner is residing either temporarily or permanently shall forthwith report to the prescribed authority in the prescribed manner, the name of such foreigner, and such other particulars respecting him and the period of his residence in such house as may be prescribed.

(2) Any householder who fails to comply with the provisions of any notification issued under sub-section (1) shall be punished with imprisonment of either description for a term which may extend to six months or with fine which may extend to five hundred rupees or with both.

Orders under Ordinance may be general or special.

6. Where under the provisions of this Ordinance the Governor General in Council or any Local Government is authorised to make any order or issue any notification in respect of foreigners, such order may be made or such notification issued in respect of foreigners generally or in respect of any class or description of foreigners, or in respect of any individual foreigner, and different orders or notifications may be made or issued in respect of different classes of foreigners.

Power to make rules.

7. (1) The Governor General in Council may make rules for the purpose of carrying into effect the provisions of this Ordinance:

In particular and without prejudice to the generality of the foregoing power such rules may provide for—

(a) the authority to whom, and the manner in which, reports under section 5 shall be made and the particulars to be stated therein; and

(b) the manner in which orders under this Ordinance shall be enforced.

(2) All rules made under this section shall have effect as if enacted in this Ordinance.

Power to rescind or modify rules or orders.

8. The Governor General in Council or the Local Government may at any time rescind or modify any order, rule or notification made or issued under this Ordinance, and the Governor General in Council may delegate, subject to such conditions and restrictions as he thinks fit, all or any of his powers under this Ordinance to any civil or military authority in British India either by name or in virtue of his office.

Saving of powers under existing law.

9. Nothing in this Ordinance shall be deemed to affect or derogate from any power which may be exercised under the Foreigners Act, 1864, or under any other law for the time being in force in respect of foreigners generally or in respect of foreigners who are subjects of a State which is at war with His Majesty.

Power of exemption.

10. The Governor General in Council may exempt, either absolutely or conditionally, any foreigner or any class or description of foreigners from all or any of the provisions of this Ordinance.

Bar of jurisdiction of Courts.

11. No order made under section 3 of this Ordinance shall be called in question in any Court.

HARDINGE OF PENSHURST,  
Viceroy and Governor General.

Delhi, the 5th March 1917.

No. 1429-D.—In pursuance of section 2 of the Defence of India (Criminal Law Amendment) Act, 1915 (IV of 1915), the Governor General in Council is pleased to make the following rules:—

1. These rules may be called the Defence of India (Passport) Rules, Short title. 1917.

2. In these rules, unless there is anything repugnant in the subject Definition. or context,

“Passport” means a passport for the time being in force, issued or renewed not more than two years previously by or on behalf of the Government of the country of which the person to whom it relates is a subject and, in the case of a person coming to India from any country other than the United Kingdom or a British possession issued or visaed by the British Ambassador or British Consul in that country, to which passport there is attached a photograph of the person to whom it relates.

“Competent authority” means any person authorised by order in writing by the Governor General in Council or by the Local Government to exercise the powers of a competent authority under these rules.

3. No person coming from or intending to proceed to, any place out of India shall, save as otherwise provided in these rules, land or embark at any port in British India unless he or she has in his or her possession a passport. Landing or embarking in British India without passport prohibited.

4. The Governor General in Council or the Local Government may by order in writing exempt, either absolutely or on such conditions as may be specified in the order, any person or class of persons from any of the provisions of these rules, and a competent authority may by like order and under like conditions exempt any person or class of persons from any of the said provisions. Power to exempt persons from the operation of the rules.

5. Any person who,

(a) lands or embarks at any port in British India in contravention of rule 3;

(b) having been conditionally exempted from any of the provisions of these rules does any act in contravention of any condition specified in the order of exemption;

(c) for the purpose of obtaining a passport or an order of exemption from any provision of these rules, or for the purpose of obtaining the renewal or variation of a passport or order, either for himself, herself or for any other person, makes a false statement or false representation, shall be punishable with imprisonment for a term which may extend to six months, or with fine, or with both.

6. Any person who voluntarily obstructs, or offers any resistance to, or impedes, or otherwise interferes with, a competent authority, or any officer or other person who is carrying out the orders of such authority or who is otherwise acting in accordance with his duty under any of the Penalties. Penalty for obstruction to authority acting under these rules.

provisions of these rules, shall be punishable with imprisonment for a term which may extend to one month, or with fine, or with both.

- Attempts.** 7. Any person who attempts to commit, or abets or attempts to abet the commission of, any act punishable under these rules shall be punishable in like manner as if he or she had committed the act.
- Power of arrest.** 8. (1) A competent authority or any officer of the Police or of the Customs Department empowered by general or special order by the Local Government in this behalf, may arrest without a warrant any person against whom a reasonable suspicion exists of his or her being concerned in an offence punishable under these rules.
- (2) Every authority or officer making an arrest under this rule shall, without unnecessary delay, take or send the person arrested before a Magistrate having jurisdiction in the case, or to the officer in charge of the nearest police station.
- Exceptions.** 9. Nothing in these rules shall apply to—
- (a) any person whose age is, or appears to the competent authority to be, less than fifteen years;
  - (b) any member of His Majesty's naval or military forces or of the Indian Marine Service entering or leaving British India on duty;
  - (c) any member of the crew of any vessel who has been lawfully engaged as such in any country outside India and who leaves British India in continuation of the same voyage in the same vessel, or any member of the crew of any vessel who has been lawfully engaged in British India for an oversea voyage who satisfies a competent authority that he is by occupation a sea-faring man;
  - (d) any *bona fide* labourer proceeding to, or returning from, the Malay States of Ceylon; and
  - (e) any *bona fide* Mahomedan pilgrim proceeding to, or returning from, Jeddah or Basra.

### Annex D. No. 8

#### THE INDIAN PASSPORT ACT, 1920.

#### ACT NO. XXXIV OF 1920.

(9th September, 1920).

An Act to take power to require passports of persons entering British India

WHEREAS it is expedient to take power to require passports of persons entering British India; It is hereby enacted as follows:—

1. (1) This Act may be called the Indian Passport Act, 1920.
- (2) It shall extend to the whole of British India, including British Baluchistan, the Sonthal Parganas and the district of Angul.
2. In this Act, unless there is anything repugnant in the subject or context,—

"entry" means entry by water, land or air;

"passport" means a passport for the time being in force issued or renewed by the prescribed authority and satisfying the conditions prescribed relating to the class of passports to which it belongs; and

"prescribed" means prescribed by rules made under this Act.

3. (1) The Central Government may make rules requiring that persons entering British India shall be in possession of passports, and for all matters ancillary or incidental to that purpose.

(2) Without prejudice to the generality of the foregoing power such rules may—

(a) prohibit the entry into British India or any part thereof of any person who has not in his possession a passport issued to him;

(b) prescribe the authorities by whom passports must have been issued or renewed, and the conditions with which they must comply, for the purposes of this Act; and

(c) provide for the exemption, either absolutely or on any condition, of any person or class of persons from any provision of such rules.

(3) Rules made under this section may provide that any contravention thereof or of any order issued under the authority of any such rule shall be punishable with imprisonment for a term which may extend to three months, or with fine or with both.

(4) All rules made under this section shall be published in the Official Gazette and shall thereupon have effect as if enacted in this Act.

4. (1) Any officer of police, not below the rank of a sub-inspector, and any officer of the Customs Department empowered by a general or special order of the Central Government in this behalf may arrest without warrant any person who has contravened or against whom a reasonable suspicion exists that he has contravened any rule or order made under section 3.

(2) Every officer making an arrest under this section shall, without unnecessary delay, take or send the person arrested before a Magistrate having jurisdiction in the case or to the officer in charge of the nearest police-station and the provisions of section 61 of the Code of Criminal Procedure, 1898, shall, so far as may be, apply in the case of any such arrest.

5. The Central Government may, by general or special order, direct the removal of any person from British India who, in contravention of any rule made under section 3 prohibiting entry into British India without passport, has entered therein, and thereupon any officer of the Crown shall have all reasonable powers necessary to enforce such direction.

GOVERNMENT OF INDIA  
HOME DEPARTMENT.

INDIAN PASSPORT RULES, 1921

NOTIFICATION NO. 1384-G DATED, SIMLA, THE 7TH SEPTEMBER, 1921,  
WITH AMENDMENTS ISSUED UP TO AUGUST, 1947.

In exercise of the powers conferred by section 3 of the Indian Passport Act, 1920 (XXXIV of 1920), the Central Government is pleased to make the following rules:—

1. These rules may be called the Indian Passport Rules, 1921.

2. In these rules, unless there is anything repugnant in the subject of context; . . . . . "competent Authority" means any persons authorised by order in writing by the Central Government to exercise the powers of a competent Authority under these rules.

3. Subject to the provisions hereinafter contained no person proceeding from any place outside India shall enter British India by sea or by air or by land unless he is in possession of a passport.

Explanation I—A person entering British India by sea or by air shall not be deemed to be proceeding from a place outside India by reason only of the fact that he has traversed extra-territorial waters in the course of his journey.

Explanation II — A person shall be deemed to be proceeding from a place outside India who having entered India from such place subsequently enters British India.

4. Every such passport —

(i) shall have been issued or renewed by or on behalf of the country of which the person to whom it relates is a subject and shall be within the period of its validity;

(ii) shall, except in the case of passport issued to Pardanashin or Gosha women have affixed to it a photograph of the person to whom it relates, duly authenticated by the issuing authority;

(iii) when issued by or on behalf of His Majesty's Government of any British possession shall be specifically valid for entry into any part of the British Empire or shall have been specifically endorsed by a competent British authority as valid for entry into British India;

(iv) when issued by or on behalf of the Government of a foreign country shall have been endorsed by way of visa for British India by a proper British Diplomatic, Consular or Passport Authority. Such visas shall be of one of the following kinds, namely:—

(a) a single journey visa valid for one year or for such shorter period as may be specified therein for one journey only to British India for any legitimate purpose;

(b) a transit visa valid for one year, or for such shorter period as may be specified therein (provided that in no case shall it be valid for a period exceeding the period for which the visa for the country of ultimate destination is valid) for one or more direct jour-

neys through British India undertaken for the sole purpose of reaching the territory of a foreign State or of another British possession and occupying in each case not more than 15 days in British India, unless an extension of the time for such journey be allowed by a competent authority, and

(c) an ordinary visa valid for one year or for such shorter period as may be specified therein for any number of journeys to British India for any legitimate purpose.

5. (1) The following persons and classes of persons shall be exempted from the provisions of rule 3: —

(a) persons whose age is in the opinion of the competent authority less than 15 years;

(b) members of His Majesty's Naval, Military or Air Force or of the Indian Marine Service entering British India on duty, and members of the families of any such person when accompanying such person to British India on a Government transport;

(c) persons domiciled in India proceeding from any foreign possession in India, or from Ceylon, or the Federated Malay States the Straits Settlements or Burma;

(d) persons domiciled in India proceeding from the Dominion of Pakistan;

(e) persons domiciled in the Dominion of Pakistan proceeding from Pakistan;

(f) persons domiciled in Ceylon proceeding from Ceylon and British subjects domiciled in Burma proceeding from Burma;

(g) persons domiciled in a foreign possession in India, proceeding from any foreign possession in India;

(h) *bona fide* Mahomedan pilgrims returning from Jeddah or Basra,

(i) Nepalese, Tibetans, and Bhutanese entering British India by land over the Nepal border;

(j) Tibetans, Bhutanese, and Nepalese entering British India by land over the Tibetan border;

(k) persons domiciled in India entering British India by land over the Nepalese, Tibetan and Indo-Burmese borders;

(1) persons or classes of persons specified in this behalf by the Central Government.

(2) In specifying any person or class of persons in accordance with the provisions of clause (1) of sub-rule (1), the Central Government may prescribe any conditions to which the exemption of such person or class of persons from the provisions of rule 3 shall be subject.

6. Any person who —

(a) enters British India in contravention of the provisions of rule 3,

or

(b) does any act in contravention of any condition prescribed under sub-rule (2) of rule 5,



shall be punishable with imprisonment for a term which may extend to three months or with fine or with both.

7. Any person who attempts to commit or abets or attempts to abet the commission of any offence punishable under rule 6 shall be punishable in like manner as if he had committed the offence.

Denys BRAY,  
Secretary to the Government of India.

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**Annex D. No. 9***Part I The Gazette of India, February 20, 1926. 285*

## FOREIGN AND POLITICAL DEPARTMENT

The 16th February 1926.

No. 77-G.—In exercise of the powers conferred by section 3 of the Indian Passport Act, 1920 (XXXIV of 1920), the Governor-General in Council is pleased to amend Notification of the Foreign and Political Department, No. 1384/G., dated the 7th September 1921, in the following manner, namely:—

1. The Explanation to rule 3 shall be numbered Explanation I and below it shall be added the following Explanation, namely:—

“Explanation II. A person shall be deemed to enter British India by sea who, having disembarked at a port in India or a port in any foreign possession in India, subsequently enters British India.”

2. For clause (d) in sub-rule (1) of rule 5 the following clause shall be substituted, namely:—

“(d) Permanent residents in India or in a foreign possession in India proceeding from a port in such foreign possession, and permanent residents in India or in Ceylon proceeding from a port in Ceylon.”

**Annex D. No. 10**

## FOREIGN AND POLITICAL DEPARTMENT

## Notification

New Delhi, the 22nd January 1930.

No. 72-G.—In exercise of the powers conferred by section 3 of the Indian Passport Act, 1920 (XXXIV of 1920), the Governor-General in Council is pleased to direct that the following further amendment shall be made in the Indian Passport Rules, 1921, namely:—

For sub-rule (1) of rule 5 of the said Rules the following sub-rule shall be substituted, namely:—

“(1) The following persons and classes of persons shall be exempted from the provisions of rule 3:—

(a) persons whose age is in the opinion of the competent authority less than 15 years,

(b) members of His Majesty's Naval, Military or Air Forces or of the Indian Marine Service entering British India on duty, and members of the families of any such person when accompanying such person to British India on a Government transport,

(c) persons domiciled in India proceeding from any foreign possession in India, or from Ceylon, or the Federated Malay States or the Straits Settlements,

- (d) persons domiciled in Ceylon proceeding from Ceylon,
- (e) persons domiciled in a foreign possession in India proceeding from any foreign possession in India,
- (f) *bona fide* Mohamedan pilgrims returning from Jeddah or Basra,
- (g) persons or classes of persons specified in this behalf by the Governor-General in Council or by a Local Government."

E. B. HOWELL,

Offg. Foreign Secy. to the Govt of India.

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Notification

Simla, the 7th May, 1930.

No. 287-G.—In exercise of the powers conferred by section 3 of the Indian Passport Act, 1920 (XXXIV of 1920), the Governor-General in Council is pleased to direct that the following further amendment shall be made in the Indian Passport Rules, 1921, namely:—

In sub-rule (2) of rule 5 of the said Rules, for the brackets and letter "(f)" the brackets and letter "(g)" shall be substituted.

E. B. HOWELL,

Offg. Foreign Secy. to the Govt. of India.

(F & P DEPT. No. 167-G/30.)

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**Annex D. No. 11**

FOREIGN AND POLITICAL DEPARTMENT.

Notification

Simla, the 16th September 1935.

No. 514-G.—In exercise of the powers conferred by section 3 of the Indian Passport Act, 1920 (XXXIV of 1920), the Governor General in Council is pleased to direct that the following further amendments shall be made in the Indian Passport Rules, 1921, namely:—

1. In rule 3 of the said Rules—

(i) for the words "by the Chaman, Khyber or Nushki land route the words "by land" shall be substituted; and

(ii) for Explanation II, the following Explanation shall be substituted, namely:—

"Explanation II.—A person shall be deemed to be proceeding from a place outside India who having entered India from such place subsequently enters British India."

2. In sub-rule (1) of rule 5 of the said Rules—

(i) after clause (f) the following clauses shall be inserted, namely:—

"(g) Chinese nationals and inhabitants of French Indo-China entering British India by land over the Sino-Burma border,

“(h) Nepalese, Tibetans, and Bhutanese entering British India by land over the Nepal border,

“(i) Tibetans, Bhutanese, and Nepalese entering British India by land over the Tibetan Border,

“(j) Siamese entering British India by land over the Siam border,

“(k) persons domiciled in India entering British India by land over the Sino-Burmese, Nepalese, Tibetan and Siamese borders,”; and

“(ii) clause (g) shall be relettered (l).

J. G. ACHESON,  
Offg. Foreign Secy. to the Govt.  
of India.

(F & P DEPT. No. 349-G (SECRET)-1934.)

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#### Annex D. No. 12

A letter from His Britannic Majesty's Consul in the Portuguese Possessions in India, No. 29/129 dated the 5th Nov. '40, to the Under Secretary to the Government of India in the External Affairs Department, New Delhi.

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Subject:—Re: necessity of documents of identity for Portuguese Europeans residing in Goa to proceed to British India.

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I have the honour to invite your kind attention to my letter No. 29/120, dated 18/23rd September last and to request you the favour of an early reply thereto.

A copy of the Local Government's letter No. 269/G, dated the 5th September, calling for the information is enclosed herewith for your information.

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Translation of letter No. 269/G dated 5-9-40, from the Chief of Cabinet, Nova-Goa, to H.B.M.'s consul, Mormugao.

I request you to please enlighten me on the following:—

“Do the Portuguese Europeans residing in Goa require any documents to proceed to British India?”

The reason for the question is this. Some time back an A.D.C. to H.E. the Governor went to spend a month in British India. His 'Guia' (a kind of passport) was sent to the Consulate for countersignature and you were of the opinion that it was not necessary and really this Officer did not meet with any difficulty during his stay and transit in British India.

It happens, however, that, recently another A.D.C. of H.E. having gone to British India, did not meet with any difficulties on the part of

the frontier authorities, neither at Kolhapur where he was for some days, but having stayed, on return journey, a night at Belgaum he was met by a police Officer who asked him for the 'travel permit' which he did not possess, and, though, politely he informed him that only to the Portuguese born in Goa, free transit was permitted in British India, but he would consent to his departure, as he knew that he was leaving by early morning train.

I have to inform you that this officer had with him and showed the official document justifying the work on which he had gone.

Thanking in anticipation for the information asked for, in order to know the procedure to be followed in similar cases, and to avoid disagreeable situations.

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A letter from the Under Secretary, External Affairs Deptt. No. E. 581(4)-G/40 dated the 2nd December, 1940 to the H.B.M.'s Consul in the Portuguese Possessions in India Marmagoa.

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Subject:—Visas for India.

I am directed to refer to your letter No. 29/129, dated the 5th November, 1940 and to say that European Portuguese subjects who are not domiciled in the Portuguese Possessions in India, are not exempt from the necessity of being in possession of Passports duly visaed for India, when entering British India from these Possessions.

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### Annex D. No. 13

#### HOME DEPARTMENT

##### Notification

New Delhi, the 22nd July 1944.

No. 89/41.A-Poll(E).—In exercise of the powers conferred by sub-rule (1) of rule 25 of the Defence of India Rules, the Central Government is pleased to order that no person, not being a foreigner shall proceed by land from British India to any place in the Portuguese possession of Goa except under the authority of a written permit issued by the Commissioner of Police, Bombay, or by the District Superintendent of Police of the Belgaum, Ratnagiri, North Kanara, Surat or Thana districts or by any other police officer subordinate to them and authorised by the said officers in this behalf or by any officer of the Central Exercises and Salt Revenue Department of the Government of India, or by a forest officer of the Government of Bombay.

Provided that nothing in this Order shall apply to a person proceeding by one or other of the following routes, namely—

- (a) by railway;
- (b) by the road from Anmode to Mollem;
- (c) by the road from Dodamarg to Asnora;
- (d) by the road from Majali te Kanakonam;
- (e) by the road from Satada to Pedna.

E. Conran-Smith, Secy.

## HOME DEPARTMENT

## Notification

New Delhi, the 22nd July 1944.

No. 89/4I.B-Poll(E).—In exercise of the powers conferred by subsection (2) of Section 3 of the Foreigners Act, 1940 (II of 1940), the Central Government is pleased to direct that no foreigner shall depart from British India for a place in Portuguese India except under the authority of, and subject to the conditions prescribed in, a permit, in the Form annexed to this notification, issued by the Registration Authority of the District in which he resides.

## FORM

PERMIT UNDER SECTION 3(2) OF THE FOREIGNERS ACT, 1940,  
FOR DEPARTURE TO PORTUGUESE INDIA

Mr. a foreigner, whose description is given on the reverse, is authorised to depart from British India for \_\_\_\_\_ in Portuguese India within a period of one month from the date of the issue of this permit. The permit is valid for a single journey only.  
Date and Seal.

Signature of Registration Officer  
DESCRIPTION OF THE PERMIT-HOLDER

Name.  
Date of birth.  
\*Passport No.  
%Registration No.  
Colour of hair.  
Colour of eyes.  
Height.  
Any other distinguishing marks.

Signature of the Permit-Holder.

\*In the case of passport holders only.

%In the case of registered foreigners only.

E. CONRAN-SMITH, SECY.

## HOME DEPARTMENT

## Notification

New Delhi, the 22nd July 1944.

No. 89/4I. C-Poll(E).— In exercise of the powers conferred by subsection (2) of section 3 of the Foreigners Act, 1940 (Act II of 1940), the Central Government is pleased to direct that every foreigner, on entering British India by land from any place within the Portuguese possession of Goa or on leaving British India by land for any place within the said Portuguese possession, shall, on the demand of any police officer, any forest officer of the Government of Bombay, any officer of the Central Excises and Salt Revenue Department of the Government of India

who may be on duty in the Ratnagiri, Belgaum or Kanara districts produce, for the inspection of such officer, his passport, certificate of registration and such other proof of his identity as may be required by the said officer.

E. CONRAN-SMITH, Secy.

## HOME DEPARTMENT

### Notification

New Delhi, the 22nd July 1944.

No. 89/41—Poll(E).—In exercise of the powers conferred by sub-rule (1) of rule 24 of the Defence of India Rules, the Central Government is pleased to order that no person shall, on coming by land from the Portuguese possession of Goa, enter British India elsewhere than at the places where the boundary between the said possession and British India is crossed by—

- (a) the railway from Castle Rock to Marmugao;
- (b) the road from Anmode to Mollem;
- (c) the road from Dodamarg to Asnora;
- (d) the road from Majali to Kanakonam; or
- (e) the road from Satada to Pedna;

Provided that any person entering British India from the said possession with the permission in writing of a police officer, a forest officer or any officer of the Central Excises and Salt Revenue Department of the Government of India shall be exempt from the provisions of this order.

E. CONRAN-SMITH, Secy.

Government of India, Home Department Notification No. 89/41—(D)  
Political (E), dated the 21st June, 1945.

In exercise of the powers conferred by sub-rule (1) of rule 24 of the Defence of India Rules regarding the entry by land into British India of persons from the Portuguese possession of Goa, and in supersession of the notification of the Government of India in the Home Department No. 89/41—Political (E), dated the 22nd July, 1944, the Central Government is pleased to order that no person shall, on coming by land from the Portuguese possession of Goa, enter British India elsewhere than at the places where the boundary between the said possession and British India is crossed by—

- (i) the railway from Castle Rock to Marmugao,
- (ii) the road from Anmode to Mollem,
- (iii) the road from Dodamarg to Asnora,
- (iv) the road from Majali to Kanakonam,
- (v) the road from Satada to Pedna,
- (vi) the road from Kirnapani to Arnoda,
- or
- (vii) the road from Bicholi to Banda.

Provided that any person entering British India from the said possession with the permission in writing of a Police Officer, a forest officer or any officer of the Central Excises and Salt Revenue Department of the Government of India shall be exempt from the provision of this order.

Government of India, Home Department, Notification No. 89/41-(E)—  
Political (E), dated the 21st June, 1945.

In exercise of the power conferred by sub-rule (1) of rule 25 of the Defence of India rules, regarding persons not being foreigners, proceeding by land from British India to any place in the Portuguese possession of Goa and in supersession of the notification of the Government of India in the Home Department No. 89/41—Political (E), dated the 22nd July 1944, the Central Government is pleased to order that no person, not being a foreigner shall proceed by land from British India to any place in the Portuguese possession of Goa except under the authority of a written permit issued by the Commissioner of Police, Bombay or by the District Superintendent of Police of the Belgaum, Ratnagiri, North Canara, Surat or Thana Districts or by any other police officer subordinate to them and authorized by the said officers in this behalf or by any officer of the Central Excises and Salt Revenues Department of the Government of India or by a forest officer of the Government of Bombay.

Provided that nothing in this order shall apply to any person proceeding by one or other of the following routes, namely:—

- (i) by railway,
- (ii) by the road from Anmode to Mollem,
- (iii) by the road from Dodamarg to Asnora,
- (iv) by the road from Majali to Kanakonam,
- (v) by the road from Satada to Pedna,
- (vi) by the road from Kirnapani to Arnoda, or
- (vii) by the road from Bicholi to Banda.



**Annex D. No. 14****I**

No. 89/41—Poll (E)

**GOVERNMENT OF INDIA**

Home Department

New Delhi, the 22nd November, 1945.

Notification.

In exercise of the powers conferred by sub-rule (2) of rule 25 of the Defence of India Rules, the Central Government is pleased to direct that the notification of the Government of India in the Home Department No. 29/41.A—Poll (E), dated the 22nd July 1944, shall be cancelled.

**II**

No. 89/41-Poll (E)

**GOVERNMENT OF INDIA**

Home Department

New Delhi, the 22nd November, 1945.

Notification.

In exercise of the powers conferred by sub-section (2) of section 3 of the Foreigners Act, 1940 (II of 1940), the Central Government is pleased to direct that the notifications of the Government of India in the Home Department, No. 89/41.B—Poll (E) and No. 89/41.C—Poll (E), dated the 22nd July 1944, shall be cancelled.

**III**

No. 89/41—Poll (E)

**GOVERNMENT OF INDIA**

Home Department

New Delhi, the 22nd November, 1945.

Notification.

In exercise of the powers conferred by sub-rule (1) of rule 24 of the Defence of India Rules, the Central Government is pleased to direct that the notification of the Government of India in the Home Department No. 89/41.(D)—Poll (E), dated the 21st June, 1945 shall be cancelled.

## IV

No. 89/41—Poll (E)

## GOVERNMENT OF INDIA

Home Department

New Delhi, the 22nd November, 1945.

Notification.

In exercise of the powers conferred by sub-rule (1) of rule 25 of the Defence of India Rules, the Central Government is pleased to direct that the notification of the Government of India in the Home Department No. 89/41. (E)—Poll (E), dated the 21st June 1945 shall be cancelled.

(Signed) V. SHANKAR.

Under Secretary to the Government of India.

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**Annex D. No. 15**

No. 35—3

British Consulate,

Nova Goa, the 27th March, 1945.

From

Major M. O. A. Baig, M.B.E.,  
His Britannic Majesty's Consul in the  
Portuguese Possessions in India.

To

The Chief of Cabinet,  
Nova Goa.

Sir,

I am directed to refer to your letter No. 485/G dated the 28th September, 1944, and to say that at present there are no restrictions on the entry into British India from Diu of European Portuguese subjects domiciled in Portuguese India, nor do the Government of India propose to introduce any such restrictions. European Portuguese subjects not domiciled in Portuguese India are, however, required to take out a passport for entry into British India, under rule 5 of the Indian Passport Rules, 1921, unless they are specifically exempted under an order of the Government of India.

With the assurance of my highest esteem,

I have the honour to be,

Sir,

Your most obedient servant,

(Signed)

H. B. M's Consul.

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## Annex D. No. 16

(T 8533/61/378)  
No. 167.

Lisbon, July, 4th 1926.

Sir,

With reference to your despatch No. 160 of the 10th ultimo (T 6121/61/378), I have the honour to inform you that I have received a Note from the Minister for Foreign Affairs stating that a Decree has been issued according to which the Portuguese Government is now in a position to abolish visas on passports under certain conditions and therefore to meet the wishes of His Majesty's Government in that respect.

2. His Excellency requests me to inquire whether His Majesty's Government agree to abolish all Consular and Administrative visas on the passports of Portuguese citizens entering or leaving the United Kingdom. He further asks whether such a regime would apply also to the British Dominions and Colonies or would be restricted to the United Kingdom only.

3. General Carmona states that if he receives from me a favourable reply at an early date, the new regime could be brought into force on August 1st next.

4. A translation of the decree mentioned by His Excellency is enclosed herein.

I have, etc.,

(*Signe*) Lancelot D. Carnegie.

The Right Hon:

Sir Austen Chamberlain, K.G.,  
etc., etc., etc.

Foreign Office, S.W. 1.  
15th September 1926.

(T 10872/61/378)

Sir,

I have considered in consultation with the departments of His Majesty's Government concerned your despatch No. 167 of July 4th, informing me of the willingness of the Portuguese Government to enter into an agreement with His Majesty's Government for the abolition of visas in the case of British and Portuguese nationals desiring to enter the respective territories, and I shall be glad if you will take steps for the conclusion of such an agreement, by means of an exchange of notes.

2. His Majesty's Government are prepared for their part to permit all Portuguese nationals to enter Great Britain and Northern Ireland without first obtaining a British visa, provided that all British subjects of whatever race or origin will be permitted to enter Portugal on similar terms. Portuguese nationals will, of course, in common with all other aliens, still have to satisfy the requirements of the Immigration Officer at the port of arrival.

3. His Majesty's Government are also prepared to agree to the admission of Portuguese nationals without British visas into all British colonies and protectorates, except Malta and Gibraltar, provided that all British subjects are similarly admitted to the Portuguese overseas territories, and subject to the proviso in respect of immigration regulations set forth in paragraph 2 above.

4. Portuguese nationals will also be admitted to the mandated territories of Tanganyika, the Cameroons and Togoland. It will, however, still be necessary for Portuguese nationals to obtain visas as a preliminary to entry into Palestine, Trans-Jordan and Iraq, since it is considered desirable that the entry into those territories of persons without visas should be restricted to natives of the territories themselves, and even British subjects are required to obtain visas before entering them. You should explain this to the Portuguese Government.

5. The Governments of the Self-Governing Dominions and Southern Rhodesia have been asked whether they are prepared to make unilateral arrangements for the admission of Portuguese nationals into their territories without a visa, but it will not be possible to include India among the territories to which Portuguese nationals may be so admitted.

I am, etc.,

H. A. Grant Watson, Esq.,  
etc., etc., etc.,  
Lisbon.

G. R. WARNER.

(S. 12994)

Passport Control Department,  
Foreign Office.  
December 30, 1926.

#### Reciprocal Abolition of Visas for British and Portuguese Nationals.

ON and after the 15th January, 1927, Portuguese citizens will no longer require a British visa for the purpose of entering Great Britain and Northern Ireland, and British subjects will not require a Portuguese visa if travelling to Portugal.

Portuguese citizens will still be required to be in possession of passports for the purpose of entering Great Britain and Northern Ireland, and must satisfy the Immigration Authorities on arrival that they comply with the provisions of the Immigration Regulations.

H. E. SPENCER.

To His Majesty's Consular and  
Passport Control Officers.

(V/74/1926)

(S 31357)

Passport Control Department,  
Foreign Office,  
February 1, 1927.

Visas for India and Ceylon.

SEVERAL cases have occurred in which aliens have arrived in Ceylon in possession of passports bearing a visa for India only, and have stated that they were informed that a visa for India included Ceylon.

2. The attention of all Consular and Passport Control Officers is drawn to the fact that, except for nationals of those countries where the abolition of the visa for the United Kingdom is extended to the non-self-governing Colonies and Protectorates (see Summary of Visa Instructions), Ceylon should be specifically mentioned on the visa if an alien intends to enter that Colony, and that a visa for India only does not include Ceylon.

3. It must be borne in mind that in no case have visas been abolished for nationals of any country for the purpose of entry into India.

H. E. SPENCER.

To His Majesty's Consular and  
Passport Control Officers.

(V/7/1927)

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**Annex D. No. 17**

ACT No. XVI of 1939

(PASSED BY THE INDIAN LEGISLATURE)

(Received the assent of the Governor General on the 8th April, 1939)

An Act to Provide for the registration of foreigners in British India

WHEREAS it is expedient to provide for the registration of foreigners entering, being present in, and departing from, British India; It is hereby enacted as follows.—

1. (1) This Act may be called the Registration of Foreigners Act, 1939.

(2) It extends to the whole of British India.

2. In this Act—

(a) the word "foreigner" shall denote a person who is not—

(i) a British subject domiciled in the United Kingdom; or

(ii) a British Indian subject; or

(iii) a ruler or subject of an Indian State; or

(iv) a person duly appointed by a foreign Government to exercise diplomatic functions; or

(v) a consul or a vice-consul;

(b) "prescribed" means prescribed by rules made under this Act.

Short title  
and extent.

Definitions.

3. The Central Government may after previous publication, by notification in the official Gazette, make rules with respect to foreigners for any or all of the following purposes, that is to say—

Power to make rules.

(a) for requiring any foreigner entering, or being present in, British India to report his presence to a prescribed authority within such time and in such manner and with such particulars as may be prescribed;

(b) for requiring any foreigner moving from one place to another place in British India to report, on arrival at such other place, his presence to a prescribed authority within such time and in such manner and with such particulars as may be prescribed;

(c) for requiring any foreigner who is about to leave British India to report the date of his intended departure and such other particulars as may be prescribed to such authority and within such period before departure as may be prescribed;

(d) for requiring any foreigner entering, being present in, or departing from, British India to produce, on demand by a prescribed authority, such proof of his identity as may be prescribed;

(e) for requiring any person having the management of any hotel, boarding house, sarai or any other premises of like nature to report the name of any foreigner residing therein for whatever duration, to a prescribed authority within such time and in such manner and with such particulars as may be prescribed;

(f) for requiring any person having the management or control of any vessel or aircraft to furnish to a prescribed authority such information as may be prescribed regarding any foreigner entering, or intending to depart from, British India in such vessel or aircraft, and to furnish to such authority such assistance as may be necessary or prescribed for giving effect to this Act;

(g) for providing for such other incidental or supplementary matters as may appear to the Central Government necessary or expedient for giving effect to this Act.

4. If any question arises with reference to this Act or any rule made thereunder, whether any person is or is not foreigner, or is or is not a foreigner of a particular class or description, the onus of proving that such person is not a foreigner or is not a foreigner of such particular class or description, as the case may be, shall, notwithstanding anything contained in the Indian Evidence Act, 1872, lie upon such person.

Burden of proof.

I of 1872.

5. Any person who contravenes, or attempts to contravene, or fails to comply with, any provision of any rule made under this Act shall be punished, if a foreigner, with imprisonment for a term which may extend to one year or with fine which may extend to one thousand rupees or with both, or if not a foreigner, with fine which may extend to five hundred rupees.

Penalties.

6. The Central Government may, by order, declare that any or all of the provisions of the rules made under this Act shall not apply, or shall apply only with such modifications or subject to such conditions as may be specified in the said order, to or in relation to any individual foreigner or any class or description of foreigner:

Power to exempt from application of Act.

Provided that a copy of every such order shall be placed on the table of both Houses of Central Legislature as soon as may be after its promulgation.

Protection to persons acting under this Act.

7. No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under this Act.

Application of other Laws not barred.  
III of 1864.

8. The provisions of this Act shall be in addition to, and not in derogation of, the provisions of the Foreigners Act, 1864 and any other law for the time being in force.

## Annex D. No. 18

### Part I

#### The Registration of Foreigners Rules, 1939

No. 21/24/39, dated the 21st June, 1939.—In exercise of the powers conferred by section 3 of the Registration of Foreigners Act, 1939 (XVI of 1939), the Central Government is pleased to make the following rules:—

#### THE REGISTRATION OF FOREIGNERS RULES, 1939.

1. Short title and commencement.—(1) These rules may be called the Registration of Foreigners Rules, 1939.

(2) They shall come into force on the 1st July 1939.

<sup>1</sup> [(3) They extend to the whole of British India, including those excluded and partially excluded areas to which the Act has been, or may hereafter be applied by notification under sub-section (1) of section 92 of the Government of India Act, 1935.]

2. Definitions and interpretation.—In these rules unless there is anything repugnant in the subject or context—

(a) "Act" means the Registration of Foreigners Act, 1939;

(b) "Certificate of Registration" means a Certificate of Registration issued in pursuance of rule 6;

(c) "Form" means one of the Forms appended to these rules;

(d) "master of the vessel" includes the pilot of an aircraft and any person authorised by such master or pilot to discharge on his behalf any of the duties imposed upon him by these rules;

(e) "passenger" means any person travelling or seeking to travel on board a vessel who is not a bona fide seaman,

<sup>2</sup> [(ee) "police officer" includes, in British Baluchistan, a levy officer and "police officer not below the rank of head constable" includes a levy officer not below the rank of Jamadar;]

(f) "registered address" means a foreigner's address in British India as reported under rule 5 and recorded in item II of his Certificate of Registration;

<sup>1</sup> Ins. by Notfn. No. 21/59/39-Pol. (W), dated the 25th October, 1939, see Gazette of India, 1939, Pt. I p. 1768.

<sup>2</sup> Ins. by Notfn. No. 21/68/39 Pol. (W), dated 13th October, 1939, *ibid.*, p. 1704.

(g) "Registration Officer" means a Registration Officer appointed by the Central Government under rule 3 and includes an authority authorised in writing by a Registration Officer to perform the duties of the Registration Officer on his behalf;

(h) "residence" means ordinary dwelling place in British India;

(i) "seamen" means a person employed on, or engaged in the working of a vessel;

(j) "tourist" means a foreigner having no residence or occupation in India whose stay in India does not exceed three months, who has no other object in visiting India than recreation or sight-seeing and whose Certificate of Registration has been endorsed "Tourist" in accordance with the provisions of rule 7; and

(k) "vessel" includes aircraft but does not include a vessel travelling solely between ports or places in India.

3. Registration Officers.—(1) The Central Government may appoint Registration Officers for the purposes of these rules for such areas as it thinks fit.

(2) A Registration Officer may, with the approval of the Central Government, authorise in writing any authority to perform any or all of his functions under these rules.

4. Passengers on vessels to report arrival in British India.—Every passenger who arrives in British India on board any vessel shall, on being required so to do by, or on behalf of, the master of the vessel, furnish true particulars as to his name and nationality and, if he is a foreigner, his age, sex, place of birth and address or intended address in British India, the purpose of his visit and the purposed length of his stay in India.

5. Report by foreigner of his address in British India, etc.—(1) Every foreigner entering, or being present in British India shall present in person to the appropriate Registration Officer prescribed by rule 6 a report (hereinafter referred to as a registration report) of his arrival or presence, as the case may be, in British India.

<sup>1</sup>[Provided that a "pardanashin" woman who is accompanied by a male companion will not be required to present the registration report in person but may do so through her male companion.]

(2) Every registration report shall be made in writing, in the English language and in triplicate and shall contain a true statement of the foreigner's address in British India and of the other particulars specified in items 2 to 10 of Form A and in the case of a foreigner entering British India, such of the particulars specified in items 12 to 15 thereof as may be appropriate.

(3) For the purposes of sub-rule (2) a foreigner's address in British India shall be—

(a) the place of his residence, or

(b) if he has no residence, the place at which, at the time of making his registration report he is for the time being living or at which he first intends to live after his arrival in British India:

<sup>1</sup> Ins. by Notfn. No. 1/17/43-Political (E), dated the 31st January 1944, see Gazette of India, 1944, Pt. I, p. 137.



Provided that, subject to the approval of the Registration Officer, any foreigner who has no residence in British India may, with the consent previously obtained of a British subject residing in British India, being a banker or a person having the management of a hotel or of a tourist or travel agency, report on his address in British India the name and address of the said British subject and thereupon the name and address of that British subject shall, for so long as the provisions of sub-rule (4) are complied with, be deemed to be the foreigner's address in British India.

<sup>1</sup> [Provided further that, in the case of a foreigner who has no residence in British India, whose occupation is such as to necessitate frequent travelling, who is not likely to return within a reasonable time to the district in which he is at any time living and who is unable to avail himself of the provisions of the foregoing proviso, the office of the Registration Officer of the district in which he has first registered upon his arrival in British India shall be deemed to be his address in British India.]

(4) In any case to which the proviso to sub-rule (3) applies, it shall be the duty—

(a) of the foreigner to keep the British subject informed of his current address; and

(b) of the British subject to furnish all such information in his possession relating to the foreigner as may be demanded for any of the purposes of the Act or of these Rules by any Registration Officer, magistrate or police officer not below the rank of head constable.

(5) Copies of Form A may be obtained on application from any Registration Officer.

6. Procedure for registration.—(1) The registration report shall be presented—

(a) by a foreigner who is present in British India on the date on which these rules come into force, within fifteen days of the said date to the Registration Officer of the district in which his address in British India is situated, or, if on the said date and for a period of fourteen days thereafter the foreigner is absent from that district, to the Registration Officer of the district in which the foreigner is for the time being present;

(b) by a foreigner who enters British India on board a vessel, at such time and place and to such authority as may be appointed for the purpose by general or special direction of the Registration Officer of the port or other place of arrival;

(c) by a foreigner who enters British India by land, within twenty-four hours of his arrival in British India to a Registration Officer:

Provided that any foreigner who enters British India in the course of a continuous journey by railway shall present a registration report to the Registration Officer of the first district in British India at which he breaks his journey.

(2) Every foreigner presenting a registration report shall furnish to the Registration Officer such information as may be in his possession for the purpose of satisfying the said officer as to the accuracy of the particu-

<sup>1</sup> Ins. by Notfn. No. 1/14/41-Political (E), dated the 29th March, 1943, see Gazette of India, 1943, Pt. I, p. 373.

lars specified therein and shall, on being required so to do, sign the registration report in the presence of the said officer and shall thereupon be entitled to receive from the said officer a Certificate of Registration in Part III of Form A:

Provided that, in any case in which the registration report is presented by a foreigner who enters British India on board any vessel to the Registration Officer of the port or other place of arrival and the foreigner's address in British India is not within the jurisdiction of that Registration Officer, a temporary certificate in Form B shall be issued and the said foreigner shall thereafter comply with the conditions set out in Form B.

(3) If, in pursuance of clause (a) of sub-rule (1), a foreigner has presented a registration report to the Registration Officer of a district other than the district of his registered address, then, for so long as the said foreigner does not return to the district of his registered address, that Registration Officer shall, for the purposes of rules 10, 11 and 12, be deemed to be the Registration Officer of the district in which his registered address is situated.

7. Period of validity of Certificates of Registration.—(1) If the Registration Officer is satisfied that any foreigner entering British India is a bona fide tourist, he may endorse on the Certificate of Registration the word "Tourist" and record therein the date of the expiry of the validity of the said certificate as so endorsed.

(2) Where a tourist enters British India on the authority of a transit visa issued to him under the Indian Passport Rules, 1921<sup>1</sup>, the validity of his Certificate of Registration shall be co-extensive with the validity of the said transit visa. In respect of any other tourist, the Certificate of Registration shall be valid for the period of the foreigner's projected stay in British India, subject to the condition that in no case shall the period of such validity exceed three months.

<sup>2</sup>[Provided that, if the certificate of registration of a tourist, other than a tourist who has entered British India on the authority of a transit visa, is expressed to be valid for a period of less than three months, the period of validity of such certificate may, on sufficient cause being shown by the said tourist, be extended by any Registration Officer, subject to the condition that in no case shall the validity be so extended beyond three months after the date on which the said tourist entered British India.]

(3) The Certificate of Registration issued in respect of any foreigner other than a tourist shall be valid for so long as the foreigner does not depart from India.

(4) Any tourist who is in British India after the date of the expiry of his Certificate of Registration shall cease to be a tourist within the meaning of these rules.

8. Production of proof of identity.—(1) Every foreigner shall, within twenty-four hours of demand being made of him by any Registration Officer, magistrate, or police officer not below the rank of head constable,

<sup>1</sup> General Statutory Rules and Orders, Vol. IV, p. 570.

<sup>2</sup> Added by Notfn. No. 21/196/39-Pol. (W), dated the 27th February, 1940, see Gazette of India, 1940, Pt. I, p. 257.

produce at such place as may be specified his passport and such other proof of his identity as may be required for any purpose connected with the enforcement of these rules:

Provided that the said Registration Officer, magistrate or police officer may, on sufficient cause being shown, extend the aforesaid period of twenty-four hours to such period as, in the circumstances, may be necessary for the production of the said passport or other proof of identity.

(2) Every foreigner entering British India shall, on demand being made of him by the Registration Officer, deliver his passport or other proof of identity to that Officer and shall thereafter attend at such time and place as the Registration Officer may direct for the purpose of receiving back his passport.

(3) Where in pursuance of sub-rule (2) a foreigner surrenders his passport or other proof of identity he shall be entitled to receive a receipt for it from the Registration Officer.

9. Production of Certificate of Registration.—Every registered foreigner shall, within twenty-four hours of demand being made of him by any Registration Officer, any magistrate or any police officer not below the rank of head constable, produce or cause to be produced his Certificate of Registration for the inspection of such Registration Officer, magistrate or police officer:

Provided that the Registration Officer, magistrate or police officer may, on sufficient cause being shown, extend the aforesaid period of twenty-four hours to such period as, in the circumstances, may be reasonably necessary for the production of the said certificate.

10. Report of temporary absence from registered address.—(1) If at any time a foreigner is absent from his registered address for a continuous period of one month he shall report to the Registration Officer of the district in which his registered address is situated his current address and every subsequent change of address including his return to his registered address.

(2) Every foreigner who stays for a period of more than twenty-four hours at any place in any other district than the district in which his registered address is situated shall report his presence in that other district to the Registration Officer of that district:

Provided that any such foreigner as aforesaid who has made a report in Form C in accordance with the provisions of rule 14 shall be deemed to have complied with this sub-rule.

<sup>1</sup>[(3) The requirements of sub-rule (1) shall be deemed to have been fulfilled if the foreigner, either before leaving his registered address or on, or before the expiry of one month from the date of, so leaving, furnishes to the Registration Officer an itinerary in writing setting out his current address during every day of his absence from his registered address and the date on which he intends to return to his registered address:

Provided that if any change in the itinerary is made, intimation shall be sent to the Registration Officer.

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<sup>1</sup> Added by Notfn. No. 21/68/39-Pol. (W), dated the 13th October, 1939, see Gazette of India, 1939, Pt. I, p. 1704.

(4) The report prescribed by sub-rule (2) may be made in writing and the requirements of the said sub-rule shall be deemed to have been fulfilled if, prior to his arrival in a district other than that in which his registered address is situated, the foreigner furnishes to the Registration Officer of the said district intimation of the dates of his proposed arrival in, and departure from, the said district:

Provided that where any foreigner who has furnished intimation as aforesaid does not arrive in or depart from the said district on the dates specified in the intimation, he shall report the dates of his arrival and departure within twenty-four hours thereof to the Registration Officer.

11. Report of change of registered address.—(1) Every foreigner who is about to change his registered address shall furnish to the Registration Officer of the district in which his registered address is situated particulars of his new address and the date of the change.

(2) Every foreigner who effects any change of his address in British India to any other district than the district of his registered address shall, within twenty-four hours of his arrival in that other district, report his arrival to the Registration Officer of that district.

(3) A foreigner shall be deemed to change his registered address—

(a) if he departs from British India;

(b) if he changes his residence from one place to another place in British India;

(c) if, having no residence, he leaves his registered address knowing that he is not likely thereafter to return thereto within six months of leaving it, or

(d) in any case to which the proviso to sub-rule (3) of rule 5 applies, if either he or the British subject whose address is deemed to be his registered address applies to the Registration Officer to be absolved from, or fails at any time to discharge the obligations laid upon them by sub-rule (4) of that rule.

<sup>1</sup> [Provided that clause (c) of this sub-rule shall not apply in any case in which in accordance with the second proviso to sub-rule (3) of rule 5 the foreigner's registered address is the office of the Registration Officer of the district in which he first registered upon his arrival in British India.]

12. Reports of changes other than of address.—Without prejudice to the provisions of rules 10 and 11 every foreigner shall furnish to the Registration Officer of the district in which his registered address is situated particulars of any circumstance affecting in any manner the accuracy of the particulars recorded in his Certificate of Registration within fourteen days after the circumstance has occurred, and generally shall supply to the Registration Officer all such information as may be necessary for maintaining the accuracy of that Certificate.

13. Saving for tourists, etc.—(1) Nothing in rules 10, 11 and 12 shall apply to any tourist for so long as the period of validity of his Certificate of Registration has not expired:

<sup>1</sup> Ins. by Notfn. No. 1/14/41-Political (E), dated the 29th March 1943, see Gazette of India, 1943, Pt. 1, p. 373.

Provided that any Registration Officer may, in relation to any tourist, at any time cancel the said period of validity and thereupon the tourist shall cease to be a tourist within the meaning of these rules.

(2) Nothing in sub-rule (1) of rule 10 shall apply to the case of any foreigner in respect of whom, in pursuance of the proviso to sub-rule (3) of rule 5, the address of a British subject is deemed to be his registered address.

14. Report to be made to and by hotel keepers.—(1) Every keeper of a hotel shall require every visitor to the hotel to record legibly, or furnish the particulars necessary for recording, and sign, on his arrival at the hotel, his name and nationality in a register maintained for the purpose and, if any such visitor is a foreigner, shall further require him—

(a) on his arrival at such hotel to complete, or furnish the particulars necessary for the completion of, Form C, and

(b) at the time of his departure from such hotel to record, or cause to be recorded, in the said register, the date and time of his departure and the address to which he is proceeding.

(2) The register prescribed by sub-rule (1) shall at all times be made available for inspection, on the demand of any Registration Officer, any magistrate or any police officer not below the rank of head constable.

(3) Every visitor to any hotel shall, on being required so to do by the keeper of the hotel, record legibly or furnish the particulars necessary for recording, and sign, his name and nationality, in the register prescribed by sub-rule (1) and, if such visitor is a foreigner, shall also—

(a) on his arrival at such hotel complete, or furnish the particulars required for the completion of, Form C;

(b) at the time of his departure from such hotel, record, or furnish the particulars necessary for recording, in the said register, the date and time of his departure and the address to which he is proceeding.

(4) Every particular, other than the signature of the keeper of a hotel or a visitor, which is required by this rule to be recorded in the said register or in Form C, shall be recorded—

(a) if the visitor is able to write in the English language, by the visitor and in the English language;

(b) if the visitor is unable to write in the English language, by the keeper of the hotel and in the English language, if he is so able or otherwise, in an Indian language.

(5) If a visitor does not understand the English language, it shall be the duty of the keeper of the hotel, if so requested, to explain to the visitor the requirements of this rule and Form C.

(6) The keeper of the hotel shall, as soon as may be, but not more than twenty-four hours, after the arrival of any foreigner, transmit a copy of Form C to the Registration Officer.

(7) For the purpose of this rule—

(a) "hotel" includes any boarding-house, club, dak-bungalow, rest-house, sarai or other premises of like nature;

(b) "keeper of a hotel" means the person having the management of a hotel and includes any person authorised by him, and competent, to perform the duties of the keeper of the hotel under this rule;

(c) "sign" includes, in respect of a visitor who is unable to write, the making of a thumb impression or other mark by means of which he is accustomed to attest a document; and

(d) "visitor" means a person for whom accommodation is provided at a hotel.

(8) Copies of Form C may be obtained, on application, from any Registration Officer.

15. <sup>1</sup>[(1) Every foreigner who is about to depart from British India on board a vessel <sup>2</sup>[shall, unless, being a tourist, his case is governed by sub-rule (1B), produce at the time of making the report under rule 11], his Certificate of Registration before the Registration Officer of the district in which his registered address is situate and the said Registration Officer shall make, sign and seal on the said Certificate an endorsement to the effect that the said report has been duly made, and the foreigner shall surrender his certificate so endorsed to the Registration Officer of the place from which the vessel leaves British India or to such authority as the said Officer may appoint in this behalf.

(1A) Every foreigner who is about to depart from British India by land <sup>2</sup>[shall, unless, being a tourist, his case is governed by sub-rule (1B) surrender at the time of making the report required by rule 11], his Certificate of Registration to the Registration Officer of the district in which his registered address is situate.]

<sup>3</sup>[(1B) Every tourist shall, subject to the provisions of sub-rule (3), on his departure from British India, surrender his Certificate of Registration—

(a) if he departs on board any vessel, to the Registration Officer of the place from which the vessel leaves British India or to such authority as the said officer may appoint in this behalf; and

(b) if he departs from British India by land, to the Registration Officer having jurisdiction at the place from which he departs from British India];

(2) Every passenger <sup>4</sup>[other than a passenger for whom a berth has been engaged by or on behalf of Government,]; who is about to depart from British India on board any vessel shall, on the request of a person having the management of such vessel, furnish or cause to be furnished in writing a true statement of the particulars set out in items 1, 2 and 10 and, if he is a foreigner, items 3 to 9, of Form D.

(3) <sup>5</sup>[Nothing in sub-rule (1), (1A), or (1B) shall require any foreigner who departs from British India to an Indian State or to a Tribal, Leased or Administered Area to surrender his Certificate of Registration but in every such case, except in the case of a tourist, the report prescribed

<sup>1</sup> Subst. by Notfn. No. 21/68/39. Pol. (W), dated the 13th October, 1939, see Gazette of India 1939, Pt. I, p. 1704.

<sup>2</sup> Subst. by Notfn. No. 21/34/40, dated the 18th February, 1941, see Gazette of India, 1941, Pt. I, p. 247.

<sup>3</sup> Ins. *ibid.*

<sup>4</sup> Subst. by Notfn. No. 21/68/39-Pol. (W), dated the 13th October, 1939, see Gazette of India 1939, Pt. I, p. 1704.

<sup>5</sup> Subst. by Notfn. No. 21/34/40, dated the 18th February, 1941, see Gazette of India, 1941, Pt. I, p. 247.

by sub-rule (1) of rule 11 shall be made to the Registration Officer of the district of the foreigner's registered address.

(4) Any foreigner who surrenders his Certificate of Registration in accordance with <sup>1</sup> [sub-rule (1A)] shall receive from the Registration Officer a license to travel through British India to the place from which he proposes to leave British India. Every such licence shall specify the route by which the foreigner will travel and the period for which it is valid and shall for the purposes of these rules be deemed to be a Certificate of Registration for so long as its conditions as to the period and route for which it is expressed to be valid are not contravened.

(5) Copies of Form D may be obtained, on application, from any Registration Officer.

16. Obligations of masters of vessels, etc.—(1) The master of any vessel arriving at or leaving any place in British India shall—

(a) Before any passenger disembarks or embarks, supply to the Registration Officer of the place of arrival in, or departure from, British India a schedule of passengers in Form E or Form F as the case may be;

(b) require every foreign passenger who is about to disembark in British India to complete, or furnish the particulars required for the completion of, items 2 to 15 by the Registration Officer for the purpose of giving him the direction prescribed by clause (b) of sub-rule (1) of rule 6;

(c) if so requested by the Registration Officer, require any foreign passenger about to depart from British India to surrender his Certificate of Registration, and deliver such Certificate together with the schedule in Form F to the Registration Officer;

(d) if so required by the Registration Officer, furnish on arrival at the said place a true statement in writing showing the name and nationality of every seaman employed on such vessel, and at the time of departing from such place take such steps as the Registration Officer may specify to ascertain whether or not any such seaman as aforesaid who is a foreigner is about to depart on board such vessel: and

(e) generally, render to the Registration Officer such assistance as he may reasonably require for carrying out the purposes of the Act and these rules.

(2) Every particular, other than the signature of a foreign passenger, which is required by this rule to be recorded in Form A, shall be recorded—

(a) if the passenger is able to write in the English language, by the passenger and in the English language;

(b) if the passenger is unable to write in the English language, by the master of the vessel and in the English language or, where no seaman on board the vessel is able to write in the English language, in an Indian language.

(3) If a foreign passenger does not understand the English language, it shall be the duty of the master of the vessel, if so requested, to explain to the foreign passenger the requirements of this rule and Form A.

(4) The person having the management of any vessel shall—

(a) require any person who intends to embark on that vessel for the purpose of leaving British India to furnish in writing a true statement

<sup>1</sup> Ins. by Notfn. No. 21/68/39-Pol. (W), dated the 13th October, 1939, see Gazette of India, Pt. I, p. 1704.

of the particulars set out in items 1, 2 and 10 and, if he is a foreigner, items 3 to 9 of Form D;

(b) cause Form D when so completed to be delivered together with the schedule in Form F to the Registration Officer of the place of departure; and

(c) take steps to ensure that no foreigner embarks until authorised so to do by the Registration Officer.

(5) Forms D, E and F shall be completed in the English language; provided that in any case in which there is no seaman on board a vessel who is able to write in the English language, Form E may be completed in an Indian language.

(6) Copies of Forms E and F may be obtained, on application, from any Registration Officer.

17. Duplicate Certificate of Registration.—(1) If any certificate of Registration issued under these rules is lost or destroyed, the foreigner to whom it was issued shall make or send to the Registration Officer of the district of his registered address a report of the circumstances in which it was so lost or destroyed together with an application in writing for the issue of a duplicate copy of the Certificate of Registration.

(2) There shall be paid for every duplicate copy of a Certificate of Registration a fee of two rupees.

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## Annex D. No. 18

### Part 2

#### Registration of Foreigners (Exemption) Order, 1939.

*No. 21/32/39—Political, dated the 27th June 1939.*—In exercise of the power conferred by section 6 of the Registration of Foreigners Act, 1939 (XVI of 1939), the Central Government is pleased to make the Declarations hereinafter set out in this Order:—

1. That the provisions of the Registration of Foreigners Rules 1939<sup>1</sup> (hereinafter in this Order referred to as the Rules) shall not apply to, or in relation to, any person who has not attained the age of sixteen years.

2. That the provisions of the Rules, except such of the provisions of rules 4, 14, 15 and 16 as apply to, or in relation to, passengers and visitors who are not foreigners shall not apply to, or in relation to, any subject of His Majesty<sup>2</sup> (other than a person who was at birth a subject of any State in Europe excluding His Majesty's Dominions in Europe or a Japanese, Chinese or Thai subject).

3. That the provisions of the Rules, except rule 8 and such of the provisions of rules 4, 14, 15 and 16 as apply to, or in relation to, passengers and visitors who are not foreigners, shall not apply to, or in relation to,—

(a) any foreigner in the service of His Majesty;

<sup>1</sup> *Supra*, p. 480.

<sup>2</sup> *Ins. by Notfn. No. 9/64/41, dated the 6th June, 1942, see Gazette of India, 1942, Pt. 1, p. 1007.*



(b) any British protected person (other than a person who was at birth a subject of any State in Europe excluding His Majesty's Dominions in Europe or a Japanese, Chinese or Thai subject);

(c) the wife and any child of—

(i) any person duly appointed by a foreign Government to exercise diplomatic functions, or

(ii) any consul or vice-consul;

(d) any person who is a subject of the Sultan of Muscat and Oman;

<sup>1</sup>) (dd) any French subject of non-Asiatic birth ordinarily resident in any of the French settlements bounded by India);

<sup>2</sup>) (e) any person of Asiatic birth who by any law for the time being in force is not required to obtain a visa for the purpose of entering British India and who is a subject of any State having sovereignty over any territory of which the boundaries are coterminous with the boundaries, external or internal, of India; <sup>3</sup>);

(f) any foreigner not specified in any of the preceding clauses of this Declaration who enters British India solely in transit to a destination beyond British India, for so long as he is authorised to travel in British India under a licence previously obtained by him from the Registration Officer of the place at which he enters British India and complies with such conditions as to route and other matters as may be specified in the said licence.

<sup>4</sup>) (g) any British subject who—

(i) has acquired British nationality by marriage or has been granted a certificate of naturalisation as a British subject under any law for the time being in force in British India, and

(ii) has been a British subject for not less than fifteen years, and

(iii) save when he has been a British subject for not less than twenty-five years, has obtained from the Registration Officer a certificate to the effect that he has furnished a statement of all visits made by him since the year 1926 to any foreign territory:

Provided that the Central Government may, by any order in writing served on any person, direct that the exemption conferred by this clause shall cease to extend to that person.)

<sup>5</sup>) (h) any member of the naval, military or air force of the United States of America, Chinese, Dutch, Free French or any other Allied nation arriving in India in the discharge of his official duties; and

<sup>1</sup> Ins. by Notfn. No. 21/15/40, dated the 5th June 1940, see Gazette of India, 1940, Pt. I, p. 816.

<sup>2</sup> Subst. by Notfn. No. 1/17/43-Political (E), dated the 1st May 1943, see Gazette of India, 1943, Pt. I, p. 451.

<sup>3</sup> Word "or" omitted by Notfn. No. 1/26/42-Political (E), dated the 6th May 1943, see Gazette of India, 1943, Pt. I, p. 466.

<sup>4</sup> Ins. *ibid.*

<sup>5</sup> Ins. by Notfn. No. 1/30/43-Political (E), dated the 7th July 1943, see Gazette of India, 1943, Pt. I, p. 722.

(i) any technical representative or civil service employee of the United States of America, Chinese, Dutch, Free French or other Allied naval, military or air force in India who is subject to naval, military, or air force discipline and is in possession of a certificate in the form prescribed in the schedule hereto annexed and issued by<sup>1</sup> (or on behalf of) an officer of the appropriate force not below the rank of a Captain in the Navy, a Brigadier or an Air Commodore.

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<sup>1</sup> Ins. by Notfn. No. 1/30/43-Political (E), dated the 20th September 1943, see Gazette of India, 1943, Pt. I, p. 1052.

## ANNEX E

## Annex E. No. 1

EXTRACT FROM "AN ELEMENTARY ANALYSIS OF THE LAWS & REGULATIONS ENACTED BY THE GOVERNOR GENERAL IN COUNCIL AT FORT WILLIAM IN BENGAL FOR THE CIVIL GOVERNMENT OF THE BRITISH TERRITORIES UNDER THAT PRESIDENCY" BY JOHN HERBERT HARRINGTON, PRESIDENT OF THE COUNCIL OF THE COLLEGE REGULATIONS, CALCUTTA.  
PRINTED AT THE CALCUTTA GAZETTE PRESS, 1817, PAGES 405-416.

Ancient forms of the Mogul constitution how far in force when the Company acquired the dewanny grant.

ON THE RIGHTS AND PRIVILEGES OF JAGEERDARS. "The ancient norms of the Mogul constitution appear to have nearly expired with AULUMGEER, and when the Company acquired possession of the dewanny, the traces of them were only to be found. It is not therefore surprising that the English should have adopted erroneous ideas on this subject; and have confirmed abuses which they found to exist. In no instance is this reflection more applicable, than to the subject I mean now to discuss, the nature of the tenure called jageer."

What the jageer tenure was under the regular constitution of the Mogul Empire.

"I SHALL first explain what this tenure was under the regular constitution of the Mogul Empire, in order to point out those abuses which have subsequently prevailed in it, with considerable detriment to the interests of the Government."

The munsab to which a jageer was an appendage.

"A JAGEER is properly an appendage to a dignity called munsab, which it is therefore necessary to explain. In the Mogul Empire there are no hereditary dignities. The rank of the nobles was conferred by special appointment from the Emperor for life only, and revocable at his pleasure; and it was estimated by the number of horse which they were supposed to command. This command was denominated munsab; and a jageer was an appendage to it. The mode of granting munsabs and jageers was first reduced to a regular system in the reign of AKBER, when the highest munsab conferred was ten thousand, and the lowest ten; being in all sixty six; of which those above five thousand were granted only to the sons of the Emperor. The person on whom a munsab was conferred was styled munsabdar. He was raised to this dignity either by the immediate selection of the Emperor himself, or from the recommendation of the Nazims of Bengal, Kabul, and Decan; who, by reason of the superior importance of their charge, and the distance of their governments from the court, were allowed the privilege of recommending for preferment those persons whose power and abilities they required for the support of their administration. The forms attending the appointment of a munsabdar are detailed in the appendix. It is only here necessary to remark that the Emperor's pleasure, signified by his signature, was equally essential for the appointment of a munsabdar, or for increasing his rank<sup>1</sup>.

<sup>1</sup> "The Emperor's pleasure being previously signified, one of the four Bukshees at the presence (who were dignified with the appellation of Buksheean Oozam, or the Grand Bukshees) presented a petition to his Majesty on behalf of the person to be promoted, specifying his name, with that of his family, and setting forth his request to be enrolled among the number of the royal servants. A sewal, or petition, of a similar nature was presented to the throne for increasing the meratib, or rank of a munsabdar, whether in consequence of the Emperor's order, or on the recommendation of the nazims of the soubahs mentioned in the minute. The sewal, or petition, having received the approbation of his Majesty, was referred

THE number of horse, which constituted the rank of the munsudbar, was merely nominal; and the personal pay of the munsudbar, though regulated by it, was distinct from that which he received for the effective horse, which he was obliged or allowed to maintain. The former commenced from the date of the certificate of his appointment; the latter from the date on which his horses were mustered<sup>1</sup>. The pay for both was issued sometimes in money, and oftener by the assignment of land in jageer. In either case the prescribed official forms were extremely minute, and most scrupulously observed.

Horse attached to a munsudbar how far nominal; and further description of this dignity.

In the Company's provinces there are no assignments in money, and the present discussion relates only to those on land called jageer<sup>2</sup>. All

to the dufter of one of the four Bukshees; where it received the attestation, or official mark of the munsuddies, called Tusdeek. It was then presented a second time to the Emperor; who signified his final approbation by superscribing the word be-debund, or 'let them grant it'. This superscription was sometimes written by the Bukshees, upon receiving the royal order for that purpose. The petition being deposited in the dufter, a yad dasht, or certificate, was issued, specifying that on such a date, such a person was elevated to a munsudbar, of so many thousand, in the rissaleh of such a Bukshee. The above forms constituted a munsudbar."

<sup>1</sup> "Descriptions of the horsemen attached to a munsudbar were taken in writing; and the horses were marked with hot irons by an Officer appointed for that purpose, called the Darogbab Dagh Tusheebab, who acted under the orders of the Bukshees at the presence."

<sup>2</sup> "In order to obtain the necessary vouchers for granting an assignment for the pay of the munsudbar, and his tabieen, or troops, an officer called the darogbab urz mokurriir presented a sewal, or petition, to the Emperor, representing that such a person having been appointed to a munsudbar of so many thousand, and the tusdeek, or original attested sewal or petition of the Bukshee, with the yaddasht or certificate, having been deposited in the dufter, his Majesty's further orders respecting such munsudbar were required. The Emperor then inscribed the letter swad, or mark of approbation, on the top of the sewal mokurriir, signifying that the sewal, containing the particulars relating to the munsudbar, had been presented a second time to his Majesty, and returned with the signature of approbation.

If the Emperor directed that the munsudbar should be paid in money, no other forms were requisite, except the customary orders on the treasury. If the Emperor signified his pleasure that the munsudbar should receive his pay by an assignment of land (which was denominated a jageer) the Bukshee notified his Majesty's pleasure to the vizier, who accordingly issued an order to the dewan-i tun, to prepare the necessary grants. Upon the receipt of this order, the dewan-i tun drew out a sewal, or petition, which was transmitted, under an envelope, to the Emperor, who superscribed it with the letter swad or mark of approbation.

It was then brought to the vizier, who signed on the back of it the letter ain, and returned it to the dewan-i tun, who added the letter meem; after which it received the official marks of the munsuddies of one of the four Bukshees, and was deposited in the dufter. The dewan-i tun then drew up another sewal, or petition, in which all the particulars relating to the assignment were detailed. If the amount of it was under ninety thousand daums, the vizier had authority to superscribe the sewal with the words Tunkba Denund, 'let them grant the assignment'.

If it amounted to one lack of daums, the vizier presented the sewal to the Emperor who superscribed it with the letter swad, under which the vizier wrote the order above-mentioned. It then received the official marks of the dewan-i tun, and his officers and was deposited in the dufter. In conformity to the above papers, a perwannah was drawn out under the seal of the vizier, directed to the dewan of the soubah in which the land to be assigned was situated; specifying the rank of the munsudbar, the cavalry attached to it, and the number of months for which the assignment was granted; and directing him, after putting the munsudbar

munsudars were obliged to attend the Emperor whenever called upon; sometimes they were bound to specific services. The dignity of munsud was equally conferred upon the civil and military officers of the state, who were supposed to be qualified for the duties of both stations, and were hence called Sahib-i Syfe Kulum, or masters of the sword and pen."

"THE jageers were granted for the purpose of enabling the munsudars to appear with a suitable retinue in the presence of their sovereign, or to enable them to discharge the duties of the station assigned to them. They were all either actually employed or ready for service when called upon. Jageers were of two kinds, unconditional, and conditional. The former were conferred upon the munsudars for their own maintenance, and that of their retinue, and the effective troops attached to their munsuds, and as the dignity itself was granted for life so were the funds assigned for it<sup>1</sup>. It is not to be understood by an unconditional jageer

in possession, to transmit an account of all the particulars relating to the land to the Royal Presence. When an assignment was granted to the dewan, the vizier's perwannah was addressed to the nazim, as appears from a sunnud of Y Y T E S A M KHAN now before me. In all other cases it appears to have been directed to the dewan; and when the offices of nazim and dewan were for a short time united in the person of S E R F R A U Z KHAN, the vizier's perwannahs for jageer assignments were addressed to him under the titles annexed to his latter capacity; and in the moolabik or provincial sunnud issued in conformity to the same perwannah, he also appears in the character of nazim.

The dewan, upon receiving the perwannah of the vizier, presented a sewal or petition to the nazim of the soubah, reciting the particulars of the assignment, which the nazim superscribed with the words sunnud to debud 'let them grant a sunnud'. Pursuant to this order the officers of the dufter drew out an account of the jumma or assessment of the lands on which the assignment was to be granted, as fixed by Torum. MUL, the dewan of AKBER, and a muchulka, or engagement, was taken from the jageerdar (which the dewan superscribed with the words benuzzer deramud 'it has been seen'); wherein he bound himself to treat the ryots with kindness, and not to collect from them more than the established dewanny dues; and also to pay into the public treasury whatever might be realized from the lands above the amount of the assessment.

The dewan then drew out a sunnud (which was called sunnud mootabik, or a sunnud in conformity to the perwannah from the presence, under the seal of the vizier) directed to the chowdries, canoongoes and cultivators of the district in which the land granted in jageer was situated; acquainting them that a tunkha, or assignment, for so many daums having been granted to such a munsudbar, they were to account with him regularly for the established dewanny dues. It also enjoined the jageerdar to treat the ryots with lenity; and not to exact from them any thing beyond the customary rents. At the end of the muttun, or body of the sunnud, after the date, the nazim inscribed the byz, or mark of approbation; and at the top the dewan affixed his seal. On the back of the sunnud was inserted the perwannah of the vizier, the sewal or petition of the dewan of the soubah to the nazim, and all the particulars of the assignment, with its progress through the various offices of the state; from that of the vizier, down to the lowest department of the dufter of the dewan of the soubah. The original was then delivered to the Jageerdar, who after, depositing a copy of it in the dewanny office, under his own seal or that of his vakeel, proceeded to take possession of the land. The sunnud to F U K H U R - O O - D E E N H O S E I N, (Appendix No. 2), is very complete; and exhibits all the vouchers referred to in his note."

<sup>1</sup> "It did not follow that any particular spot, once granted to a munsudbar, was to be continued to him during life; nor even that he should invariably receive his pay by an assignment on land. When a munsudbar detached on service was recalled, or sent to another province, he generally received his assignment on lands not far distant from his new station. Sometimes the jageerdars were obliged

Jageers, for what purpose granted.

Of two kinds, unconditional and conditional.

that the munsudbar was exempt from the performance of any service. All that is meant by this term is, that the retaining the munsudbar, and the troops attached to it, did not depend upon his holding any particular office. A conditional jageer was granted to the principal servants of the crown in virtue of their offices, such as the vizier, the bukshees, the nazims, and their principal officers. The grant generally specified the name of the employment, and the number of troops to be maintained for the exercise of it; and the jageerdar was to remain in possession of the land assigned in jageer under this form as long as he held the office. The assignment had no relation to the Munsudbar, or personal rank of the jageerdar, being exclusively allotted for the support of the troops attached to his official capacity. Upon the removal of these officers, their lands were usually transferred to their successors. Jageers could only be conferred with the royal sanction: but when the power of the Emperor declined, the nazims of the distant soubahs, who are originally allowed only to recommend munsudbars, usurped the privilege of granting jageers, both conditional and unconditional. This act was so avowedly derogatory to the authority of the Emperor, that an evasion was practised to conceal it. The sunnud for the jageer was prepared by the dewan of the soubah, in which the lands assigned were situated, and attested by the seal and the signature of the nazim. His authority for issuing this grant was a perwannah from the vizier, in consequence of his Majesty's previous sanction; and hence this grant has obtained the name of sunnud mootabik, or grant in conformity to the order from the presence, under the seal of the vizier."

THIS sunnud is the foundation of all the rights and privileges annexed to a jageer, and it is therefore necessary to consider it with attention. All jageeree sunnuds consist of two parts; the body which is properly the grant; and the endorsement. The former is general, stating that an assignment of a certain specified amount has been granted to such a person, from a certain date, and refers to the endorsement for the particulars, which are fully detailed there. The particulars which require notice, are the following. 1st. The rank of the munsudbar; and the pay annexed thereto. 2nd. The number of effective horse allowed him; and the pay thereof. 3rd. The amount of the assignment in daums, or in rupees on a proportionate valuation thereof. 4th. The number of months for which the assignment was granted.

First. The rank of the munsudbars, and pay annexed thereto. It has been already observed that the rank of a munsudbar was constituted by the number of horse which he was supposed to command. But in each rank there were three degrees, according to which his pay was regulated. Thus it did not follow that every munsudbar of the rank of

Detail of circumstances relative to sunnuds for jageers.

Particulars which require special notice.

1st. particulars Rank of the Munsudbar, and pay annexed thereto.

to receive their pay in money, and those who were paid in money obtained assignments on land. In the book called the *Insbai Aulumgeeree*, there are various drafts of grants, both for converting money assignments into jageers, and the latter into the former; a proof that no perpetual occupancy of land was conveyed under this tenure.

And from the sunnud of FUKHUR-OO-DEENHOSEIN it further appears, that his father relinquished a considerable part of his jageers during his own life in favour of his son, for whose pay no funds had been provided; the whole of the lands in the soubah, set apart for assignments having been previously appropriated. The father of FUKHUR-OO-DEENHOSEIN received an assignment in another province for the land thus made over to his son."

1000 received equal pay. This depended upon the degree of that rank in which he stood; and that degree again upon the number of effective horse which he was allowed. If the number of them was equal to the amount of his munsab, he was of the first degree. If less than that number, and more than half, of the second degree. If less than half, of the third. These distinctions applied only to munsabs of, and under, the rank of five thousand. According to these distinctions, the pay of a munsabdar of one thousand, if of the first degree, would be 20,00,000 daams; if of the second, 19,00,000; and if of the third, 18,00,000 only. A table of the pay of the munsabdar, for their personal rank, is inserted in the appendix<sup>1</sup>, which will point out that annexed to each rank, and its three degrees. It may also be verified by a reference to the grant to FUKHUR-OO-DEEN HOSEIN. The rank of his munsab is specified at two thousand; and the effective horse allowed him 500. By the rules laid down, he is in the third degree of the rank of 2000; and his pay is regulated accordingly, viz.

<sup>1</sup> The table here referred to is entitled Pay of the munsabdar for twelve months, in daams, for their munsab zaut, or personnel rank; and contains the following specification:

Rank of the Munsabs in daams	First degree	Second degree	Third degree
Twenty . . . . .	40,000	35,000	30,000
Thirty . . . . .	55,000	50,000	45,000
Forty . . . . .	70,000	65,000	60,000
Fifty . . . . .	85,000	80,000	75,000
Sixty . . . . .	1,00,000	95,000	90,000
Eighty . . . . .	1,40,000	1,30,000	1,20,000
One hundred . . . . .	2,00,000	1,80,000	1,60,000
One hundred and fifty . . . . .	2,50,000	2,30,000	2,10,000
Two hundred . . . . .	3,00,000	2,80,000	2,60,000
Two hundred and fifty . . . . .	3,50,000	3,30,000	3,10,000
Three hundred . . . . .	4,00,000	3,60,000	3,60,000
Three hundred and fifty . . . . .	4,50,000	4,30,000	4,10,000
Four hundred . . . . .	5,00,000	4,80,000	4,60,000
Five hundred . . . . .	8,00,000	7,50,000	7,00,000
Six hundred . . . . .	9,50,000	9,00,000	8,50,000
Seven hundred . . . . .	11,00,000	10,50,000	10,00,000
Eight hundred . . . . .	12,50,000	12,00,000	11,50,000
Nine hundred . . . . .	15,00,000	14,50,000	14,00,000
One thousand . . . . .	20,00,000	19,00,000	18,00,000
One thousand and five hundred . . . . .	30,00,000	27,00,000	24,00,000
Two thousand . . . . .	40,00,000	37,00,000	34,00,000
Two thousand and five hundred . . . . .	50,00,000	47,00,000	44,00,000
Three thousand . . . . .	60,00,000	57,00,000	54,00,000
Three thousand and five hundred . . . . .	70,00,000	67,00,000	64,00,000
Four thousand . . . . .	80,00,000	77,00,000	74,00,000
Four thousand and five hundred . . . . .	90,00,000	87,00,000	84,00,000
Five thousand . . . . .	1,00,00,000	97,00,000	94,00,000
Six thousand . . . . .	1,20,00,000		
Seven thousand . . . . .	1,40,00,000		
Eight thousand . . . . .	1,60,00,000		
Nine thousand . . . . .	1,80,00,000		
Ten thousand . . . . .	2,00,00,000		



Amount assigned by the table for the pay of a munsudbar, in the third degree of the rank of 2000 daums, . . . . .	34,00,000
Add 500 effective horse, at 8000 daums for each per annum, . . . . .	40,00,000
Total in daums of the jageer assigned according to the established rules of the Empire . . . . .	74,00,00

Secondly. The number of effective horse allowed him. This was entirely unconnected with the number which fixed the rank of the munsudbar; although it ascertained the degree of it, and on this account, in the revision of jageer sunnuds, is particularly worthy of attention. The pay assigned for each horseman was at the rate of 8000 daums for twelve months; but the actual sums received by the jageerdars bore but a very small proportion to these allowances; which were little more than nominal; and hence it was that the munsudbars were not obliged to muster above a certain proportion of their effective troops; beyond which the number was nominal only.

Secondly. The number of effective horse allowed.

Thirdly. The amount of the assignment in daums. The daum was an imaginary coin, at the rate of forty to a rupee. But in paying the troops this imaginary coin was valued according to the number of months for which the assignment was granted, and was in fact much below the general computed rate.

Thirdly. Amount of the assignment in daums.

Fourthly. The number of months for which the assignment was issued. This is a very material point, as the value of the jageer, or assignment, greatly depended upon it. The munsudbars, and their effective troops, never received above eight or nine months pay; and often only three. About five months was the medium. This will appear from a comparison of the daums granted in the sunnuds and their valuation in rupees. A table is annexed for the purpose of exhibiting the actual value of a lack of daums, by a rule of proportion formed on the number of months for which the assignment was drawn out <sup>1</sup>. This calculation was made by the dewan, as the perwannah of the Vizier only specified generally the amount of the daums, according to the established rates of the empire; and the number of months for which the assignment was granted.

Fourthly. Number of months for which the assignment was issued.

"FROM the preceding explanation a jageer may be defined to be, an assignment in land or money, for the support of a certain dignity, and for the troops annexed thereto. That it was either conditional or unconditional. The former implied, that it was granted for the expenses of a

Definition of a jageer, under the preceding explanation.

<sup>1</sup> The following is the table here referred to.

Account to show the value of daums assigned by jageer, in proportion to the number of months for which the assignment was granted.

When the assignment was for twelve months, one lack of daums was estimated at, ...

		Rs.	As.	Gs.
		2,500	0	0
11. ditto . . . . .	.ditto . . . . .	2,291	10	6
10. ditto . . . . .	.ditto . . . . .	2,083	5	3
9. ditto . . . . .	.ditto . . . . .	1,875	0	0
8. ditto . . . . .	.ditto . . . . .	1,666	10	6
7. ditto . . . . .	.ditto . . . . .	1,458	5	3
6. ditto . . . . .	.ditto . . . . .	1,250	0	0
5. ditto . . . . .	.ditto . . . . .	1,041	10	6
4. ditto . . . . .	.ditto . . . . .	833	5	3
3. ditto . . . . .	.ditto . . . . .	625	0	1

particular office or station; the latter, that it was independent of any office or station, being appropriated for the maintenance of a dignity, a suitable number of attendants, and the effective troops annexed to it. In the latter case, it was granted for life, or until the Emperor should please to resume the dignity, or diminish it. In the former case, it existed whilst the possessor continued in office only; and upon his removal or dismissal, devolved, either in whole or in part, upon his successor. The services required from the jageerdars were either specific, or they were bound to the performance of whatever duties might be assigned to them, and to attend in person with their effective troops, whenever required. The actual value of a jageer depended, first, upon the degree of the rank of the munsudbar; and secondly, upon the number of months for which the assignment was granted. These considerations will suggest the rules to be observed in the revision of the sunnuds; but it is first necessary to explain the restrictions, by which a munsudbar, in possession of a jageer, was prevented from receiving more than he was entitled to."

Jageerdars held accountable for any gowfeer, or overplus, received from the rents of the lands assigned to them.

"As an equivalent for the pay which a munsudbar was entitled to receive, either on account of his personal allowance, or that of the troops under him, he received possession of certain lands, the rent of which was calculated in daums, according to the assessment of TOORUN MUL. If they were found to produce more than the jageerdar was entitled to, he was obliged to account for the overplus, under the denomination of towfeer, or excess. This obligation extended also to any arrears of the rents of the lands assigned in jageer, for the time which had elapsed previous to his acquiring possession; or to any anticipation of rents, in case of his dismissal, previous to that period. And secondly, a proportion was deducted from the amount of the assignment for any deficiency in the number of effective troops which he was obliged to maintain. It was often usual, in assignments of any considerable amount, to suspend a part thereof, until the accounts of the munsudbar had been adjusted. To render these restrictions more binding, a jageerdar was obliged to sign an obligation, previous to the receipt of his grant, making himself accountable for whatever might be due on the above grounds. The following instance, in proof of the strictness with which the Government exacted the towfeer, is so remarkable, that I shall insert it at length from a book of good authority<sup>1</sup>.

BURKUNDZ KHAN, and other munsudbar, having obtained an assignment for their pay in the pergunnah Beranee, they laid claim to the possession of the whole district, as the amount of the rents of it in daums corresponded exactly with that specified in the vizier's assignment. The dewan refused his assent, and insisted upon their receiving their pay in money which compelled the munsudbars to accept the assignments according to the established rules, and these left them no portion of the towfeer. By this adjustment, the Government was saved from a loss of 1,09,791 rupees, being the excess of the rents of the district, beyond the valuation of TOORUN MUL. If therefore a revision of the sunnuds should take place, the following points must be attended to. First, the authenticity of the perwannah from the vizier: secondly, the

<sup>1</sup> A *Dustoor-ool-amul*; or book of regulations and forms; written in the Fusly year 1137, by ANUND RAM, Nooskhan-novees in the dewany dufter of Allahabad.

number of months pay granted in the assignment: and lastly, the difference between this sum and the actual produce of the lands."

"UNDER the Moghul Government there was a certain *mehal*, or *jurisdiction*, consisting of such lands as were set apart for being granted in jageer, under the denomination of Paibakee. The other lands in the Soobah were called Khalsah Mokurrery, or fixed exchequer lands: these were supposed to be most productive, and were never granted in jageer. Under this jurisdiction; jageers, when resumed, or escheated, fell; and here the towfeer, or excess, was brought to the credit of the state; as well as the amount of arrears, or anticipations, for broken periods, as already explained. The produce of the three last articles was called the share of the Exchequer; and under this term the jageerdars were compelled to account for it. Such were the ancient and regular forms of the Moghul constitution regarding the dignity called munsub; and its appendage jageer; and from these it will appear that a jageerdar had not originally, or constitutionally, any right or property in the lands.

IN BENGAL there are few jageers, and of no considerable amount: but in Behar they exist to the annual value of near four lacks of Rupees, according to the estimate upon which they were made over to the jageerdars. Four-fifths of these grants were obtained during the anarchy of the reign of SHAM ALUM's immediate predecessor; and at the commencement of his accession, when he invaded Behar. Under such circumstances, we are not to expect much attention to the forms, or to the spirit, of the constitution; and on examining several of those grants, it appears that most of them contain nothing more than a simple assignment of daums, without any specification of the rank of the munsubdars number of horse he was bound to entertain; or months for which he received pay; or whether the grant was conditional, or unconditional; nor the customary engagement to pay into the Khalsa the excess; or amount resulting from anticipated rents, or arrears of a broken season. Of eight grants which have been revised, two only specify any services to be performed. By a comparison however of the number of daums assigned, with the amount of the revenue lands delivered over to the jageerdar, most of the assignments will appear to be for four or five months, as in Bengal and elsewhere; and from the evidence of the oldest and most intelligent officers, it appears that, until the end of BEHADUR SHAH's reign, the regular forms were observed, and the accounts of the munsubdars examined with the usual severity. From these circumstances it is concluded, that the lands in Behar, assigned by the jageeree grant, were held under the same tenure as in other parts of the empire. It is also probable that many of the grants in Behar were fraudulently or surreptitiously obtained."

Description of the Paibakee mehal under the Moghul Government.

It appears, from what has been said, that the jageerdar had not any right of property in the assigned lands.

What jageer in Bengal and Behar.

When obtained in Behar.

And grant of them how for regular.

(2)

LAND ALIENATION OFFICE,  
MR. T. H. MADDOCK'S REPORT OF  
8TH NOVEMBER, 1841.

On the nature  
and origin of  
Saranjam  
Grants  
particularly  
with reference  
to those of  
Dekhan.

1. In submitting for the consideration and orders of the Governor General in Council the accompanying letter from the Secretary to the Government of Bombay and its enclosures relating to the Saranjams of the Dekhan the Secretary beg to leave to offer the following remarks.

2. The Saranjams of the Dekhan like the Jageers of Hindustan are to be understood as lands the public revenue of which is granted by the Sovereign in lieu of a money payment for personal service or the service of troops to the state and frequently amounting in value to somewhat more than an estimated equivalent of the service required from the holder the surplus being granted as a favour without equivalent.

3. These tenures being in their nature personal were not under any of the former Governments of India regarded as hereditary, any more than the service in lieu of which they were originally granted was itself considered hereditary.

4. But there has always been found a disposition in this country to confirm with some modification to the Son the office held by his father and many of the most important ministerial officers under the Native Governments both Hindoo and Mohamedan have continued hereditary for some generations. In like manner Jageerdars or Chiefs holding lands on military service looked forward to their Sons succeeding them, and as this expectation was a stimulus to their loyalty and devotion to the prince they served, it was encouraged, and the son not unfrequently succeeded to the command and to the emoluments that were enjoyed by his father.

5. But though this occurred not unfrequently the confirmation was always considered as an act of grace and favor—it would not have been demanded as a right and the modern date of almost all the grants of this description may be adduced as a sufficient proof that the practice was not universal nor indeed generally followed. For the former Governments of India whether Hindoo or Mohamedan considered grants of this description as resumable at pleasure; and the sunnuds by which they were conferred, we rarely if ever meet with an expression guaranteeing their continuance for one or more lives or for any specified period of time. They were regarded rather as a temporary assignment in lieu of wages in money in the Government revenue in a certain village or district, than as a permanent alienation either of land or revenue. Whether they were confirmed to the Son on his father's death, depended entirely on favor or political expediency and it rested in the same considerations at all times, how long they were continued and when they were resumed.

6. In a Minute by Sir T. Monro dated 15th March 1822 is found the following sentence, "the Commissioner at Poonah in answer to a reference made to him on the subject, has stated that he has not been able to find a single Altamgha in the Dekhan and has transmitted a list of five hundred and fifty nine Jageers resumed by the Peeshwah's Govern-

ment within the last fifty years none of which are altamgha; of these, he observed, three hundred and sixty four were resumed for reason assigned, usually offences against the state, and one hundred and ninety five without any reason assigned. In the Nizam's dominions, too, the resumption of Jageers appears from the note of his minister Chundoo Lall transmitted by the Resident to have been regulated as in Carnatic by the will of the prince.' The same would no doubt be the result of similar enquiries in the States of all other native Princes and independant Chiefs.

7. It may safely be assumed that prior to the establishment of the British rule, no notion had ever been entertained of hereditary rights in the holders of these grants and it is only necessary to refer to any of the existing Native States of the present day to learn that no such principal or practice are still known there.

8. In the Mahratta principality of Sindiah, Jageers are constantly taken from one and bestowed upon another as partiality or expediency dictate. Even in the Rajpoot States, the Thakoors, though holding by a far superior tenure to that of ordinary jageers, are liable to be dispossessed and to see their Estates confiscated or conferred on others. And everywhere throughout India will it be found the practice of Native Governments to consider land tenures of this nature resumable at the pleasure of the prince who conferred them, or of his successor. It is perfectly certain moreover that in former times when one dynasty has been subverted by another, the conquering power paid little or no attention to the grants of its predecessors; in the papers now submitted not a single case occurred of a jageer granted by the predecessors of the Peishwahs; and had the Peishwah's dominions fallen into the hands of the Nizam or Hyder Allee or any Hindoo conqueror no consideration would have been shown to the ancient jageerdars beyond what policy dictated or money could purchase. And their resumptions of such tenures would not have been regarded as rapacity or usurpation but would have been considered as the natural and almost inevitable result of the change of dynasty. It need not be argued that the British Government should on its acquisition of a new territory, have acted in every instance a similar part. No fault can be found with a more liberal conduct towards families of consideration and influence to conciliate them, and to prevent as far as possible the discontent which always attends sudden loss of property. But it may be safely assumed that in whatever degree the British Government has seen fit without an adequate motive to render the position of that class, which enjoys affluence or competency without contributing any thing to the general resources, more permanently secure in the enjoyment of perquisites and privileges and to confer on them rights which they did not possess under the princes who raised them to fortune and distinction, so far the Government has been in error. The acknowledgment of any of the Jageerdars of the Dekhan as hereditary proprietors of their Jageers is a measure that would never have been admitted by Bajee Rao or any of his predecessors. And what interest can the British Government have in the case of these individuals, unless when they have personally done it service that deserves requital to induce it to bestow upon them more than their original patrons conferred, or ever would have conferred upon them. Giving them hereditary rights in tenures which were before only temporary is certainly doing this. And it is a mistake which has often been committed by

British Officers in other places. There are several provinces in India where the first Sunnuds granted by the British Government in confirmation of former Sunnuds have made Jageers and other service grants perpetual, and a large alienation of revenue will be the consequence forever. And it should be remembered that in the South of India where terms were used in Sunnuds implying hereditary right in a grant, such terms were regarded by Native Government and by the people themselves as of little or no validity [see Sir T. Munro's minute quoted above] whereas under the British Government such terms give a solemn guarantee forever unless where the grant may be fortified by rebellion or other offence against the State. The value of the lands held by the Jageerdars of the Dekhan is comparatively trifling but the principles on which their rights and those of the Government should be considered are the same as those alluded to and it is of essential consequence that the highest authorities in sanctioning rules for the future disposal of these properties, should not assume the existence of rights which in the laws and practice of country have no existence.

9. The good policy of preserving a middle and upper class of society such as landed properties of different grades exempt from payment of revenue to the State has often been adduced as a reason for maintaining, though at a pecuniary loss to ourselves, the petty Chieftains and Jageerdars of India. But much doubt may be entertained of the soundness of this argument and if it possess any weight, if it is essential to the contentment of our subjects and to the influence of the Government over them that there should be men of weight and property to advise and guide them. It is clear that the Government should not have relied on the good will and exertions of the relations or favorites and proteges of the Prince whose power we subverted, the Jageerdars of their creation, but should have allotted to them a suitable provision and replaced them by our own immediate adherents who, and their successors after them might have looked up to the British Government as the sole origin from which they derived all that they enjoy. Any of the disaffection which may prevail, almost all the insurrections against our authority which have occurred will be found not so much in those territories where we have left the least of power, wealth, and influence in the hands of former petty Chiefs and Jageerdars but chiefly where we have been most liberal in foregoing the rights of conquerors and sovereigns in order to conciliate them. Nor can it be said that the concessions made to this class have generally rendered them a blessing to the people by their superior intelligence and by the rights of moral example to their inferiors. Unfortunately they are distinguished for the most part only by their rapacity, their indolence and their extravagance, and by the discontent which they not uncommonly feel and express towards the present order of things. The Government does not find it necessary to spread its armies over the face of those provinces, the territories of which it most exclusively retains, and where the possessions of petty chiefs and jageerdars are rare and insignificant. Its great Military Strength is developed in those quarters where these classes have by its liberality been left in the enjoyment of what they had usurped or what had been bestowed upon them under former Governments. No permanent feeling of gratitude is to be expected in the classes thus favored, they can never be relied upon as a source of strength to the Government and the amount

of their incomes is so much sacrificed to the general resources of the Empire.

10. There has been a revolution produced in the feelings and in the very order of society in India by its falling under the Government of England which well deserves notice in the consideration of this question. Under Native princes temporary alienations of the revenue were necessary, because they were the mode by which their armies were supported and their Civil Establishments were chiefly paid. It was the manner in which they rewarded merit or services and provided for their relations and favourites. These were the persons that with the exception of the priesthood engrossed all the power and rank and riches of the Country. They were necessary to the splendor of the Court, and they maintained and led the Military force required for the defence of the State. All other classes were neglected and left to their mercy and they exercised in their own small circles a power almost as absolute as that of their Sovereign and in the rapid change of dynasties which formerly occurred and in frequent and sudden acquisition of power and station by Military and other adventures, they had objects of excitement which might be of service to their sovereign or might hold out the highest prospects to their own ambition. Under the British Government all this is changed. Our Civil and Military officers are taken from another class and are paid regularly out of the public treasury without having any tenure of land or any power except that which belongs to their Officers, over the mass of the people. In the eye of the law as far as personal rights are concerned all are considered equal and the little feudal lords, the Jageerdars of the former regime, are out of place in the present system. They are apt to be disloyal and malcontent because there is no longer any scope for their ambition and because they are allowed to exercise no arbitrary power over their dependants or any of their fellow subjects. They submit reluctantly to the equal administration of justice which is the most striking characteristic of British rule and are indignant at being summoned to the Adawlut. They have no feelings in common either with the Government above them or with the mass of the people below them, and they never can become the connecting link between the rulers and their subjects in which position such a class might be of incalculable advantage to all parties.

11. The confirmation of a large portion of the landed tenures of these rent free holders has debarred the Government even if it had seen the policy of such a measure from raising up new families to wealth and distinction, for the state of the finances would at no time have admitted of our both maintaining the old and raising up a new body of sharers in the produce of the Country. The only classes which have greatly raised themselves in the scale of Society during the British rule in India are those who have amassed fortunes from mercantile speculation, many of these classes have become opulent and influential. They are generally speaking intelligent and respectable, and they are good subjects because their interests are identified with the permanence and the prosperity of the present Government. Of late years also there has been a great stimulus afforded to the honourable though moderate ambition of a numerous and important body of our subjects the employee of the Government. Means have been taken and are every day improving to raise the standard of intellectual attainments among the middle and

upper classes of the people in order to fit them for the discharge of high and responsible duties in the Civil Government of the Country. They have already been admitted to a large share in the judicial and revenue administration and their emoluments have been placed on such a footing as to afford them an honorable competence adequate to the high position which they hold in society. This class of our subjects must become if it is not so already, far more influential than that of pensioners and Jageerdars, and the influence of the former is far more likely than that of the latter to be exerted in favor of the existing order of things for they have greater intelligence, are imbued with better principles, and have a direct interest in the stability and success of the Government which has created and maintains them.

12. They and the wealthy commercial families, would under the present system have naturally filled the place occupied by the Jageerdars and others of the same class under the Native Governments but we have allowed the drones to keep possession of the hive, and the resources of the State are thereby too much straitened to admit of Government doing all that it might wish in rewarding those of its native servants who have shown the greatest loyalty and devotion in its cause or who have most distinguished themselves in the discharge of important duties to their country or the Government and, by thus raising to still greater influence than they already possess, its own native servants and dependants.

13. That they are intrinsically superior to the favored servants and adherents of the former rulers and that politically considered they are of more weight in society and deserve to be more regarded by the Government cannot admit of a doubt. But in weighing the importance to the Government of any class as holding a position in Society between it and the greater body of its subjects, it must be allowed that their power for good or evil is confined within a small compass. Their influence over the mass of the people will in times of excitement be as nothing compared to that of the priesthood whether Hindoo or Mahomedan—and on this account there was the less necessity on our obtaining the Government of the Country for the sacrifice that we made in order to maintain in their places the influential families which we found in the enjoyment of lands and other sources of emolument. For there can be little justice or expediency in lavishing on those who have no claim upon the present Government, or upon the country, a permanent share in its resources which they have not earned, simply because they were in the employ or enjoyed the favor of a former prince. Yet it cannot be denied that the authorities in this Country have too often been misled in recognising in the grants of former rulers a vested interest in the grants which it was beyond the competency of the Government justly to set aside, and they have been actuated by a natural aversion to consigning to poverty or want those whom they found in the enjoyment of affluence; and as far as admitting in favor of these grantees a life interest in what they held, there may often have been good policy in the measure. But the concession should except in particular cases have stopped there. And this seems to have been the course which the Government of Bombay has followed in the case of some of the Jageerdars and most of the pensioners of the Dekhan, and it is in consequence of their having done so that the papers now submitted require, under the order of the Hon'ble Court, the deliberate



consideration of the Government of India, with a view to decide whether certain resumed Jageers should be restored to the heirs of their former holders.

14. It is shown in these papers that the oldest of the grants under which any of their Jageerdars held his lands is subsequent to the establishment of the Peishwabs in 1714. None of them, therefore, fall within that class of Jageers which the Hon'ble Court propose to consider as hereditary in the fullest sense of the word. They have no pretensions to great antiquity, and they prove, moreover, what has been before alluded to that in the course of the reigns of the Peishwabs, the whole of the Jageers which may have been granted by the Kings of Delhi or the Raja of Satara have been so completely resumed that not one of them remained in existence at the termination of the Peishwabs dynasty. It is therefore unnecessary to discuss how far it would be expedient or according to the law and custom of the country to have perpetuated by a solemn Act of the Government such more ancient Jageers; and to assist the Government in determining how the more modern ones should be treated, the former correspondence on the subject has been consulted from the year 1819 to the present day.

15. In Mr. Elphinstone's report of the 25th October 1819 alluding to these Jageerdars he says:

"All were left in possession except such as were granted as late as Bajee Rao's time to whom pecuniary pensions were assigned.

All Jageers held by ancient and great families were recommended to be hereditary (but no communication has been made on this subject to the holders)."

16. From the above passage it is clear that the term "hereditary" inserted in the last column of the statement of Jageerdars of the first Class which accompanied the letter, implies no more than that it was proposed to consider them as hereditary and this in some instances only in a qualified sense of the word, as it is added in some cases, that the grant may be diminished on the holder's death and the proposal to consider certain of the Jageers hereditary was never promulgated or made known to the Jageerdars and was never acted upon.

17. On the contrary, the Supreme Government on receiving the statements submitted with Mr. Elphinstone's letter of the 25 October 1819 expressed a strong aversion to declaring these grants hereditary. It may be useful for the purpose of showing the sentiments at that time of the Supreme Government in this point, to quote largely from the letter written from this department on the 4th March 1820, in reply to Mr. Elphinstone's report on this subject —

"Since that period, alluding to the instructions of Government, dated September 26th 1818, however, a considerable diminution has taken place in the hopes then formed of an efficient revenue from the conquered country applicable to the general service of the state. From the latest calculations received it now appears that, considering the ostensible magnitude of the conquest, the aid to be derived from it to our resources is likely in comparison to be scanty and imperfect or at any rate much inferior to what was at first expected.

"This consideration makes the Governor General in Council anxious that the alienations of public revenue either in Jageers, Pensions or

other grants, should be limited as much as possible as to the number, amount and duration.

"I am therefore directed to convey to you his Lordship's request that the Hon'ble the Governor in Council will be pleased to revise the list transmitted in the despatches now acknowledged, with a view to the reduction if practicable of the expense which they menace.

"It is for several reasons inexpedient that this revision should be attempted here, and the Governor General in Council is satisfied that it can only be accomplished satisfactorily by the Hon'ble Governor in Council.

"I am consequently instructed to confine my communication to a few observations.

"Where the faith of Government is pledged by the promise of the Hon'ble the late Commissioner, it is not of course the wish of the Governor General in Council that any infraction of that promise should take place.

"Where it is deemed essential by the Hon'ble the Governor in Council for the tranquility of the Country, or on other important grounds of political expediency that the grant proposed should take effect, the Governor General in Council will rest with entire confidence on his judgment.

"But His Lordship trusts that cases may be found in which neither good faith will be violated nor the tranquility of the Country endangered nor essential plans of policy frustrated by reduction".

"With reference to those grants which it is proposed to make hereditary, the Governor General in Council doubts the policy of making any grant hereditary which may justly be put on the footing of life grants. By keeping them as life grants Government is by no means excluded from the power of renewing them, if it should be deemed expedient to do so, and every renewal will be a fresh act of grace conferred on the individual receiving it. But by now declaring those grants to be hereditary Government would be precluded both from resuming its rights when it might be necessary to do so, and conferring favors on the descendants of the present grantees and would thus be deprived of a probable source of future improvement in revenue and every other branch of Civil Administration, as well as the means of winning attachments by personal obligation."

18. If this cautious mode of procedure was wise and necessary in 1820 when uninterrupted peace prevailed throughout India, and when the general finances of the Country were in a flourishing and improving condition, there is nothing in the present state of affairs that does not render it expedient to continue in the same course of endeavour by all fair means to diminish those useless drains on the resources and invariably to avoid making them permanent.

19. And in reply to the instructions of the Supreme Government, the Government of Bombay over which Mr. Elphinstone then presided stated on the 11th of May 1820 as follows:

"No grant of any description has been declared hereditary, the distinction in the list of Jageers transmitted to the Supreme Government into hereditary and for life being intended as a suggestion for the future regulation of Government; but having in no instance been communicated to the party concerned.

"The Governor in Council is of opinion that the grants marked hereditary should be continued to the heirs of the present occupants, but he entirely concurs with His Excellency the Most Noble the Governor General in Council in respect to the expedience of renewing the grants on the death of each incumbent. Government will indeed be at liberty of exercise its discretion in granting or withholding the renewal on that occasion excepting the case of what are termed Padshahee grants which the Governor in Council conceives ought in all cases to be renewed and of the more ancient grants by the Rajas of Satara which should be treated with similar attention."

"Before concluding this letter the Governor in Council thinks it necessary to remark that the amount of the Jageers and pensions will soon be diminished by the death of the present incumbents, many of whom are men advanced in life; the number that has fallen in already is for this reason considerably above what might have been expected."

20. From these extracts it is clear that Mr. Elphinstone was not disposed to consider any of the grants which he had sanctioned as perpetual, except those termed Padshahee or those of ancient date from the Rajas of Satara, and though the propriety of admitting any Jageer or service grants from whatever source proceeding to be regarded as perpetual alienations from the revenues of the Country must admit of question, yet as it appears from the tables formed from the records of the Peishwah's Dufter and from the subsequent investigation of Mr. Marriott and from the present statements of Mr. Mills, that none of the Jageers now under consideration are of that description, and that all apparently date their origin from the time of the Peishwahs, that point need not be brought in discussion on this occasion.

21. It was stated by the Government of Bombay in their letter of May 11th, 1820, in reply to a requisition from the Supreme Government for more full particulars of the alienations of revenue in the territories conquered from the Peishwah that the Collectors were then engaged in the investigation the result of which would probably show a considerable reduction in the total amount of allowances of this description. But it does not appear that this work was prosecuted with vigor, and no reports on the subject came before the Supreme Government as far as the records of this Office show till the year 1830. From that year when the subject came under the consideration of the finance committee till 1834, there was a constant correspondence between the two Governments regarding the Jageers and pensions of the Dekhan and in the latter year Mr. Marriott's report and tables were submitted, the Hon'ble Court observations on which are the present subject of consideration.

22. But it will be proper to notice as closely connected with the subject of this paper that the Hon'ble Court in their reply of the 20th of August 1804 to the despatches of this Government, transmitting lists furnished by the Government of Bombay of the Poona Pensioners, were pleased to approve of the proceedings of that Government respecting them.

23. Those proceedings were as follows. The pensioners were divided into four classes, first pensions granted to the representative of ancient families, which it is considered desirable to maintain in respectability or preserve from too sudden downfall; second pensions granted to persons

in power or high employment or in the enjoyment of influence at the time of the conquest, and whom it was considered desirable to conciliate; third pensions granted for services rendered to the British Government by persons not in the service; fourth pensions granted to servants of the British Government persons on the establishment of the Poona Residency and others.

24. The mode of disposal of these pensions after the pensioners' death, was, that they should be generally discontinued and where it was necessary to make provision for families of deceased pensioners, the following rates should on no account be exceeded for the first class, one half to the next generation, and one fourth to the third generation when the pension is to terminate. For the second class in special and rare cases, one third to the next generation only. For the third and fourth classes in special cases, not exceeding in number one tenth of the whole, one third of the original pension to the next generation only.

25. The entire amount of the pensions included in these Classes was Rupees 3,28,327 and the amount to be continued under these rates to the next generation was Rupees 32,316 or about one tenth of the amount of the original pension.

26. But though the Hon'ble Court approved the proceedings, they expressed an opinion that, in cases where the pensioners had been granted in lieu of territorial rights, it would be proper in dealing with them to be guided by the same consideration as in the case of Jageers. And there can be no doubt that the two are closely allied and that similar rules should be followed in disposing of both. The two first Classes of pensioners comprise the same description of persons as the higher Jageers, some names are found in both lists of persons holding both land and money pensions and there can be no doubt that, under the Government from which the grants proceeded, the tenure of both was considered nearly equally good and valid. But the manner in which these two kinds of grants have been treated by the British Government is strikingly different. The Jageerdar of the most favored Class is almost regarded as having a vested right in his land, which at his death is continued undiminished to his descendants. To the most favored of the pensioners, it is only allowed his son to succeed to a half of his pension, his grandson to succeed to a quarter and the pension after that to cease altogether. Yet the Jageer land was granted merely as the substitute for a money payment by the Prince. It was sometimes more convenient to give the one than the other and it must sometimes have been purely accidental which was given. This being the case, there ought surely to be some analogy in the present mode of dealing with the two kinds of endowment and in following the suggestions of the Hon'ble Court with regard to the pensioners in money, it might be advisable to adopt the same course with the holders of Seranjams who are for the most part pensioners paid by an equivalent for money in a grant of land, but whose claims upon the State are not, generally speaking, a bit stronger than that of the first and second class of money pensioners.

27. It would now appear to be proposed by the Acting Agent of Sirdars, Mr. Mills that the Seranjams marked hereditary in the original list prepared under the orders of Mr. Elphinstone which have since been resumed, should be restored to the heirs of the original holders, and that they should virtually be hereditary, but the Hon'ble Courts orders do

not go this length. They merely direct that where Mr. Marriott's schedules are less favorable to the Jageerdars than those prepared under the orders of Mr. Elphinstone, this Government shall deliberately consider which shall be acted upon.

28. Now, it will be found that, though some of the Jageers to which the word hereditary is attached in Mr. Elphinstone's list have been resumed according to Mr. Marriott's list, the latter is the more favorable of the two to the great body of the Jageerdars, many of those who would have been dispossessed in the second generation altogether under Mr. Elphinstone's scheme having been provided for by the regrant of their lands or by a money allowance under those since adopted.

29. Under these circumstances, and bearing in mind the explanation of Mr. Elphinstone, that he meant the term hereditary merely to convey a recommendation in favor of the families to whose Jageers it was attached, that they should be continued at least for one more life, and as no intimation was ever given to the parties concerned which would lead them to expect a confirmation of their lands to their descendants, and that some of them have on the deaths of the holders been resumed and others continued to their next heirs, there does not appear sufficient reason to disturb the present arrangements to the extent at least of restoring the lands and refunding mean profits of those Jageers which have been actually resumed. It might be better in any such cases to take into consideration the circumstances and wants of the late Jageerdars families and grant a provision in money for their support.

30. But with respect to the arrangements that have been made in favor of the Jageers of the inferior Jageerdars in the Dekhan, on terms more advantageous to them than Mr. Elphinstone's rules would have authorized, the suggestion of Mr. Mills that the present holders should not be disturbed seems quite proper and judicious.

31. It will remain for the Hon'ble Court to approve such rules for the future for all these Classes of Jageers as may be considered most appropriate to the nature of their tenures and best calculated to produce future uniformity of practice, in treating them and which without neglecting the claims on Government of deserving families, may lead gradually to the recovery of the greater part of that portion of the resources of the State which they are at present permitted to enjoy.

32. If it is the intention of this Government to offer any suggestions to the Hon'ble Court on the subject it may be proper to draw attention to the expediency of declaring in the first place, that the tenure of no Jageer Seranjam or services grant can ever be recognised as hereditary; a decision of the Privy Council having already established that principle in the case of Altangha grants a species of grant always deemed superior to that of Jageers and that as the Government in virtue of the law and practice of India has full power at any time to resume such grants, any portion of grants of this nature which it may see fit to continue in favor of the families of former holders is to be regarded as a new favor bestowed on the parties whom it may be conferred and cannot in any manner be claimed as a matter of right.

33. To lay down precise rules for providing for the descendants of the Jageerdars, it will be very difficult to fix a scale which would apply with equal fairness to all the individual cases of Class I of Mr. Elphinstone's

table, or of the other Classes in whose favor the Bombay Government has already made concessions. There must be great difference of circumstances in many of the cases to be disposed of and the same scale which in some cases would entail an unnecessary sacrifice on Government would in others not more than suffice to form a proper provision for the families of deceased Jageerdars.

34. To overcome this difficulty it would seem desirable to frame rules on the principle of those which were approved by Court of Directors for the Poona pensions by fixing a limit to the renewal of grants to the families of pensioners within which the local Government might exercise its discretion, on a due consideration of the circumstances and wants of the parties to be provided for as to what portion of the value of the original grant should be continued to them, having it always borne in mind that it is our duty as well as our interest to reduce as far as possible this burden on the resources of the Country. It might then be fixed prospectively that the Jageers of the first Class shall on no account be confirmed in full for more than two lives, that is, after the death of the son or other successor of the Jageerdar who was in possession at the time of the conquest; that the third generation shall on no account succeed to more than moiety of the value of the original Jageer, and the fourth and fifth generation to more than quarter of the same. That on all occasions of making these reductions in the value of the grant the local Governments unless it see good reason for continuing part of the land rent free, or for levying a rent from the whole of it equal to the portion of its value to be resumed shall commute the value of the reserved tenure into a money pension and assess the whole of the land. That with respect to the other Jageers in which Mr. Elphinstone recognized only a life interest in the incumbents at the time of the conquest, or which he proposed to reduce at their deaths, they are invariably to be resumed, subject to the discretionary authority given to the local Government in respect to commutation of the value of the lands of the first Class, and that the provision to be made for the families of the deceased Jageerdars shall not exceed one third of the value of the lands they held and shall be granted only for one generation. And that in any case which may appear to the local Government to deserve more favorable consideration, no orders shall be issued to that effect without the sanction of the Court of Directors applied for through the Government of India. Adoptions should not be allowed to give any title to succession which should be confined to legitimate offspring.

35. I have taken the liberty to offer these suggestions because I conceive that the rules proposed by the Acting Agent of Sirdars in the Dekhan have been founded on a misconception of the intention and order of the Hon'ble Court. Mr. Mills presumes it to be the Court's object to render hereditary the estates marked as hereditary in Mr. Elphinstone's list. But it does not appear that the Honorable Court in their letter of the 7th of February 1838 intended to come to any decision on the point. The extract from the 14 para of that despatch inserted in the margin clearly leaves it to be considered by this Government, whether the Schedule of Mr. Elphinstone should in certain

„Yet we are desirous that Mr. Elphinstone's Schedule should be compared with those submitted in the letters under reply in order that in any case when where the latter are less favorable to the parties it may be deliberately considered by you which of the two should be acted upon.“

cases be the guide for determining whether estates were to be continued or not in favor of the first direct descendants from the parties in possession at the time of the conquest, and makes no mention of adopting the principle stated by Mr. Mills "that estates marked hereditary by Mr. Elphinstone should be hereditary though not expressly declared to be so". Mr. Elphinstone in his explanatory letter of the 11th of May 1820 had given his opinion, "that the grants marked hereditary should be continued to the heirs of the present occupants"—that is to say, that there should be one succession after the existing occupants before the estate should be resumed; not indeed but that he would leave Government "at liberty to exercise its discretion in granting or withholding the renewal". And this is precisely what has been done by the Bombay Government in regard to this class of Jageers. It has exercised its discretion in resuming them or continuing them for another generation; and it would now be equally inexpedient to reverse its acts in the cases of this class of Jageerdars as to direct the resumption of what it has continued in favor of other classes, because according to Mr. Elphinstone's Schedules they are liable to resumption. The rules proposed by Mr. Marriott and approved provisionally by the Government of Bombay were highly favorable to all Classes of the Jageerdars.

36. In the cases of resumptions according to Mr. Marriott's list that have been noticed by the Hon'ble Court in a quotation from a recent letter of Mr. Elphinstone, it appears that, the estate of Yeswunt Rao Dhabang was continued to his son who is since dead, that the estate of Sheik Meeran is still held by the family, and the family of Shumshere Bahadur enjoys a pension from the British Government of four lacs of rupees per annum. There appear to have been three estates resumed since the tables of Mr. Marriott were prepared which according to his suggestions, would have continued for another generation. The Government of Bombay will be able to explain the reasons of this departure from what they had before approved with regard to these cases.

37. I have troubled Government with the above remarks at greater length than might otherwise be proper, in consequence of the importance which attaches to a decision in the Poona Jageers, if it establishes any principle with regard to other tenures of a similar nature in other parts of the Country. They are numerous under the Madras Presidency as well as in Bombay and in this side of India and where they are not guaranteed by positive grants as hereditary property by the British Government, they present the most legitimate source from whence the finance of the State may in time be gradually recruited. From neglecting to establish some periodical review of the titles by which these estates are held, successions frequently occur unnoticed by the Officers of Government and every succession strengthens the title to an estate as a perpetual alienation. The Government has lately called for returns of all political stipends payable at the different residencies and agencies, and it would probably be of use to obtain similar information with respect to Jageers with brief particulars of the nature of the grants by which each is held and the ground of any assumed rights of inheritance entertained by the present holders of them, and it might be expedient to resolve that all Jageers are held on a life tenure, excepting, only such as have been rendered hereditary by a deed of the British Government, and that no successions will hereafter be allowed except under the special order in

each case of Government, to be confirmed with respect to all estates exceeding in annual income Rupees 10,000 by the Government of India.

Fort William  
The 8th November 1841.

(Signed) T. H. MADDOCK.

True Copies.  
Sd/  
Chief Secretary.

(3)

EXTRACT FROM "LIST OF SARANJAMS AS THEY STOOD ON 1ST AUGUST 1874" BY A. T. ETHERIDGE, COLONEL, ALIENATION SETTLEMENT OFFICE, DECCAN AND SOUTHERN MAHRATTA COUNTRY.

It was the practice under former Government both Mohomedan and Mahratta to maintain a species of feudal aristocracy for State purposes by temporary assignments of revenue either for the support of troops for personal service, the maintenance of official dignity, or other specific reason. Holders of such grants were entrusted at the same time with the powers requisite to enable them to collect and appropriate the revenue and to administer the general government of the tract of land which produced it. Under the Mahomedan dynasty such holdings were known as Jaghir, under the Mahratta rule Saranjam. If any original distinctive feature marked the tenure of Jaghir and Saranjam it ceased to exist during the Mahratta Empire, for at the period of the introduction of the British Government there was no practical difference between a Jaghirdar and a Saranjamdar either in the Deccan or Southern Mahratta Country. The terms Jaghir and Saranjam are convertible terms in these districts. The latter is now almost universally adopted. These holdings being of a political character were not transferable nor necessarily hereditary, but, as a rule, were held at the pleasure of the Sovereign. On succession a Nazarana was levied. When of a personal nature they were termed Zat Saranjam, when for the maintenance of troops Fouj Saranjam.

It will not be necessary on the present occasion to trace the history of the families who held these Saranjams or to dilate upon their many vicissitudes. The history and vicissitudes of most of the Jaghirdar's and Saranjamdar's families will be found recorded in Grant Duff's "History of the Mahrattas". It will suffice to show here how they were treated by the British Government on its accession to power. It was on the 18th June 1818 that the Honourable the Commissioner, Mountstuart Elphinstone, first submitted to the Governor General "a general view of the measures adopted for the settlement of the Peshwa's late country," and "suggestions on the plans" which seemed "best suited to the completion of that object". One of the most important subjects discussed was the best method of providing for the Jaghirdar's and Saranjamdar's whom the events of the war had deprived of their power and possessions. It was proposed to do this by leaving them their personal holdings and by pensioning on moderate sums the few not so provided for. As a measure of policy, Mr. Elphinstone also recommended "pensions to



some of the old Ministers of the State reduced to poverty by the persecution of Baji Rao, a sort of bounty that would be more popular than the provision for that Prince's own Ministers'.

The above was the arrangement proposed with regard to the Jaghir-dar's and Saranjamdar's generally. There were exceptions, such as the Patvardhan Chiefs, Apa Desai, the Pant Sachiva and others in both the Deccan and Southern Mahratta Country whose possessions were subsequently fixed on different principles. These formed and continue to form a separate and special class, and, being protected by treaty, need not be here further alluded to. For the rest the Governnor General deferred to Mr. Elphinstone's local knowledge and experience and did not question the soundness of his policy. But Mr. Elphinstone made it quite apparent that his arrangements in the first instance were provisional only and were not intended to involve more than present alienation of revenue. He distinctly guarded against any permanent alienations in the case of holders not protected by treaty. He remarked, that "no grant of any description has been declared hereditary, the distinction in the list of Jaghirs transmitted to the Supreme Government into hereditary and for life being intended as a suggestion for the future regulation of the Government, but having in no instance been communicated to the party concerned."

Indeed, Mr. Elphinstone had proposed to reduce the personal Jaghirs in the event of any increase of the available revenue of the country being deemed absolutely required. This, however, the Government of India did not consider necessary, although it was distinctly intimated that the alienation of revenue, which these liberal arrangements involved, was sanctioned not as a permanent but as a prospectively diminishing one.

"Every fair occasion should be taken to resume or curtail Jaghirs falling in by the death of the holder."

On the 25th October 1819 Mr. Elphinstone reported to the Supreme Government the completion of his work in the following despatch:—

"1. I have the honour to report the completion of the plan proposed in my despatch No. 78, for restoring the personal lands of the Chiefs, Ministers, and other Jaghirdar's of the Mahratta Government.

"2. The first step in this operation was to extract from the Peshwa's Daftar a full account of each Jaghir, and to ascertain, as correctly as possible, the character and history of each Jaghirdar, with the time when he made his submission to the British Government. This was done immediately after the war.

"3. The Collectors were next furnished with lists of the personal Jaghirs, and requested to ascertain their actual value, and whether they were in force up to the breaking out of war.

"4. After time had been allowed for this enquiry, a proclamation was published, calling on all who had claims to Jaghirs to appear and show their sanads, with lists of their personal lands, acquainting them that it was in contemplation of His Excellency the Most Noble the Governnor General to make some provision for them, and apprising them that none who did not appear before the 15th September would be attended to.

"5. The investigation was now committed to Mr. Mc Donnell, who proceeded to compare the statements of the Jaghirdar's with those drawn up in the Daftar, checking both by the accounts received from

the Collectors. A complete register was framed on this comparison, showing the name of the holder of each Jaghir; the date and nature of the grant; the situation of the lands, and the sources of revenue when not drawn from land; with the kamal or highest revenue, the revenue as stated by the Jaghirdar, and actual collections as reported by our officers.

"6. The whole list was then examined, and decisions passed on each case.

"7. All were left in possession of their lands except such as were granted as late as Baji Rao's time, to whom pecuniary pensions were assigned.

"8. All Jaghirs held by ancient and great families were recommended to be hereditary (but no communication has been made on this subject to the holders). Those which were to cease at the death of the present possessors were specified, and where any allowance was to be continued to their heirs it was likewise noted down.

"9. Besides these principles which determined the grant, other detailed rules were drawn out regarding the manner of executing it, and are enclosed (No. 1). The object of them was the convenience of Government and the accommodation of the Jaghirdar's.

"10. The enclosed statement No. 2 shows the result of the above inquiries, and the decisions passed on them. Where the principles and rules laid down have been departed from, the reasons are always stated in detail; a short account of each of the principal persons is also given.

"11. No. 3 is an abstract of No. 2; the Jaghirs in Satara were afterwards deducted. The balance shows what is still to be paid by the British Government,—it amounts to Rupees 7,46,269-13-0 of actual collections; but as many are already in possession, and others have not appeared, the actual deduction from our future revenue will not amount to this sum.

"12. The reason why those who have not appeared are still allowed a hearing on accounting for their absence is, that it is probable they also held them as Inams (a case not unfrequent), and have, therefore, been already put in possession; this would sufficiently account for their non-appearance. The following are the detailed rules which are referred to in the 9th paragraph of the letter just quoted:—

#### GENERAL RULES

"I. When a Jaghirdar has no fixed villages for his personal Tynat, he is to receive villages of the average goodness of the Pargana, the Tankha of which shall amount to the sum fixed for his personal Tynat. In cases where the grant to the Jaghirdar's has been regulated by the Kamal instead of the Tankha, he will receive villages the Kamal of which will amount to his personal Tynat. A Jaghirdar will be allowed to select a village for his residence, the rest will be fixed by Government, as may be most convenient; and if he should willingly take money instead, it will be so much the better—the sum to be something above the actual collection from the villages he would otherwise receive.

"II. Where a large portion consists in partial collections in money and kind, on the lands of other persons (Amal), one village may be granted, and the rest of the personal allowance made in money; the amount to be regulated by an average of the collection from these sources.

"III. The same scale may be adopted, when not particularly inconvenient, even if the whole Jaghir should consist of Amals.

"IV. The holders of Mokasa, in districts where the revenue has much declined would probably accept of a fixed pecuniary payment, which, though much inferior to what the Mokasa would hereafter rise to, will still be considerably above the receipts from that source. Bargains of this kind ought always to be concluded when they appear favourable to Government; when Mokasa is derivable from the villages in the possession of foreign States, the Jaghirdar is to be allowed to collect them according to former practice, unless they have been exchanged or ceded. In the former case compensation will be made by Government, but in the latter none.

"V. The above rule is applicable to Jaghirs; it should be recommended to Government to exchange any that lie within the territories of foreign powers.

"VI. Where money is given in lieu of Jaghirs situated in Satara, the sum is to be paid by the Raja who is to receive the villages.

"VII. No Saranjam ceded to the British Government by the Treaty of 1817, and no Jaghir not actually enjoyed up to the war, to be restored, unless specially directed so to be.

"VIII. In all cases of Mutsadis, where they do not reside upon their Jaghir, and have no particular ground of attachment to it, a pecuniary payment, somewhat exceeding the produce of the Jaghir, ought to be made, instead of actual restoration, unless in peculiar cases, which will be specified in the list and marked 'land'.

"IX. In cases where members of the Huzarat, and other persons whose Jaghir it is absolutely necessary to continue, have a large share of their resources within the Nizam's country, an application must be made to that prince to continue them in the same manner as Inams.

"X. Ditto. Ditto. Ditto. Paga Chiefs.

"XI. A list of the Jaghirs of Ministers of foreign States to be sent to the Residents at the Courts of those States, and their opinions to be solicited confidentially as to the expediency of continuing them."

Such was the plan proposed by Mr. Elphinstone, and sanctioned by the Government of India, for restoring the personal lands of the Chiefs, Ministers, and other Jaghirdar's of the Mahratta Government.

The transmission on the 25th of October 1819 of this despatch was one of the last official acts of the Honourable Mountstuart Elphinstone as Commissioner and before proceeding to Bombay to the Government of which he stood appointed. In some respects it was not to be supposed that the lists could be complete. Indeed, Mr. John Warden, his first Assistant, has recently pointed out (1852) that from personal knowledge many of the Saranjams were left unsettled though included in the lists.

The Governor General replied on the 4th March 1820. He stated, that, though he recognizes in the lists an adherence to the principles laid down in the instructions of 26th September 1818, a considerable diminution had taken place in the hopes then framed of an efficient revenue from the conquered country applicable to the general service of the State, and that he was therefore anxious that the alienations of public revenue, either in Jaghirs, pensions, or other grants, should be limited as much as possible as to number, amount, and duration.

He ordered a revision in any instance in which the faith of Government was not pledged by the promise of the Honourable the late Commissioner, or in which it was not deemed essential for the tranquility of the country or on other important grounds of political expediency that the grant proposed should take effect. His Lordship trusted that cases might be found in which neither good faith would be violated, nor the tranquility of the country endangered, nor essential plans of policy frustrated by reduction. In illustration of his sentiments, the Governor General in Council particularized several instances which casually struck him as admitting of revision, and remarked generally with reference to the grants proposed to be made hereditary, that he doubted the policy of making any grants hereditary which might justly be put on the footing of life-grants. By keeping them as life-grants, he observed, Government was by no means excluded from the power of renewing them if it should be deemed expedient to do so, while every renewal would be a fresh act of grace conferred on the individual receiving it; but by at once declaring those grants hereditary, Government would be precluded both from resuming its rights when it might be necessary to do so, and from conferring favours on the descendants of the grantees, and would thus be deprived of a probable source of future improvement in revenue and every other branch of civil administration, as well as of the means of winning attachment by personal obligation.

Mr. Elphinstone, then Governor of Bombay, replied on the 11th May following (1820), that, while deeply sensible of the necessity of economy and willing to adopt every practicable means of reducing the expenses with which the recent conquest from the Peshwa was burdened, he found it impossible, after the most careful revision, to effect any considerable saving. He added, that while all had been told that they would hold for life, "no grant of any description had been declared hereditary", though he suggested that the grants marked "hereditary" should be continued to the heirs of present occupants, but he entirely concurred with His Excellency the Most Noble the Governor General in Council in respect to the expediency of renewing the grant on the death of each incumbent, and concluded by stating that Government would, indeed, be at liberty to exercise its discretion in granting or withholding the renewal on such occasions, except in the case of what was termed Padshahe grants, which ought, in all cases, to be renewed; and of the more ancient grants by the Raja's of Satara, which should be treated with similar attention.

On 17th June the Government of India yielded to Mr. Elphinstone's opinion and concurred in the proposed expenditure, with, however, a marked allusion to the necessity of its not being allowed to become a permanent one:—

"The Honourable the Governor in Council being of opinion that it is impossible to effect any considerable saving in the Jaghirs and pensions

with which the territory conquered from the Peshwa is burdened, the Governor General in Council, in reliance on the Judgement of the Governor in Council, has only to express his own concurrence, trusting that advantage will be taken of every proper opportunity to reduce the expenses incurred."

This closed the discussion at that time; and the general subject did not again come under the consideration of the Bombay Government until 1832, when the Deputy Agent for Sirdars, Mr. John Warden, who, as already mentioned, had been Mr. Elphinstone's first Assistant, pointed out the necessity of establishing some uniformity in practice in dealing with Saranjams, for that, "as each of these fall in his Lordship in Council is troubled with correspondence and recommendations, and so different have the decisions sometimes been in cases of a similar kind, that no uniform principle can be said to be yet established". This led to the adoption of Mr. Warden's proposals. Lists were prepared by him, and these having been revised by the Agent for Sirdars Mr. Marriott, were submitted to the Honourable the Court of Directors, who, however, decided on making a still more liberal provision for the Jaghirdars, for reasons subsequently explained, in their despatch No. 17, dated 26th October 1842, to the Government of Bombay to have been:—

"Although this arrangement (the arrangement proposed in the lists prepared by Messrs. Warden and Marriott) would not have violated any pledge given to the Jaghirdars, it was greatly at variance with the recorded intentions of Mr. Elphinstone; and after having communicated with that gentleman on the subject, we forwarded to the Government of India the substance of a paper received from him, the principles laid down in which we desired might be conformed to in reconsidering the subject. Mr. Elphinstone observed that the maintenance of many of the Chiefs in their possessions was suggested for the purpose of avoiding popular discontent, and preventing the too rapid fall of great families; but that in other cases it was recommended in the belief that the holders were entitled of right to an hereditary tenure, not (in general) by express grant, but by length of possession. This remark, he said, was applicable to all those families which had held their jaghirs from the time of the Mogal Emperors or the Rajas of Satara.

"The Jaghirdars of the Peshwa, said Mr. Elphinstone, stood on a different footing: they had arisen under the dynasty which we subverted: none could have been in possession for more than seventy years; and they had been kept in mind, by the exaction of service, as well as by occasional resumptions, of the real nature and extent of their tenure. Much consideration was, however, due to them as the actual possessors of power, and they were allowed to retain their personal lands for one or more generations, according to their merits or importance.

"Mr. Elphinstone thus recognised two classes of Jaghirdars, those of the Mogal Emperors and the Rajas of Satara, whose lands he recommended should be hereditary in the fullest sense of the word; and those of the Peshwa, who had a claim to hold their lands for one or more generations."

These instructions were issued by the Honourable Court on the 7th February 1838, and in conformity to them the Agent for Sirdars was on the 6th November following directed to prepare and submit to Government "revised lists of the Jaghirdars and the rules for succession to their Estates".

Amended lists were accordingly prepared by the Agent and submitted to the Honourable Court, who, however, disapproved of them, pointing out (in their Despatch of the 26th October 1842, No. 17) that their previous orders had been misunderstood, and calling for new lists in the following terms:—

“6. In attempting to apply those principles to the various cases under review, Mr. Mills, the Acting Agent for Sirdars, has fallen into a misapprehension which you have failed to correct.

“7. He affirms that none of the Deccan Saranjams come within Mr. Elphinstone's first class, all of them being grants made since the Peshwas commenced to reign. This result is arrived at by assuming that Balaji Vishvanath, the first Peshwa, commenced to reign in A.D. 1714, while the earliest grants of which the date is known are of 1719.

“8. But it is only by a complete historical error that all acts of the Mahratta Government subsequent to 1714 can be considered as acts of the Peshwas, in contradiction to the Rajas of Satara. Balaji Vishvanath was appointed Peshwa in 1714, but so far was he from obtaining undisputed control over the Raja that, upon his death in October 1722, his son, Baji Rao, was not appointed to the Office of Peshwa until seven months after his father's decease, the duties of the office being discharged during the interval by the other Ministers of the Raja. Even Baji Rao, though he made long strides towards the permanent establishment of the power of his family, can only be considered as the principal officer and Minister of Shahoo Raja; the supreme authority over the Raja and the Mahratta State was first usurped by the son of Baji Rao (Balaji Baji Rao). This usurpation, however, was not effected in the life-time of Shahoo Raja, who was never deprived of personal liberty or sovereign authority as far as he chose to retain it, and exercised it shortly before his death in 1749, by naming Ram Raja his successor. It is from the troubled period which immediately succeeded this event that the sovereignty of the Peshwas is most unexceptionably dated, and the year 1751 may be fairly assumed as the epoch of its commencement.

“9. We direct, therefore, that all Jaghirs in Class I. of Mr. Mills's list which bear dates anterior to 1751 be, as Mr. Elphinstone recommends, hereditary in the fullest sense of the word, together with those of which the dates are unknown, but which are known to be ancient. The latter class, though small, includes the three resumed Jaghirs of Shaik Meera, Shamshere Bahadar, and Eshvant Bao Dabhare. The first of these, already restored to the son of the last holder, but for life only, must be considered hereditary; the second and third, which are now under attachment, must, if there be any direct heirs, be restored; and in all three cases the receipts from the date of attachment must be accounted for to the Jaghirdars.

“10. In addition to these ancient Jaghirs, all those of more recent date, which were granted in commutation for the resumption of ancient possessions (which is known to have been the case with some), are entitled in like manner to an hereditary tenure.

“11. With respect to the Jaghirs of more modern origin, Mr. Mills has fallen into another error in supposing us to have determined that all estates which were marked 'hereditary' in Mr. Elphinstone's original recommendation should be hereditary. On the contrary, we expressly

declared our intention to be only that Mr. Elphinstone's schedules should be compared with those submitted with the letters under reply, in order that, in any case where the latter are less favourable to the parties, it may be deliberately considered which of the two should be acted upon.

“12. With regard to Saranjam grants bearing date subsequent to 1751, resumption after a second generation from the conquest, making a pensionary provision equal to half the net proceeds of the Saranjam lands for the generation next succeeding, should be the general rule; but in cases in which Mr. Elphinstone may have recommended a more extended provision, it should be deliberately considered by you and the Governor General in Council whether the services or merits of the family, or the popularity which would attach to the act, furnish an adequate inducement to make an exception to the rule, by prolonging for a further term the tenure of either the whole or a portion of the Jaghir. We should make these exceptions liberally, and we would extend them, where similar reasons recommend their adoption, even to cases not mentioned with particular favour by Mr. Elphinstone.”

In directing the Agent for Sirdars to carry out on 9th May 1843 the Honourable Court's orders in the most careful manner, the Bombay Government issued very full and detailed instructions on the subject of revising these amended lists. New lists were accordingly submitted on the 29th December 1844. But they were not considered in all respects satisfactory, and Government took occasion to point out to Mr. Brown, who meanwhile had succeeded Mr. Warden as Agent, in how far the latter officer's interpretation of the Honourable Court's orders differed from that placed upon them by the Government. Important principles seemed to have been misunderstood or carelessly applied, and the attention of the Agent was especially drawn to them. The Government orders were very clear, and concluded by pointing out the necessity of extreme caution on the part of the Agent who was told that —

“The greatest care should be taken in collecting the further information now called for since the re-opening of the question of the character of these grants presents an opportunity for the commission of fraud and deception which the greatest caution and vigilance on your parts can alone prevent.”

Revised lists were submitted to Government on 26th October 1847, but, supplementary information being called for, they were only some time after forwarded to England. They eventually received a general sanction in the Honourable Court's Despatch dated 22nd May 1849, No. 15.

It was subsequently discovered, however, that errors and oversights of a grave nature affecting the interests of Government existed in these lists, and it was determined to subject them to the scrutiny of the Inam Commission (Government letters Nos. 4175 and 4249 of 1852). The scrutiny by the Inam Commission elicited the fact that the enquiry by Mr. Warden which resulted in the new lists of 1884 was most faulty and imperfect and that the revision by Mr. Brown which produced the fresh lists of 1847, though carried out under special orders from Government, did nothing but add to the difficulty.

It remains only to be said that, eventually, the settlement effected, the outcome of which are the following lists, was regulated by the most liberal interpretation of the rules fixed by the Honourable Court, viz. :—

1st. That all Saranjams granted prior to A.D. 1751, or held in commutation for anything so granted, should be considered hereditary.

2nd. That all Saranjams granted between A.D. 1751 and 1796 should be continued to the holder at the introduction of British rule for one generation further, with a pension of half the net proceeds of the Saranjam to the third generation.

3rd. That all Saranjams granted after A.D. 1796,—that is to say all Saranjams granted by the last Peshwa Baji Rao,—should be continued to the holder at the introduction of British rule, after his death a pension of half the net proceeds being granted to the next generation.

The word *hereditary* in the last rule simply meant, in the first instance, continuance to the occupant at the introduction of the British Government, the first British grantee, and his descendants; but it was subsequently allowed with retrospective effect to comprise the brothers of the first British grantee and their descendants<sup>1</sup>; though in case of a Saranjam being divided among these brothers, or other separate provision having been made for them, each brother would in that case transmit his separate interest to his descendants without the right of cross inheritance in case of the failure of lineal descendants<sup>2</sup>.

There were certain subsidiary rules but these need not be detailed here. In this manner formal adjudication was at length completed. Succession to Saranjams is restricted to lineal male heirs in the order of primogeniture. The eldest son is the heir in the first instance, and his name is thus entered in the list of Saranjamdars. The fact of a younger son having had the management in his father's life-time does not affect this rule.

In Saranjams continuable for two generations with pension to a third, the eldest surviving son represents a generation.

In Saranjams of the second class, if the eldest son of the first British grantee die before his father but leave a son, that son on his grandfather's death is to be considered the second generation, and the whole Saranjam will be continued to him, but in this case no pension is allowed to the next generation.

The laws relating to Jaghirdars, Saranjamdars, and Sardars generally are:—

	Regulation XXIX of 1827.
	“ VII of 1830; and XIII of 1830.
	“ of 1831; and XVI of 1831.
Act	XIX of 1835.
“	XIII of 1842.
“	XXIII of 1871.
Bombay Act	III of 1863.
“	II of 1866, Secs. 2 and 5.
“	XIV of 1866, Sec. 3.

<sup>1</sup> This expansion of the original meaning came afterwards to be termed hereditary in the fullest sense of the word.

<sup>2</sup> Despatch from the Secretary of State No. 3 dated 20th February 1860, paras 13 and 14.



The rank of the different Saranjamdars is decided by their place in the list of Sardars.

A. T. ETHERIDGE, Colonel,  
Alienation Settlement Officer,  
Deccan and Southern Mahratta  
Country.

(4)

EXTRACTS FROM "THE INDIAN LAND PROBLEM AND LEGISLATION" BY  
G. D. PATEL, 1954, pages 39-40; 48; 364

"Jahagirs and Saranjams.

The expression 'Jahagir' is a Persian word compounded of two words, Ja or Jai meaning a place or position and gir meaning taking or occupying. Literally, it means (1) holding or occupying a place or position or (2) holding land. But owing to its political association, it required a technical sense meaning a tenure of a particular kind. It was a tenure which was common under the Muslim Rule in which the public revenues of a given tract of land were made over to a servant of the State. The word "saranjam" literally means apparatus, provisions or materials. In his Glossary, Wilson defines saranjam as temporary assignments of revenue from villages or lands for support of troops or for personal service usually for the lifetime of the grantees; all grants made to persons appointed to civil offices of the State to enable them to maintain their dignity and to grants for charitable purposes. They were neither transferable nor hereditary and were held during the pleasure of the Sovereign. This definition is corroborated by the description of the saranjam given by Mountstuart Elphinstone in his "Report on the Territories conquered from the Peshwa"<sup>1</sup>.

According to the account given by Col. Etheridge in his preface to the Saranjam List, it was the practice of the former Governments, both the Muslims and the Marathas, to maintain a species of feudal aristocracy for the State purposes by temporary assignments of revenue either for the support of the troops or personal service, the maintenance of official dignity or for other specific reasons. The holders of such lands were entrusted at the time with the necessary powers for enabling them to collect and appropriate the revenue and to administer the general management of the lands. Under the Muslim rule, such holdings were called Jahagirs and under the Maratha rule, they came to be called Saranjams. However, this distinction between these tenures ceased to exist during the Maratha period. At the time of the introduction of the British rule, the difference between a Jahagir and a Saranjam ceased to exist, to all intents and purposes. The two terms became convertible and all such grants came to be known by the general term 'saranjam'. Apart from the Saranjam grants, which were found only in the Deccan, there were other grants of a political nature found scattered over the whole State. Their origins did not materially differ from those of the

<sup>1</sup> Report, p. XXVI of its appendix.

Saranjams with the result that the British treated them under the same rules called the Saranjam Rules.”

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“6. *The Resumption Rules of 1952.*”

It may be recalled that the Saranjams and Political grants were governed by the Saranjam Rules of 1898. As pointed out by the Full Bench of the Bombay High Court in *Daulatrao v. Province of Bombay*, (49 Bom. L.R. 270) that the said Rules were rules of convenience only. They did not exhaust the general power of Government or prevent Government from making any decision or determination referable to a particular Saranjam. In the same case, it is observed that “the whole structure of the saranjam tenure is founded in the sovereign right, which can only be changed by conquest or treaty. So founded, Jahagirs or Saranjams, with the feudal incident connected with them, are granted or withheld at the will or pleasure of the sovereign power, and, if granted, the fixity of the tenure is always subject to interruption or revocation by resumption, be it temporary or absolute in character”. This decision of the Bombay High Court was consistent with earlier decisions of the said Court and was supported by legislative enactments from earlier times. Section 38 of Bombay Regulation XVII of 1827 provided that land held exempt as jahagir should be liable to resumption and assessment under the general rules at the pleasure of Government. This principle was repeated in the Bombay Regulation VI of 1833 (section 1(3)). Since the saranjams and political grants were continuable at the pleasure of Government, it was open to Government to resume them. In this background of the law, it was not deemed necessary to undertake a special legislation for resuming these grants. But as they were governed by the Rules, they could be resumed by Government by special Rules framed for the purposes.

Consequently, Government framed the special rules called the Bombay Saranjams, Jahagirs and other Inams of Political nature, Resumption Rules, 1952. They have superseded the Saranjam Rules of 1898. They apply to the saranjam and political inams of the whole State (excluding the merged territories), which have been classed as inam class I in the Land and Cash Alienation Registers and the Saranjam List of 1900. They have been brought into force with effect from the 1st November 1952.

The expression “political inam” has been defined as a grant in saranjam, jahagir or other alienation of political nature which may be either of the following kinds or both:

(1) grants of a village or a portion thereof, land revenue either in whole or part entered as class I in the Land Alienation Registers kept under section 53 of the Land Revenue Code or in the Saranjam List prepared under the orders of Government,

(2) a grant of cash allowance entered in the Saranjam List or the Cash Alienation Registers prepared under the Rules framed under the Pensions Act, 1871.

But these allowances do not include a privy purse of a Ruler in respect of which a guarantee or assurance is recognized by Article 363 of the

Constitution. If any doubt arises as to the nature of the grant, the question is to be referred to the State Government and its decision shall be final (Rules 3 and 4).

With effect from the 1st November, 1952, all these saranjam and political inams have been resumed by Government and all rights legally subsisting on that date have been extinguished. But in the case of political inams which consist of exemption from payment of land revenue only, such exemption shall be extinguished.

(a) with effect from the 1st August 1953, if the amount of such exemption exceeds Rs. 5,000 per year,

(b) with effect from the 1st August 1955, in all other cases.

This provision has been adopted from the Bombay Personal Inams Abolition Act, 1952 with a view to giving relief (or compensation) to the small saranjamdars and political inamdars in the State. It was necessary for maintaining uniformity in the two measures (Rule 5).

The Rule 6 is very important. All villages and lands, if they were the grants of the soil, have been resumed and now vest in Government free from any rights, tenures, incumbrances or equities created by the holder. But if there is any Kadim inferior holder in possession of lands on payment of annual assessment, he is to continue to hold the land as an occupant on new and impartible tenure.

All inam villages and lands, which consisted of exemption from payment of land revenue have been resumed and vested in Government free from any rights, tenures, incumbrances or equities created by the holder. But if they are in actual possession of the holder or any person holding from him, and, if there is an inferior holder, who pays only assessment, the resumption in the case of such lands is by levy of full assessment only. This means that they are not to be dispossessed of such land.

The provisions of the rule 6 (1) are far reaching in effects and form the crux of the Rules. Under it, all the soil saranjams have been resumed outright and the saranjamdar is left with neither land nor land revenue. Although out of 100 saranjams, the number of soil saranjams may be about 10 or so; still in view of the absolute resumption of such grants it is urged that the saranjamdars are hard hit by the absence of any provision either for grant of compensation or lands. The Government stand is perfectly legal; it has resumed what had been originally granted. Consequently, it cannot be challenged in a court of law<sup>1</sup>.

Such is not the position of the land revenue saranjamdars, (whose number is considerable), under the Resumption Rules. They are allowed to retain the lands which are in their actual possession or in possession of persons holding from them. In the result, their domestic economy will not be disturbed.

As regards the forests in the Saranjam villages, in the case of the soil saranjams, saranjamdars are not entitled to the forest trees, as such trees have vested in Government on resumption. In the case of the land revenue saranjamdars, the land not being vested in the saranjamdars,

<sup>1</sup> Recently, Govt. has ordered that the soil saranjamdars should be regranted certain lands in their actual possession on payment of a nominal occupancy price of three times the assessment of the lands, having regard to their income from other sources subject to the condition that they give pro rata maintenance allowance to their dependants who received such allowances before resumption.

the trees upon the land would not vest in them. They (saranjamdars), therefore, would not be considered as being in actual possession of the land on which the forest trees are growing. As a result, the provisions of rule 6(2) (a) are not attracted and the saranjamdars are not entitled to the forest trees<sup>1</sup>.

If the inam consists of a cash allowance, the holder is entitled to get compensation equal to seven or three times the annual amount of such allowance, according as the allowance was recognised hereditary or for the life time of the holder. This payment is to be deemed in full settlement of his claim to the inam. It is made clear that the compensation provided in the case of these cash allowances is by way of grace only (Rules 7, 8 and 9). The Rules have been revised in order to provide for payment of compensation in transferable bonds bearing interest at 3% and redeemable during a period of 20 years in equated annual instalments of principal and interest.

The Saranjam Chauth and other allowances which are chargeable to the Central revenues are not covered by these Rules. They are continuable as hithertofore until the Government of India decides upon their abolition.

The Rules have been published in the Bombay Government Gazette (Part IV) dated 17th September 1952. By issuing the Resumption Rules, Government completed its programme of abolishing inams and watans in the Bombay State excluding the merged areas."

\* \* \*

"According to Wilson's Glossary of Judicial and Revenue Terms, the expression 'Jagir' means any grant of land and/of land revenue made by a ruler to his servant or subject in appreciation of services rendered or to be rendered in future. It consisted either of entire villages, parcels of land, amals (shares of revenue) or cash allowances. The jagirs were, generally, for the life-time of the grantees and consisted of land revenue. Although prima facie, they were estates only for life, they were granted in such terms which made them hereditary.<sup>2</sup> The grants were made sometimes to the relatives of the ruler for maintenance and support of the status and dignity. Some grants were for maintenance of troops or private emergency on the State."

\* \* \*

"it is clear that the grants of jagirs were made by different rulers — Muslims, Rajputs or Marathas — for creating feudal interests, which would render assistance and support to the State both in peace and war. Further, the Jagirdars were expected to carry out the wishes of the Rulers in all the circumstances and any negligence or remissness in duty on their part was visited for forfeiture of the jagirs. Thus all the jagirs whether they were for life-time, hereditary or permanent, were continuable during the pleasure of the Ruler and there was nothing which could prevent the Ruler from resuming them even for the slightest dereliction of duty, real or imaginary."

<sup>1</sup> G.M., R.D. No. 7494/51-M (sp 1) dated 14th March, 1953.

<sup>2</sup> Gulabdas v. Collector of Surat, I.L.R. 3 Bom. 186 (P.C.).

## Annex E. No. 2

## Part I

TREATY OF 1739<sup>1</sup>

## (1)

## FIRST DOCUMENT. 25TH APRIL 1739

Treaty in respect of the differences that arose between the Great Baji Rao Pradhan and the Firangee, made by Venkat Rao and Dadaji Rao, generals of Baji Rao Pradhan with Antonio Carneiro do Alcacao and Jose Pedro Emaus dated 27 Muharram, Suhur San Tisa Salasin Maya Wa Alaf. (Seal.)

Agreement has been made to deliver to Shrimant Baji Rao Pradhan the fortress of Bassein and territory and posts under its jurisdiction. Thereby hostilities will be stopped. Shrimant Rao (the Peshwa) will deliver to the Firangee the port of Daman, its territory and its posts. The troops from that territory will be withdrawn. But should fighting have taken place between the two parties before information of this agreement reaches the north then it is left entirely to the Rao to adhere (or not) to this agreement. And after this agreement is accepted by both parties the ryots of Bassein, Christian and Hindu, will march out of the fort of Bassein with their property and arms and deliver the fort to the Rao Pradhan. Such of the people in the fort who choose to go away will be allowed to leave in peace and allowed to go to whatever port without molestation. Copies of this agreement should be despatched separately by both parties without delay and letters should be sent to the North. The agreement concluded at Goa is final. Written at Raia 27 Muharram Suhur San Tisa Salasin Maya Wa Alaf. (End of writing.)

## (2)

## SECOND DOCUMENT. 27TH APRIL, 1739

An agreement made by Vencta Rou and Dadajee Rao, generals of the magnificent Bagi Rao Pardone, the Plenipotentiaries of the Portuguese States being present, namely Antonio Carneiro de Alcacao and Joze Pedro Emans, on the 27th of April, 1739.

That the Portuguese states shall contribute seven lacs of Rupees each rupee being equal to two Xerafins of Goa coinage—for defraying the expenses made by the forces at present occupying their territories, in order that the aforesaid forces may break up the camp; and it is stated as follows—as soon as the stipulations are signed by both parties, two Portuguese of note shall be sent bringing with them two lacs of rupees for defraying the first instalment—that the army immediately after having received the first instalment, shall decamp and that all the troops which are to be found in Salsette and Bardez, shall quit these

<sup>1</sup> Translation from "The Portuguese and the Marathas" by Pissurlencar, Vol. 4.

two provinces and abandon the fortresses, they may hold, thus leaving the country free to be inhabited and cultivated by its proper inhabitants and that the main body of the army shall go up the Ghats leaving behind one chieftain with some people beyond the dominions of the Portuguese, where also the two Portuguese shall remain as hostages, until the second instalment be duly paid.

That within a fortnight the second instalment of three lacs of rupees shall be made up, payable in money, gold, silver coral, cochineal, and other different goods and that after having paid the second instalment the Portuguese shall deliver up an obligatory writing for the payment of the two other lacs which are left, to be paid within six months, and that for assurance of this last instalment, two natives of the *camares* Gracee (magnificent members) of Salsette and Bardez shall be delivered as hostages and they shall remain in such place as may be assigned to them until in effect, the said instalment shall be made good; and that as soon as the aforesaid obligatory writing be delivered up, together with the said hostages, the two first *white* men who had been given as sureties for the first five lacs of rupees shall be at liberty to return home. At Raia on the 27th of April, 1739 signed Antonio Carneiro de Alcacao Joze.

PEDRO EMANS.

(3)

THIRD DOCUMENT. 27TH APRIL, 1739

SECOND TREATY

Stipulations of peace agreed to between the magnificent Bagi Rao Pardone and the Portuguese states in presence of Vencata Rao and Dadajee Rao, generals of the magnificent Bagi Rao and Antonio Carneiro Alcacao, and Joze Pedro Emans Plenipotentiaries of the said Portuguese states on the 27th of April, 1739.

That the Provinces of Salsetto and Bardez, with all their fortresses, belong *in toto* to the Portuguese States, and in order that the same States may enjoy them, they shall be evacuated by all the troops at present occupying them; but with declaration that from the royal quit rents [forosteas] paid every year by the villages to the said States 40 per cent shall be deducted and delivered to the magnificent Bagi Rao Pardone.

As the said provinces of Salsette Bardez are found ravaged by the frequent irruptions of the native armies the magnificent Bagi Rao Pardone and his chieftains shall fulfil the *seguro* and *quito* the States may have granted to the villages that the islands of Carjooren and Pandem shall be delivered up to the Bhonsele, who shall be released and continue exempt from contribution to the States 1000 Xerafins [500 rupees] yearly as promised in the stipulations made in the time of Siva Bhutt and that a paper shall be given to him showing that he is exempted from paying the aforesaid sum.

That the prisoners of the Provincias del Norte, Bassein Shastee chewul, northern districts and of the Provinces of Salsette and Bardez, including

all the Negros, shall be set free by both parties without any ransom and that the engagements or bonds which any of the said prisoners might have made for his ransom, shall be delivered up to the States and shall have no effect at all.

That the merchants of Goa shall be allowed to trade freely in the territories of Phonda, now subjected to Bagi Rao Pardone and they shall not be compelled to pay more duties than those which were always usual, that the said merchants shall be allowed also to convey their goods by water on the river and enjoy the liberty they always have had heretofore without any alteration.

That the Portuguese states shall not intercede into the territories of the magnificent Bagi Rao, but on the contrary they shall maintain with them a good intercourse and the magnificent Bagi Rao and his chieftains shall act in the same manner towards the dominions of the States of the Portuguese.

That under these conditions there is established a firm peace between the Portuguese States and the magnificent Bagi Rao as also between the same States and Ramachandra Sawant and Jairam Sawant, Bhonsla and Sar Desaees of Koodal whose bramins or officer Nurba Shenwee son of Sivajee Shenwee, was present in this army, at the execution of the act of settlement in those stipulations, in which he is comprised, in consequence of the protection of the same magnificent Bagi Rao—Raia on the 27th April, 1739 [signed] Antonio Carneiro Alcacao and Joze Pedro Emans.

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## Part 2

### TREATY OF 1740

DOCUMENT OF 8TH SEPTEMBER, 1740.

(PESHA DAFTAR. GHADNI. RUMAL 481.)

Treaty of the Sarkar Rajashri Balaji Pandit Pradhan Suhur Ihide Arbain Maya Wa Alaf. There was war between the Sarkar and the Firangee. D. Francisco Baron Galenfes came on behalf of Pedro Mascarenhas D. Sandomil, Viceroy of Goa, and captain Inchbird on behalf of Stephen Law, the Governor of Bombay, and concluded the following treaty.

(1) The administration of the Sarkar established in Salsette and Bardez should be withdrawn. The old fortifications of fort Coculim will be preserved and the new will be demolished. Military stores and supplies will be carried away to which the Firangee will not obstruct.

(2) Prant Bassein, Salsette, Prant Daman, Belapur, Uran, and Rewdanda and Korla shall not be molested by the Firangee. In like manner the Sarkar will grant Salsette Bardez and Pargana towards Daman which will be governed by the Firangee. No disturbance will be caused to the territory from the Sarkar.

(3) The Firangee shall not molest the territories that have been obtained and will be obtained in future by the Sarkar in Prant Phonda Jamboli, Panch Mahal, Sondha and Bidnur.

(4) The Firangee will not molest merchant vessels and tarandas from the territory of the Sarkar navigating the sea and also the ships of the Sarkar and of merchants importing from Mascat dates and horses. The Sarkar's fleet will likewise not molest ships from the territory of the Firangee navigating the sea.

(5) Both parties will release the prisoners of each other. Female slaves and male slaves escaping from each other's territory will be delivered.

(6) Watandars of either side who may have gone from one side to the other willingly may be permitted to do so. Hereafter nobody going from one side to the other will be given asylum. If there should be any disturbance from Watandars who have gone over before, they will be punished by both sides.

(7) Military stores and provisions in the fort of Coculim will be removed by the Sarkar with the help of begaris\* from the five villages adjacent to Coculim. The other places of Salsette will not be molested. These begaris will be dismissed when the stores have reached their destination. They will not be detained.

\* (Forced Labour).

(8) Merchants in fort Rewdanda and Korla who desire to stay behind will be permitted to do so. Those who desire to depart will be allowed to depart with their property. They will not be molested. The Firangee will carry away in safety provisions and other stores.

(9) The forts of Daman and Sau Jatane also known as Lodhe Daman belong to the Firangee. They will be retained by the Firangee. They will not be molested by the Sarkar. It is agreed to grant a pargana towards the maintenance of the two forts. Accordingly the Sarkar will grant Pargana Neher in Prant Daman. There are forts belonging to Sarkar in the said Pargana; places contiguous to the forts will be retained for the forts; in exchange the Sarkar will give lands and villages adjacent to Lodhe Daman. An agent on behalf of the Sarkar and another on behalf of the Firangee will fix places contiguous to the forts to be kept by the Sarkar and the places to be granted in exchange.

(10) The Firangee will render all kind of help to the Sarkar in its war with the Angrias.

(11) The vessels of the Sarkar which are ready or are under construction at Asolna port and galleys and gallivats which are in the port of Phonda, will be either brought to this side or will be carried to Sondha ports as it suits the convenience of the Sarkar. Till then about a hundred men will be left behind to guard the ships. They will not be molested by the Firangee. Similarly soldiers of the Sarkar who will stay on, will not create disturbances in the territories of Salsette and Bardez. The Firangee shall not plunder the sailing crafts belonging to traders as long as they remain in the ports of Asolna and Phonda. The Firangee will not obstruct or arrest the passage of ships when the Sarkar carries them away.

(12) Patels and ryots from Firangee territory that will come over or have already crossed over and Patels and ryots from the Sarkar's dominion that will go over or have already gone, will be permitted to do so by both sides. This should be reciprocal. They should not be harassed.

The said Patels and ryots going away willingly, will be permitted to do so by both sides.

(13) It is agreed to deliver the forts of Rewdanda and Korla with cannon and ammunition. Accordingly the gates of both the forts may be



delivered to the English. Pending the arrival of written notification that Salsette and Bardez have been evacuated, the troops of the Sarkar may be permitted to stay in the church of St. John and in the town. As soon as notification arrives certifying that Salsette and Bardez have been evacuated and freed, English troops shall withdraw surrendering both the fortresses to the representative of the Sarkar. The Sarkar's agent shall prepare in advance inventories and lists of artillery and ammunition in the two places.

(14) Treaty has been concluded between the sawant and the Firangee which both parties will observe. In case of violation by the sawant the Sarkar will help the Firangee. In case of violation from the Firangee the Sarkar will help the sawant.

Accordingly fourteen articles have been agreed upon. Both sides will act accordingly. Engagements concluded before this treaty are revoked. The present treaty will be enforced by both parties. Be it known. 27 Jamadilakhar.

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### Annex E. No. 3

#### FIRST DRAFT OF THE PROPOSED TREATY. 1775

(Peshwa Dafter. Ghadni. Rumal 482.)

Previously a treaty between the Firangee State and Shrimant Peshwa Pant Pradhan was concluded to the effect that they should work in perpetual amity without interruption. Both parties having been firmly and sincerely convinced of the necessity to continue mutual amity without interruption whatsoever, had entered into detailed treaties of friendship. Much time has elapsed since then. During the intervening period the sardars and Subhadars of both sides having acted contrary to the spirit of the treaty caused a cleavage in friendly relations. However, they were never strained so excessively by either of the parties as to cause a complete break. Both sides had a feeling of despair. At that time Dom Jose Pedro da Camara arrived at Goa as Captain and General Viceroy. He deputed Narayan Vithal Dume to Rajashri Madhav Rao Narayan Pant Pradhan. After meeting, Shrimant ordered Rajeshri Trimbak Vinayak, Sar Subhadar, to confer with the Firangee Vakil, and after clearing misunderstanding, cement friendly relations. Accordingly both sides drew up an agreement as follows:—

(1) In case the fleet of the Majestic State and of the Shrimant encounter each other, they will inquire in a friendly manner of each and will show respect by extending honourable reception. The Firangee State will be given reception that is given to them by other Western Powers.

(2) In case the fleet of the Shrimant encounters a Firangee Vessel or the Firangee fleet encounters a grab of the Shrimant, both sides will behave respectfully towards each other.

(3) In case warships of the Firangee state-sibars, Galbat and small vessels encounter the fleet of the Shrimant or vice versa both should respect each other.

(4) In case the fleet or ship of the Firangee State have plenty of water and fuel and the fleet of the Sarkar is deficient and if the Commander of the Maratha fleet asks of the Commander of the Firangee fleet, the Firangee Commander should give them. Likewise if the fleet of the Sarkar has war material in store and if the Firangee ship or fleet run short of small arms and demand them, the former should give them. If one side has provisions and the other is short of them and asks for them, the former shall satisfy the requirement of the latter, against payment of its price in cash.

(5) In case the fleet of the Shrimant run short of water and fuel and should it seek refuge in a Firangee creek the Commanding Officer of the creek will provide supplies and render all possible help and likewise should the fleet ship or sibar of the Firangee State be short of provisions, the Commanding officer of the creek in the territory of the Shrimant will render all possible help by supplying water and fuel, and if there is shortage of provisions, the same be allowed to be carried against payment of reasonable price.

(6) In case the fleet of the Sarkar encounter an enemy and engage him and if in the meanwhile the fleet or a frigate of the Firangee State arrive on the spot, the latter shall render all possible assistance and help to the former provided the enemy is not an ally of the Firangee State. The fleet of the Sarkar will act in a reciprocal manner.

(7) Any warship, vessel or merchant ship (belonging to the Shrimant) that shall be driven by stress of weather for shelter in a creek in the dominion of the Firangee State, shall be offered protection from the enemy. All possible assistance shall be given (by the Firangee) for the refitall of equipage of ships that may have been damaged by inclement weather and when ready they shall be honourably conveyed to a safe resort. In like manner the Firangee fleet or frigate or Vessel, warship, merchant-ship shall have similar treatment in the jurisdiction of the Shrimant.

(8) Merchant ships of the Firangee territory which enter the dominions of the Sarkar for trading purposes, shall do so on payment of (zakat) duties in the usual manner. They will not be harassed. Traders selling their commodities shall be permitted to carry freely foodgrains and other commodities. Likewise, traders from the dominions of the Shrimant entering those of the Firangee with their river boats shall be permitted to sell in them food grains and other commodities and shall buy in exchange whatever they want, and paying usual duties in respect of same. They shall be permitted to return freely, without being harassed by anybody. They shall agree to this reciprocally.

(9) In case merchant ships from the dominions either of the Sarkar or of the Firangee while sailing to any port, come across the fleet of either party or any warship or sloop, they will not be seized on the ground that they have no pass. They will be allowed to go unmolested after ascertaining the origin of the country. And also, in case, an enemy at sea should seize any merchant craft belonging to either of the dominions, the navy or a ship from either party shall, when coming across them, render assistance, setting free the ships seized, which they shall convey safely until they near their own rivers. The commanders acting in this manner shall be rewarded.

(10) In case a merchant from either of the dominions hire a vessel from a merchant belonging to foreign territory and load it with merchandise and should that vessel be seized by the fleet or warship of either party, the goods after inquiry will be returned to the person concerned, and the vessel may be retained by the Captor. In like manner should a ship from the territory of the Firangee be hired by a foreigner and found carrying goods without pass, it will be released after due inquiry. The merchandise will be dealt with in whatever manner (the Sarkar) thinks proper. Merchant ships from the Sarkar's dominion will be treated by the Firangee likewise. In case foreign merchants possess the Sarkar's but not the Firangee's permit, they may be seized. Likewise ships carrying Firangee permits without the Sarkar's pass will be liable to seizure.

(11) The ships of China seas, from the Firangee ports, sailing the sea and visiting ports for the purpose of trade, will not be molested by the fleet of the Sarkar. They will be given all possible help as other merchant ships.

(12) The Firangee and Sarkar shall direct the officers, Subhadars and Killedars on the bordering territories of both dominions to foster friendly relations between the parties and those who will deviate will be punished.

(13) In case Desai, Mirasdar or any person from the dominion of the Firangee escapes and takes refuge in the dominion of the Sarkar and plans treason such person shall not be allowed to do so and not be given asylum on the border of the respective dominions.

(14) Neither party shall give assistance to the enemies of the other, nor shall it help with provisions or commodities.

(15) In case a slave, male or female, escapes from the dominion of the Firangee officers of the Sarkar shall not punish them, but shall send them back under escort with letter. Also the Firangee will not punish slaves escaping from the Sarkar's territory but will restore them to the Sarkar.

(16) In case the Sarkar requires from the Portuguese ammunition, cannon, swords or any other military stores and if these are available with the Firangee, they shall be supplied to the sarkar against payment of its price in cash.

(17) Differences previous to this treaty will not be revived.

(18) Both parties will instruct the commanders of their respective fleets about the treaty directing them to observe the same. So also both parties shall instruct Kamavidars, Subhadars. In case, either party fails to observe the treaty, the matter will be taken up by the envoys of the respective Governments. The party which will be found to have deviated from this agreement shall satisfy the other party by removing misunderstanding and the person who shall be found guilty will be punished. There will be no ground for disturbing friendly relations.

(19) When either of the two parties (commands a small force) becomes weak, the other shall not start a quarrel but shall help according to the articles mentioned above. Neither will commit aggression on the other. Both will behave in a friendly and sincere manner.

(20) In case the Firangee needs troops or infantry for defending themselves against an enemy the Sarkar will send them on payment according to convenience.

(21) Accordingly agreement is drawn up. The Firangee shall conclude the same ceremoniously according to his custom and shall seal and sign it. The Peshwa shall put his seal on this agreement ceremoniously according to his custom and shall deliver it to the Firangee and the Firangee shall deliver it to the Peshwa. On the delivery of these copies to each other, both parties shall issue instructions to this effect to the Amaldars, Subhadars or Commanders of the navy of respective dominions and a notice by the Public crier shall be circulated in both dominions so that nobody shall act due to ignorance contrary to this agreement and there shall be no reason for breach of friendship. This shall be good for the benefit of both.

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**Annex E. No. 4**

LETTER FROM THE GOVERNOR AND CAPTAIN GENERAL OF GOA TO  
SAKHARAM, 21ST JANUARY 1777

(Deccan College Collection. Paper I.)

To the great Sakharam Bhagwant from Dom Jose Pedro Da Camara Governor and Captain General of the Portuguese State of India.

I am in receipt of your letter and have noted its contents.

After arriving here I despatched to your court Narayan Vithal Dhume to express my friendly sentiments towards your Government. Even though we are on good terms with Royal powers here and even though they wished and still wish, we did not help them nor allowed them to enter the ports in our jurisdiction. We have reserved this honour for the Peshwa. In consequence according to agreement made with Narayan Vithal Dhume to give Pargana in the vicinity of Daman, the same may be given to the state. We desire that your honour will decide to effect this for increasing friendship.

Seven ships have been released, but the agreement about restoration of their equipage has not been observed. Reparations for the same may be made.

It was agreed to give Rs. 12 000/- in compensation for the timber of the ship. I desire you to issue necessary instructions for payment of the same and the river boats seized at Ratnagiri may kindly be restored with their equipage.

On agreeing to this, a treaty of lasting friendship will be concluded between the two countries. May the Almighty extend his protection to your Highness.

Dated 21 January 1777.

Dom Jose Pedro DA CAMARA

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## Annex E. No. 5

SECOND DRAFT OF THE PROPOSED TREATY,  
21ST OCTOBER, 1777

(Peshwa Daftar. Ghadni. Ruml 477).

Copy of the Treaty agreed  
to by the Sarkar.

Treaty of agreement of the Sarkar of Rajeshri Madhav Rao Pandit Pradhan in the year saman sabain Maya Wa Alaf (1777).

Narayan Vithal Dhume having come to court from the Portuguese Viceroy of Goa, Dom Jose Pedro da Camara, conveyed desire of the Firangee for friendship. Accordingly an agreement for treaty is drawn up. The articles are as below:

(1) In case the fleet of the sarkar encounters the fleet of the Firangee or a ship or in case a ship of one of the parties meets the entire fleet of the other, they shall behave in a friendly manner.

(2) In case the fleet of the sarkar and of the Firangee meet at sea and if one is short of water and fuel and the other has them in plenty the latter shall satisfy the requirements of the former. In the same manner if one is short of stores and the other has them in abundance, the latter shall satisfy the requirements of the former against payment of price in cash. This shall be done reciprocally.

(3) The fleet of the sarkar shall not molest ships of the China seas from the ports of the Firangee, bringing merchandise, and sailing the seas for purpose of trade; neither shall the Firangee molest the fleet of the sarkar sailing from his ports to trade in those of China.

(4) The female slaves and male slaves who will escape from the territory of the sarkar shall be delivered to the sarkar. This shall be done reciprocally.

(5) Disputes prior to this treaty shall not be revived by both parties.

(6) Differences in respect of the present agreement will be settled by negotiations through envoys. Both parties to act accordingly.

(7) Merchant crafts, provision ships and river boats which enter the dominion of the sarkar from those of the Firangee, loaded with commodities for trading purposes shall be permitted to do so on payment of Zakat to the sarkar as usual. These shall not be molested by anybody. The traders selling their commodities shall be permitted to carry freely food grains and other commodities. Likewise traders from the dominions of the sarkar entering those of the Firangee with their river boats, and provision ships shall be permitted to sell their commodities and buy in exchange whatever they want paying duties in respect of the same in the manner practised from the previous years. They shall be permitted to return freely without being harassed. This is reciprocal.

(8) In case merchant ships from the dominions of the sarkar and of the Firangee moving along the coast to visit ports fall in with the fleet of either party or with a man-of-war, they shall not be intercepted for not carrying pass (Kaul). They shall be allowed to pass unmolested. In case

an enemy is sighted seizing a merchantship belonging to either dominions, the fleet or ship of either of the allies which comes across, shall exert to the utmost to rescue the captured ship, and convoy it to safety. The commanders acting in this manner shall be rewarded by their superiors.

(9) When the fleet of the sarkar encounters an enemy and commences an action and if in the meanwhile the fleet and the frigates of the Firangee arrive on the scene, the latter shall render assistance and help to the Former, in case the said enemy is not an ally of the latter. This is reciprocal.

(10) This agreement between the sarkar and the Firangee shall be conveyed to the officers of the bordering territories and to the fleets directing them to observe the same and, in case the mamlatdars fail to comply, necessary measures will be taken. This shall be done reciprocally.

(11) In case rich Zamindars or any other persons from the dominion of the Firangee try to create disturbances or form confederacies in the said dominion, they shall not be allowed to do so; Traitors will not be permitted to stay within the borders of their dominions. This shall be observed reciprocally.

(12) The enemy of the sarkar shall not be given aid by the Firangee nor shall be supplied with provisions. In the same manner the sarkar shall not supply war material or provisions to the enemy of the Firangee.

(13) When either of the two parties becomes weak the other party shall not pick up quarrel on flimsy grounds but will act sincerely according to the agreement.

(14) The Firangee will not bring with his own convoys ships other than from his own ports nor will he permit the use of his flag by other ships.

(15) Soldiers from the sarkar's dominion seeking refuge in the dominion of the Firangee shall not be given asylum; they shall be delivered to the sarkar. In like manner if the sepoys in the dominion of the Firangee escape and take refuge in the dominion of the sarkar, they shall be delivered to the Firangee.

(16) The Firangee shall not allow Raghunath Rao to enter his dominion, nor stay in it; neither shall he afford him aid or provide him with supplies of any kind.

Narayan Vithal Dhume Firangee envoy having come to Huzur a treaty of sixteen articles has been drawn up. Accordingly a treaty be concluded.

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### Annex E. No. 6

#### TRANSLATION OF THE LETTER OF MADOU RAO TO THE GOVERNOR <sup>1</sup>

(Arch. da India, livro 20. de Pazes, fol. 413)

To the Illustrious owner of the great State, and Moulder of Fate, the Grand Dom Frederico Guilherme de Sousa, Governor of the Ports of Goa, whose friendship may be everlasting.

<sup>1</sup> Translation from the Portuguese text in the Collection of Biker, Vol. VIII, page 72.

After expressing my great friendship I say that I am extremely happy to hear from the lips of the esteemed Narayan Vithal, that you have been entrusted with the Government of those ports, and he spoke to me also of the virtues of your prudence and of your distinguished personality.

The Grand D. Jose Pedro da Camara, former Governor of those ports, sent, for the purpose of strengthening the friendship of my Sarkar, the Treaty of agreement, which was given to my Sarkar by Naryan Vithal. Now, I have directed that the Treaty of Agreement, on the part of my Sarkar, may be handed over to the above named, who will despatch it to you, and I request you to acknowledge receipt of the same, and I desire the reciprocal observance of what has been agreed. And as a token of my friendship I send you five pieces of cloth, specified, in a separate list, which will reach there. Written on the 13th of the month of Gilahaz, which in Portuguese corresponds to 23rd December. I shall not proceed further and this is the letter.

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### Annex E. No. 7

LETTER FROM THE VICE ROY, DOM FREDERICO GUILHERME DE SOUSA,  
TO THE SECRETARY OF STATE, MARTINHO DE MELLO E CASTRO <sup>1</sup>

(Arch. da India, livro das Moncoes, no: 161, fol. 417)

Most Illustrious Excellency,

My predecessor sent Narayan Sinai Dumo, Envoy on behalf of the Majestic State to the Court of Poona, of Madhav Rao Pandit Pradhan, Ruler of the Marathas, in order to discuss and conclude the negociation of peace and interests of the State. The Envoy had discussed the clauses but when I assumed office, the agreement had not yet been made and concluded; as soon as I took cognizance of everything, I issued instructions to the said Envoy to request and conclude the Agreement and Treaty.

Madhav Rao, Ruler of the Marathas, signed the Treaty and forwarded it to me, with the request that I should approve it. I approved and signed it, as it seemed convenient in the public interests of the State.

As a result of repeated steps taken and letters addressed to the Ministry of the said Court through our Envoy, we received drafts, so that by one remittance 15,500 rupees were paid, and by another 5,000 rupees, totalling 20,500 rupees, with the advance of 3 per cent. All this has been collected and credited to the Royal Exchequer; the said advance proceeds from the higher value of the Maratha rupees over Goa rupees.

The remaining amount, as promised in the Treaty has not yet been paid, nor the villages near Daman have been handed over, despite repeated reminders, because of the doubts raised by Subedar Vassagi Pant, administrator of the said villages, in the execution of the Sanads, or orders of the said Madhav Rao; nor can they be handed over now, in view of conquest made in them by the British; However, the Ministry

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<sup>1</sup> Translation from the Portuguese text in the Collection by Biker, Vol. VIII, at page 71.

of the said Court promises to hand over other villages, yielding income in the amount mentioned in the Treaty, even though they may not be situated near the jurisdiction of the said city of Daman, towards which end I am negotiating through the said Envoy.

I enclose herewith the copies of the letter of Madhav Rao and the Treaty; of which I inform you, in order that it being submitted to Her Majesty, she may decide what she thinks is the best. May God preserve you. Goa, dated the 1st January 1781—

Initials of the Governor.

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**Annex E. No. 8**

LETTER FROM THE SECRETARY OF STATE, MARTINHO DE MELLO E CASTRO  
TO THE GOVERNOR <sup>1</sup>

(Arch. da Índia, livro das Moncoes, no. 163, fol. 115)

Your letter sent along with the translation of the Treaty concluded with the Marathas has been submitted to the Queen, Our Lady, and though some clauses of the Treaty have been badly translated, and cannot be understood, however, from what one can infer from them, it would appear that this agreement is suitable to us; accordingly Her Majesty has found fit to approve the said Treaty.

As regards to what you stated that the said Marathas have not handed over the villages near Daman, which villages they are unable to hand over, because the British have conquered them, from the information which is available to us here, it would appear that the British conquest did not go beyond Bassein and its surrounding places and jurisdiction; they have not also extended up to the District of Daman; and if it is so, you must insist that the clauses of the Treaty should be fulfilled with the handing over of the villages close to Daman, which may be more suitable owing to their nearness. However, in case you find it impracticable to obtain the villages, which have been promised, you may accept others which might be offered yielding the same revenue, furnishing a list, containing their names and situation.

May God preserve you.—Palace of Our Lady of Ajuda, dated the 27th February, 1782.

Martinho de Mello e Castro.

Senhor Dom Frederico Guilherme de Sousa (2nd route)

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<sup>1</sup> Translation from the Portuguese text in the Collection by Biker, Vol. VIII, at page 94.



## Annex E. No. 9

TREATY WITH ANGRIA <sup>1</sup>

AGREEMENT OF PEACE ARRANGED BETWEEN THE MAJESTIC STATE AND RAGOGI ANGRIA VAZARATMAB SARQUEL, LORD OF CULABO, YEAR 1778.

The Governor and Captain General, D. Frederico Guilherme de Sousa, reported to Her Majesty, through the office of the Secretary of State for Maritime and Overseas Dominions, on the 1st January, 1780, enclosing a copy of this treaty. Her Majesty made in the Treaty some alterations, which can be seen at the margin of the same copy, filed in "book of the Monsoon of the Kingdom", 1784—answered in 1782—enclosed in the letter of the same office at page 883 *et seq.* The Angria of Culabo having been informed of this decision, he did not agree to those alterations, and, therefore, the Treaty did not come into force. 1778

TREATY OF PEACE BETWEEN HIS EXCELLENCY DOM JOSE PEDRO DA CAMARA, GOVERNOR AND CAPTAIN GENERAL OF INDIA AND THE MAGNIFICENT RAGOGI ANGRIA VAZARATMAB SARQUEL, SENHOR DE CULABO, CHECKED BY FATHER FR. LEANDRO DA MADRE DE DEUS

(Arch. da India, livro 2.0 de Pazas, fol. 26<sup>2</sup>)

[Then follows the Text of Treaty of January 7, 1778]

TRANSLATION OF THE SAME TREATY, ACCORDING TO THE MARATHA TEXT, WHICH CAME FROM CULABO.

(Arch. da India, livro 2.0 de Pazas, fol. 261)

[Then follows the Treaty of 20th February 1778]

TRANSLATION OF THE LETTER FROM RAGOGI ANGRIA VAZARATMAB SARQUEL, LORD OF CULABO, TO THE VICE-ROY, IN WHICH HE SAYS AS FOLLOWS.

(Arch. da India. livro 2.0 de Pazas, fol. 386)

[Then follows the Text of the letter of 20th February, 1778]

LETTER FROM THE SECRETARY OF STATE, MARTINHO DE MELLO E CASTRO, TO THE GOVERNOR DOM FREDERICO GUILHERME DE SOUSA

(Arch. da India, livro das Moncoes, n.o. 162 fol. 833.)

"I took to the Royal presence of Her Majesty your letter, dated 1st January, 1780, in which the copy of Treaty concluded by your predecessor with the petty King Ragogi Angria was enclosed. Her Majesty ordered to make in the Treaty alterations, which can be seen at the margin of the copy of the same, which I enclose herewith. You will

<sup>1</sup> Translation from Portuguese text given in the Collection by Biker, Vol. VIII, at page 47.

<sup>2</sup> In this Treaty the Portuguese and Maratha Texts follow side by side.

communicate these alterations to the said petty King to the effect that, if he agrees, the Treaty may come into force; if he does not agree, you will consider it null and void. You will find herewith copy of the letter that I have written to the said petty King, which is also enclosed herewith so that you may forward it to him. God may keep your Excellency. Palace of Our Lady of Ajuda, March 7, 1781—Martinho de Mello e Castro, (to) Governor Dom Frederico Guilherme de Sousa."

TREATY OF PEACE ARRANGED BETWEEN HIS MOST ILLUSTRIOUS EXCELLENCY DOM PEDRO DA CAMARA, GOVERNOR AND CAPTAIN GENERAL OF INDIA, AND THE MAGNIFICENT RAGOI ANGRIA VAZARATMAB SARQUEL, LORD OF CULABO, CHECKED BY FATHER FR. LEANDRO DA MADRE DE DEUS.

(Arch da India. livro Moncoes, n° 162, fol. 884.)

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| <p>1. In case of any encounter between the fleet of the Majestic State, or any other armed vessels from the strongholds of Dio and Damão, with the fleet of Culabo, the latter shall make themselves known, by a small gallevat, and both fleets shall cooperate in showing the friendship which subsists.</p>   | <p>In case, however, that they should not make themselves known, and the vessels of the state should attack their fleet, they shall not break the peace on this account.</p> |
| <p>2. The vessels of Culabo shall come and go freely, in the port of Goa, and resort to those of Dio and Damão for the benefit of their commerce, but must be provided with a passport from the Magnificent Ragogi Angria, Lord of Culabo, showing that they belong to his subjects.</p>   | <p>They shall receive all possible good treatment, every facility being allowed, which may contribute to their commerce, and safety in the said ports.</p>                   |
| <p>3. The vessels of the subjects of the Majestic State shall likewise trade freely in the ports of Culabo, whether from this city, or from Dio and Damão, carrying passports from the State, and from their respective Governors.</p>   | <p>They shall receive all possible good treatment, every facility being allowed, which may contribute to their commerce, and safety in the said ports.</p>                   |
| <p>4. When by chance the fleet of the Magnificent Ragogi Angria, Lord of Culabo, puts into this port of Goa, or those of Dio and Damão, they shall be well received, and permitted to buy at the fair price, whatever they stand in need of; and the same shall be practised in the ports of Culabo with respect to the fleet, and other vessels, from Goa, Damão and Dio.</p> | <p>Approved.</p>   |
| <p>5. Should the fleet of Culabo enter any of the ports of Goa, Damão and Dio, with</p>  | <p>The said prizes not belonging to Portuguese</p>   |

any prizes of ships or other craft, these not belonging to the dominions of the Majestic State, no impediment shall be put in their way; and in case the fleet of the Majestic State, should meet the said fleet of Culabo, with the said prizes, on the north or south coast, both shall show their flags and saluting with one gun, both shall proceed upon their course, without interfering with each other, or with the prizes.

6. When the Magnificent Ragogi Angria, Lord of Culabo, shall stand in need of the aid and succour of the Majestic State, he shall request them to render it, and the same shall be practised by the Majestic State, in case of like necessity, and both parties shall reciprocally observe this article.

Two copies shall be made of the present Treaty, which shall be of a similar tenor, and shall be signed and sealed, and for their reciprocal observance and perpetual fulfilment, and for the preservation of the firm friendship which must subsist between the two parties, one of the said copies shall be remitted to the Magnificent Ragogi Angria, Lord of Culabo, and the other shall be preserved in the office of the Secretary of the Majestic State, Goa, 7th of January 1778. D. Jose Pedro da Camara. Feliciano Ramos Nobre Monrao.

subjects, or to powers allied to the crown of Portugal.

Denied.

The copies must be separately signed by the commissioners, and in both the Majestic State is to have precedence in speaking.

LETTER OF THE SECRETARY OF THE STATE TO ANGRIA

(Arch. da India, livro 1.º de Pazas, fol. 890)

(Then follows the Text of the letter of March 7, 1781)

LETTER FROM THE GOVERNOR OF INDIA TO THE SECRETARY OF STATE  
MARTINHO DE MELLO E CASTRO

(Arch. da India, livro 2.º de Pazas, fol. 894)

Most Illustrious Excellency:—

By a letter of the 7th of March last year, your Excellency informed me that having placed my letter of the 1st of January of the year 1780, before her Royal Majesty, together with the copy of the treaty entered into by my predecessor, with the petty king Ragogi Angria, which accompanied it. Her said Majesty ordered such alterations to be made in the said treaty, as appeared from the notes in the margin of the copy returned to me, which I was to communicate to the said king, and upon

his agreeing thereto the treaty should be effectual, and should he refuse to do so, I should hold the said treaty to be null and void. Enclosed I should find a letter to the said petty king from your Excellency, which I was to forward to him.

I executed the royal orders, writing to the said petty king, and remitting to him the letter from your Excellency, and the treaty with the alterations which appeared from the notes placed in the margin of the different articles thereof; declaring that if he agreed thereto the treaty should come into force, and should he not agree I would hold it to be null and void. The said petty king did not agree, and, therefore, the said treaty is null and void. Of which I inform your Excellency that Her Majesty may order according to her pleasure. God keep your Excellency. Goa, 8th of March 1782.

Signature of the Governor.

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**Annex E. No. 10**

TRANSLATION OF MARATHI PORTION IN PHOTOSTAT COPY OF ANNEX 19  
TO THE MEMORIAL OF THE PORTUGUESE GOVERNMENT

Shri

COPY

26 April 1799

Bajirao Raghunath Pradhan to the Collectors of Zakat of Mahals in District Bassein dated Tisa Tisain Maya Alaf.

Pargana Nagar Haveli has been assigned to the Firangee of Goa by the Sarkar as Saranjam near Daman. He carries food-grains, teak-wood, etc., from there to Daman by water and by land. Though such is the practice from the past it has been communicated to the Huzur that you have started harassing him in respect of Zakat. Hence this letter is being addressed to you. Therefore the Firangee of Goa will carry from the pargana to Daman by water and by land food-grains and teak-wood. He should not be pressed for Zakat. Be this known. Dated 26 Zilkad. Orders be executed. (Seal in writing.)

Raj Shaka Chaitar Wadya 14.

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**Annex E. No. 11**

LETTER FROM A PORTUGUESE SECRETARY AT GOA TO  
VITHAL RAO GORAKSH. 7th JULY, 1798<sup>1</sup>

TO THE ENVOY VITHAL RAO GORQUI.

I received your letters, dated the 20th of the last month, as well as the copies, enclosed therewith, of the Sanad and Orders which were issued by that Sarkar in respect of the dispute about the Praganá Nagar Haveli, and having submitted everything to His Excellency, the latter

<sup>1</sup> *Agentes Da Diplomacia Portuguesa Na India* by P. Pissurlencar, Tipografia Rangel, Bastora, Goa, 1952, at page 484.

took due note of the good work performed by you, which is quite in keeping with the zeal that you have always been showing in "promoting the interests of the State" and I hope that with the production of the Sanad the same Pragana will be freed.

His Excellency has immediately issued the Order to the Treasurer General of the Court to pay to your son the amount of five hundred and sixty-one rupees, which you have spent in gifts, and yesterday I sent notice to your son to take delivery of the said order of payment and to deal with the matter of collecting the amount.

Now that the Pragana has been restored and since the person sent by Ambruta Rao is carrying a letter from the Ruler to His Excellency by the same formality, with which he came on account of the gun powder, the same Excellency will take into consideration the proposal of the above mentioned Ambruta Roa, the latter paying the value of the commodities which he desired to obtain, at the time of delivery, effected to the person who comes to take them, and this is the reply that His Excellency directs to be given on this matter, because without intervention of the Ruler the above mentioned commodities cannot be sold, since they must be considered as having been purchased by that Sarkar.

. . . . .  
 . . . . .

Goa, dated the 7th July, 1798.—Jose Caetano Pacheco Tavares.  
 (Book of the Neighbouring Kings, No.: 19, page 94 reverse).

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### Annex E. No. 12

TREATY BETWEEN THE HONORABLE EAST INDIA COMPANY AND HIS HIGHNESS BAJEE RAO RUGHOONATH RAO PUNDIT PRUDHAN, HIS HEIRS AND SUCCESSORS, CONCLUDED AT POONA, ON THE 13TH OF JUNE 1817, BY THE HONORABLE M. ELPHINSTONE, ON THE PART OF THE HONORABLE COMPANY, AND BY MORO DIXIT AND BALAJEE LUXOOMAN, ON THE PART OF THE RAO PUNDIT PRUDHAN, BY VIRTUE OF FULL POWERS FROM THEIR RESPECTIVE GOVERNMENTS <sup>1</sup>

PREAMBLE.—Whereas a Treaty of General Defensive Alliance, consisting of XIX. Articles, was concluded at Bassein, between the Honorable East India Company and His Highness Rao Pundit Prudhan Bahadoor, and whereas seven Articles of Agreement, supplemental to the said Treaty, were agreed on at Poona, between the same Powers: and whereas certain disputes have since arisen, which it is the desire of both parties to remove; with a view to adjusting the said disputes, and to the better fulfilment of the said alliance, the following Treaty has been concluded between the two States:—

#### *Article I*

Whereas Trimbukjee Denglay, by the murder of Gungadhur Shastree, the public Minister of the Gaekwar State, rendered himself obnoxious to public justice, and it became the peculiar duty, both of the Honorable East India Company's Government, and of that of His Highness Rao Pundit Prudhan Bahadoor, to inflict on him such punishment as might mark their detestation of his crimes, and deter others from committing the like atrocities; and whereas Trimbukjee Denglay has escaped from the custody of the Honorable East India Company's Government, to which he was made over by Rao Pundit Prudhan Bahadoor, and has since added to his crimes by assembling banditti and committing various acts of plunder and murder, His Highness Rao Pundit Prudhan Bahadoor solemnly engages never to afford to the said Trimbukjee any countenance or protection whatever, but to use his utmost efforts to seize and deliver him up to the Honorable East India Company; and until such time as said Denglay may be delivered up, the family of the said Denglay are to remain as hostages in the hands of the Honorable Company's Government. His Highness Rao Pundit Prudhan Bahadoor also engages severely to punish all who participated in the said Trimbukjee's rebellion, and who have not surrendered themselves according to His Highness' Proclamation.

#### *Article II*

All Articles of the Treaty of Bassein, and of the supplemental Articles concluded at Poona, which are not contrary to the tenor of the present Engagement, are hereby confirmed.

<sup>1</sup> Treaties, Agreements, and Engagements, between the Honorable East India Company and the Native Princes, Chiefs, and States, in Western India; The Red Sea; The Persian Gulf; etc. also between Her Britannic Majesty's Government, and Persia, Portugal, and Turkey—by R. HUGHES THOMAS—Bombay, 1851,—page 530.

*Article III*

By the XI. Article of the Treaty of Bassein, His Highness Rao Pundit Prudhan Bahadoor engages to dismiss all Europeans, Natives of States at war with Great Britain, who shall meditate injury towards the English. His Highness Rao Pundit Prudhan Bahadoor now engages never to admit into his territories any subject of any European or American powers whatever, without the previous consent of the British Government.

*Article IV*

By the XVII. Article of the Treaty of Bassein His Highness Rao Pundit Prudhan Bahadoor engaged neither to commence nor pursue, in future, any negotiations with any Powers whatever, without giving previous notice to, and entering into mutual consultation with the Honorable East India Company's Government. In order to the more effectual fulfilment of this Article, His Highness Rao Pundit Prudhan Bahadoor hereby engages neither to maintain Vukeels or other Agents at the Court of any Power whatever, nor to permit the residence of Vukeels or other Agents from any Power whatever at his Court; and His Highness further engages to hold no communication with any Power whatever, except through the Resident or other Minister of the Honorable Company's Government, residing at His Highness' Court: and His Highness Rao Pundit Prudhan Bahadoor hereby, for himself, and for his heirs and successors, recognizes the dissolution, in form and substance, of the Muratha Confederacy, and renounces all connexion whatever with the other Muratha Powers, whether arising from his former situation of executive head of the Muratha Empire, or from any other cause. Nothing contained in this Article shall affect any rights which His Highness Rao Pundit Prudhan Bahadoor may possess over any Chiefs of the Muratha State, between the rivers Nurbuda and Toongbhudra, and to the West of the Western frontier of His Highness the Nizam's dominions, who are now in obedience to His Highness Rao Pundit Prudhan Bahadoor. His Highness, however, renounces all claims on the Raja of Kolhapoor, and on the Government of Sawunt Warree, and engages to advance no claims on the lands of their Highnesses Sindia, Holkar, the Raja of Berar, and the Gaekwar, which may be situated within the limits before-mentioned.

*Article V*

His Highness Rao Pundit Prudhan Bahadoor specially renounces all future demands on His Highness Raja Anund Rao Gaekwar Bahadoor, whether resulting from the former supremacy of the said Rao Pundit Prudhan Bahadoor, as executive head of the Muratha Empire, or from any other cause; but as various demands and papers of accounts, arising from certain unfinished transactions, subsist between the Government of His Highness Rao Pundit Prudhan Bahadoor and the Government of the Raja above mentioned, which His Highness Rao Pundit Prudhan Bahadoor agreed, by the XIV. Article of the Treaty of Bassein, to submit to the arbitration of the Honorable Company's Government, those demands are hereby declared to be in force, as far as relates to past times; but His Highness Rao Pundit Prudhan Bahadoor now consents, that in the event of the payment of the annual sum of four lacs of Rupees,

by Raja Anund Rao Gaekwar Bahadoor, the above Agreement shall be set aside, and the said Raja shall be discharged from all claims whatever on the part of the said Rao Pundit Prudhan Bahadoor. In case His Highness Raja Anund Rao Gaekwar Bahadoor should not consent to the payment of the annual sum of four lacs of Rupees, then the Agreement above-mentioned, which forms part of the XIV. Article of the Treaty of Bassein, shall remain in force, and binding on both parties, but His Highness Rao Pundit Prudhan Bahadoor hereby distinctly renounces all future claims on His Highness Raja Anund Rao Gaekwar Bahadoor.

*Article VI*

In the IV Supplemental Article to the Treaty of Bassein, it is agreed, that in time of war, His Highness Rao Pundit Prudhan Bahadoor shall appoint and furnish five thousand Cavalry and three thousand Infantry with a due proportion of ordnance and military stores, to join and act with the British subsidiary force; and, in addition thereto, His Highness agrees to employ in the war such further force as he shall be able to bring into the field. That Article is hereby annulled; and in lieu thereof it is agreed that His Highness Rao Pundit Prudhan Bahadoor shall place at the disposal of the British Government sufficient funds for the payment of a force of five thousand Cavalry and three thousand Infantry, and the provision of a due proportion of ordnance and military stores; on the fulfilment of which engagement the British Government shall have no future claim to the services of the contingent above-mentioned. But His Highness Rao Pundit Prudhan Bahadoor shall still be bound, as formerly, to co-operate in the war, with such a force as he may be able to bring into the field, the Honorable Company, in the same manner, engaging to employ in active operations against the enemy, the largest force which they may be able to furnish over and above the subsidiary force.

*Article VII*

To enable the British Government to supply the place of the contingent above-mentioned, His Highness Rao Pundit Prudhan Bahadoor hereby assigns and cedes, in perpetuity, to the Honorable Company, all the territories and rights detailed in the Schedule annexed to this Treaty; and His Highness expressly renounces all claims and pretensions, of whatever description, on the countries enumerated in the said Schedule, and all connexion with the Chiefs and Bhoomeas of those countries.

*Article VIII*

As it may be found that certain of the territories ceded by the foregoing Article may be inconvenient, from their situation, His Highness Rao Pundit Prudhan Bahadoor, for the purpose of rendering the boundary line a good and well defined one, agrees that such exchanges of Talookas and lands shall be made hereafter, on terms of a fair valuation of their respective revenues, as the completion of the said purpose may require; and it is agreed and covenanted that the territories to be assigned and ceded to the Honorable Company, by the VII. Article, or in consequence of the exchange stipulated eventually in this Article,



shall be subject to the exclusive management and authority of the said Company and their Officers.

*Article IX*

His Highness Rao Pundit Prudhan Bahadoor will immediately issue the necessary Purwanas, or orders, to His Highness' Officers to deliver over charge of the districts ceded by Article VII. to the Officers of the Honorable Company; and it is hereby agreed and stipulated, that all collections made by His Highness' Officers, subsequently to the commencement of the Hindoo year (answering to the 5th June, 1817, A.D.) shall be carried to the credit of the Honorable Company, and all claims to balances from the said districts, referring to periods antecedent to the conclusion of this Treaty, shall be considered as null and void.

*Article X*

All forts situated within the districts ceded as aforesaid, shall be delivered to the Officers of the Honorable Company, with the said districts, and His Highness Rao Pundit Prudhan Bahadoor engages that the said forts shall be delivered to the Honorable Company without being injured or damaged.

*Article XI*

It is further agreed, that if disturbances shall, at any time, break out in the districts ceded to the Honorable Company, by this Agreement, His Highness Rao Pundit Prudhan Bahadoor shall permit such a proportion of the subsidiary troops, as may be requisite, to be employed in quelling the same within the said districts.

*Article XII*

His Highness Rao Pundit Prudhan Bahadoor, on his own part, and on the part of his heirs and successors, hereby cedes to the Honorable East India Company, in perpetual sovereignty, the Fort of Ahmednuggur, together with as much of the adjoining country as may be within (2000) two thousands yards of the Fort, measured from the foot of the glacis. His Highness Rao Pundit Prudhan Bahadoor engages to furnish such pasture lands as may be required for the use of the subsidiary force, at the most convenient place adjoining to the cantonments of the different divisions of the said force; and although, by the spirit of the Treaty of Bassein, the British Government is already entitled to send such troops into His Highness' territories as may appear requisite for the fulfilment of the terms of that Treaty, yet, to remove all doubts on that point, His Highness Rao Pundit Prudhan Bahadoor further engages to admit the residence, within his dominions, of any number of British troops, in addition to the subsidiary force, that the British Government may think necessary, and to permit all British troops to pass through all parts of his dominions without obstruction, provided that nothing in this Article is to entitle the British Government to make any demand on His Highness for the expense of the additional troops so residing.

*Article XIII*

His Highness Rao Pundit Prudhan Bahadoor hereby cedes to the Honorable East India Company all his rights, interests, or pretensions, feudal, territorial, or pecuniary, on the province of Bundelkund, including Saugur, Jhansi, and the lands held by Nana Govind Rao, and agrees to relinquish all connection with the Chiefs in that quarter.

*Article XIV*

His Highness Rao Pundit Prudhan Bahadoor, for himself, and for his heirs and successors, hereby cedes to the Honorable East India Company all his rights and territories in Malwa, which were secured to him by the 11th Article of the Treaty of Surje Anjungaum, and generally all rights and pretensions of every denomination, which he may possess in the country to the North of the river Nurbuda, excepting those which he possesses in the province of Guzerat; and engages never more to interfere in the affairs of Hindoostan.

*Article XV*

His Highness Rao Pundit Prudhan Bahadoor formerly rented his share of the city and province of Ahmedabad, including the tribute of Katteewar, to Bhugwunt Rao Gaekwar, at the rate of four lacs and a half of Rupees per annum, and granted a Sunud to that effect under date the twenty-seventh Juma-dee-ool-akhur (1205) one thousand two hundred and five. The tribute of Katteewar, formerly comprehended in that farm, has been ceded to the British Government by the VII. Article of the present Treaty. His Highness now agrees to grant the remainder of the said farm, in perpetuity, to His Highness Raja Anund Rao Gaekwar Bahadoor, and to his heirs and successors, on the same terms as those contained on the above-mentioned Sunud, dated the twenty-seventh of Jumadee-ool-Akhur, A.H. one thousand two hundred and five (1205), excepting the terms contained in the II., VIII., XI., and XV. Articles, which are hereby abrogated and annulled. In consideration of the greatness of the actual revenue of the city and province of Ahmedabad, and likewise of the loss to which His Highness Rao Pundit Prudhan Bahadoor has already been subjected by his renunciation of all future claims on His Highness Raja Anund Rao Gaekwar Bahadoor, and by his accepting an annual payment of four lacs of Rupees in lieu of all claims actually due up to the present day, it is agreed that the former sum of four lacs and a half of Rupees shall still be paid for the farm of Ahmedabad, notwithstanding the separation of the tribute of Katteewar.

*Article XVI*

Whereas certain Articles of Agreement (VI in number) regarding the settlement of the Southern Jageerdars, were presented by the Resident at Poona to His Highness Rao Pundit Prudhan Bahadoor, on the 6th of July, one thousand eight hundred and twelve (1812) A.D., to which, after a modification suggested by His Highness, and submitted to him on the seventh of the same month, His Highness gave his entire consent; Those Articles are hereby recognized and declared to be binding on

both parties, as much as if they formed part of the present Treaty; and whereas various disputes have arisen, regarding the muster of the troops of the said Jageerdars, and the manner and periods of their service, His Highness Rao Pundit Prudhan Bahadoor hereby agrees to be guided entirely by the advice of the British Government with regard to those subjects, and to issue no orders to the Jageerdars without full concert with the British Government. His Highness hereby agrees to restore to the said Jageerdars any of the lands included in their Sunuds which may now be in His Highness' possession; and in consideration of the recommendation of the British Government, His Highness hereby consents to restore to Madhow Rao Rastia the Jageer formerly held by him, and resumed in the year one thousand eight hundred and fourteen, and to permit him to hold that Jageer as formerly, under the guarantee of the British Government.

*Article XVII*

The fort and territory of Moilghaut having been taken possession of by the troops of His Highness Rao Pundit Prudhan Bahadoor, without concert with the British Government, and His Highness' occupation of that fortress having since occasioned various inconveniences to the other allies, His Highness Rao Pundit Prudhan Bahadoor engages to withdraw his troops from Moilghaut; and he hereby renounces all claims and pretensions to the said fort and territory, and to all other territories occupied by his troops during the expedition of one thousand eight hundred and eleven.

*Article XVIII*

This Treaty, consisting of XVIII. Articles, being this day, 13th June 1817, settled and concluded at Poona, by the Honorable M. Elphinstone, Moro Dixit, and Balajee Luxoomun, Mr. Elphinstone has delivered to His Highness the Peshwa a copy of the same in English, Persian, and Murathee, under the seal and Signature of the said Honorable M. Elphinstone; And His Highness the Peshwa has delivered to the said Hon'ble M. Elphinstone another copy, also in English, Persian, and Murathee, bearing His Highness' seal; And the Honorable M. Elphinstone, afore-said, has engaged to procure and deliver to His Highness, without delay, a copy of the same, duly ratified by His Excellency the Most Noble, Francis, Marquis Hastings, K. G., Governor General, etc. etc. in Council, on the receipt of which, by His said Highness, the present Treaty shall be deemed complete and binding on the Honorable East India Company, and on His Highness the Peshwa, and the copy now delivered to His said Highness shall be returned.

Peshwa's  
Seal.

Peshwa's Signature.  
(Signed) HASTINGS.  
N. B. EDMONSTONE.

Governor General's  
Small Seal.

A. SETON.  
G. DOWDESWELL.

This Treaty was ratified by the Governor General in Council, this fifth day of July, one thousand eight hundred and seventeen, at Fort William in Bengal.

(Signed) J. ADAM,  
Acting Chief Secretary to Government.

Schedule alluded to in Article VII. of the foregoing Treaty

*Schedule of the Lands and Revenues ceded, in perpetuity, by His Highness Rao Pundit Prudhan Bahadoor, to the Honorable East India Company, by virtue of the VII Article of the annexed Treaty, amounting to thirty-four (34) Lacs of Rupees*

Lands and Revenues to be made over immediately:—

The districts of Belapoor, Athgaon, and Kulian, and all the territories possessed by His Highness Rao Pundit Prudhan Bahadoor situated to the North of those districts, as far as Guzerat, and lying between the Ghauts of the Syadree mountains and the sea.

All the rights and territories possessed by His Highness Rao Pundit Prudhan Bahadoor in Guzerat, with the exception of Ahmedabad, Orpar, and the annual payment due by the Gaekwar; the tribute of Katteewar, estimated, after deducting the expense of collections, at four lacs of Rupees.

The territories of Dharwar and Koosigul. The above territories are to be made over immediately. The necessary expenses of the management of the said districts are then to be ascertained, and deducted from the gross revenue. The remaining revenue is to form part of the thirty-four lacs stipulated for in the seventh Article, and the territory required to complete that amount is to be ceded in the Carnatic, in such situations as may be most convenient to the Honorable East India Company's Government, with a view to the preservation of a distinct boundary line.

Whatever collections may have been made by the Officers of His Highness Pundit Prudham Bahadoor from the districts, to be made over immediately, or from those to be hereafter assigned, in the Carnatic, subsequent to the commencement of the present Hindoo year (answering to the 5th of June, 1817), are to be repaid to the Officers of the Honorable East India Company, agreeably to the ninth Article of the Treaty.

For the purpose of ascertaining the amount of the revenues of the territories now made over, it is agreed that the regular accounts for the last twenty years shall be produced from the records of His Highness Rao Pundit Prudhan Bahadoor's Government, within the period of five days.

PESHWA'S Seal.

PESHWA'S Signature.

Governor General's  
Small Seal.

(Signed) HASTINGS.  
N. B. EDMONSTONE.  
A. SETON.  
G. DOWDESWELL.

Ratified by the Governor General in Council, this fifth day of July, one thousand eight hundred and seventeen.

(Signed) J. ADAM,  
Acting Chief Secretary to  
Government.

*Appendix A*

*Paper presented by the Resident at Poona to the Peshwa's Ministers, on the 6th of July 1812, and accepted by His Highness on the following day,—*  
(alluded to in Article XVI of the foregoing Treaty)

I. His Highness the Peshwa will take no notice of past injuries, and will advance no pecuniary claims without the consent of the British Government.

II. The Jageerdars to retain possession of their Surinjamee lands as long as they serve His Highness the Peshwa with fidelity.

III. All lands and revenues which have been usurped, i.e. enjoyed without Sunuds, by the Jageerdars to serve His Highness the Peshwa.

IV. The Jageerdars to serve His Highness the Peshwa, according to their Tynat Zabtās, and to attend with their contingents when summoned by His Highness. The Peshwa will not give any promise to the Jageerdars that shall limit his ancient right to summon them when he pleased, and retain them as long as he thinks fit; But he promises the British Government to employ them when the affairs of his Government require it, and to dismiss them according to the ancient usage, by the advice of the British Government, when their services are not required. His Highness also engages to treat the Jageerdars with the consideration to which they are entitled by former practice.

V. The British Government charges itself with the fulfilment of the conditions contained in the IV. Article above written. If the Jageerdars shall not accept them, the English Government will enforce them by fair means, or by force, if necessary, and if they should finally reject them, the British Government will unite with the Peshwa in resuming their lands for His Highness. Should the Jageerdars give their consent to these engagements at present, but hereafter refuse to comply with them, the British Government will join the Peshwa in punishing them.

VI. The Peshwa's Government will not depart from any of the engagements into which the British Government may enter, in conformity to the preceding Articles, nor is any other authority to interfere with the British Government in the present negotiation.

PESHWA'S  
Seal.

PESHWA'S Signature.

(Signed) HASTINGS.

N. B. EDMONSTONE.

A. SETON.

G. DOWDESWELL.

Governor General's  
Small Seal.

Ratified by the Governor General in Council this 5th day of July 1817.

(Signed) J. ADAM.  
Acting Chief Secretary to  
Government.

*Sunud from His Highness Bajee Rao Rughoonath Peshwa, to His Highness Anund Rao Gaekwar, for the surrender, in perpetual sovereignty, to the British Government of the Peshwa's share of the Ahmedabad District*

The farm of Ahmedabad, in the Province of Guzerat, to the North of the Mahee River, having been granted to you in perpetuity from the present year, a settlement was made for the payment of the Rusud, etc. in the usual currency, independently of Kattewar.

The real amount of the Rusud . . . . .	Rs. 3,75,000
Private personal payment . . . . .	„ 25,000
Court charges . . . . .	„ 50,000
	<u>4,50,000</u>

By instalments as follow, viz.:

On the 1st of Shravun Shood . . . . .	1,50,000
Ditto 1st of Poush Shood . . . . .	1,50,000
Ditto 1st of Vyshakh Shood . . . . .	1,50,000
	<u>4,50,000</u>

Which sum of four and half lacs of Rupees, was settled for the farm, without any deduction on account of famine, or disturbance, and exclusive of all charges for interest, exchange, or other allowances, connected with the Rusud, to be paid by instalment to the authorities of the Presence, a receipt being taken for the same, upon which terms the farm was granted to you on the 29th of Rujub of the present year, Sun Suman Ushur Myatyne Wu Uluf (or 15th June, 1817), and a Sunud issued accordingly; But as the sum of four lacs and a half of Rupees, annually accruing to Government from the said district, together with the Government authority over it, have been ceded to the British Government on account of military expenses, you will continue to pay the sum of four lacs and a half of Rupees annually, and obtaining a receipt for the same, act in concurrence with the British Government.

*Dated the 7th of Zilkad' Soor Sun Suman Ushur Myatyne Wu Uluf (or 19th September 1817 A.D.)*

(A true translation)  
(Signed) R. T. GOODWIN,  
Secretary and Translator.

*Proclamation issued on the 11th of February 1818, by the Hon'ble M. Elphinstone, Sole Commissioner for the settlement of the Territories conquered from the Peshwa*<sup>1</sup>

From the time when Bajee Rao ascended the Musnud, his country was a prey to faction, and there was no efficient Government to protect the people. At length Bajee Rao was expelled from his dominions, and took refuge in Bassein, where he was dependent on the bounty of Khunde Rao Rastia. At this time he entered into alliance with the British Government, and was immediately restored to the full possession of this authority. The tranquillity that has been enjoyed since that period is known to all ranks of men. At Bajee Rao's restoration, the country was laid waste by war and famine, the people were reduced to misery, and the Government derived scarcely any revenue from its lands: Since then, in spite of the farming system, and the exactions of Bajee Rao's Officers, the country has completely recovered, through the protection afforded it by the British Government, and Bajee Rao has accumulated those treasures which he is now employing against his benefactors: The British Government not only protected the Peshwa's own possessions, but maintained his rights abroad. It could not, without injury to the rights of others, restore his authority over the Muratha Chiefs, which had expired long before its alliance with him, but it paid the greatest attention to satisfy his admissible demands, and had succeeded, in spite of many difficulties, in adjusting some, and putting others in a train of settlement. Among these were Bajee Rao's claims on the Gaekwar; The British Government prevailed on that Prince to send his Prime Minister to Poona, for the express purpose of settling those demands, and they were on the eve of adjustment, with great profit to the Peshwa, when Gungadhur Shastree, the Gaekwar's Vukeel, was murdered by Trimbukjee Denglay, the Peshwa's Minister, while in actual attendance on his Court, and during the solemn pilgrimage of Pundhurpoor. Strong suspicions rested on Bajee Rao, who was accused by the voice of the whole country; but the British Government, unwilling to credit such charges against a Prince and an Ally, contented itself with demanding the punishment of Trimbukjee. This was refused, until the British Government had marched an army to support its demand; yet it made no claim on the Peshwa for its expenses, and inflicted no punishment for his protection of a murderer. It simply required the surrender of the criminal, and on Bajee Rao's compliance, it restored him to the undiminished enjoyment of all the benefits of the alliance. Notwithstanding this generosity, Bajee Rao immediately commenced on a new system of intrigues, and used every exertion to turn all the powers of India against the British Government. At length he gave the signal of disturbances, by fomenting an insurrection in his own dominions, and prepared to support the Insurgents by open force. The British Government had then no remedy but to arm in turn. Its troops entered Bajee Rao's territories at all points, and surrounded him

<sup>1</sup> Treaties, Agreements, and Engagements, between the Honorable East India Company and the Native Princes, Chiefs, and States, in Western India; The Red Sea; The Persian Gulf; etc. also between Her Britannic Majesty's Government, and Persia, Portugal, and Turkey—by R. HUGHES THOMAS—Bombay, 1851—page 539.

in his capital, before any of those with whom he had intrigued, had time to stir. Bajee Rao's professions of gratitude for past favours, and of entire dependence on its moderation, once more resolved Government to continue him on his Throne, after imposing such terms on him as might secure it from his future perfidy. The principal of these terms was a commutation of the Contingent, which the Peshwa was bound to furnish, for money, equal to the pay of a similar body of troops, and on their being agreed to, the British Government restored Bajee Rao to its friendship, and proceeded to settle the Pendharees, who had so long been the pest of the peaceable inhabitants of India, and of none more than the Peshwa's own subjects. Bajee Rao affected to enter with zeal into an enterprise so worthy of a great Government, and assembled a large army, on pretence of cordially assisting in the contest; but in the midst of all his professions, he spared neither pains nor money to engage the powers of Hindoostan to combine against the British, and no sooner had the British troops marched towards the haunts of the Pendharees than he seized the opportunity to commence a war, without a declaration, and without even an alleged ground of complaint. He attacked and burned the house of the British Resident, contrary to the laws of nations and the practice of India, plundered and seized on peaceable travellers, and put two British Officers to an ignominious death. Bajee Rao himself found the last transaction too barbarous to avow, but as the perpetrators are still unpunished, and retain their command in his army, the guilt remains with him. After the commencement of the war, Bajee Rao threw off the mask, regarding the murder of Gungadhur Shastree, and avowed his participation in the crime, by uniting his cause with that of the murderer. By these acts of perfidy and violence, Bajee Rao has compelled the British Government to drive him from his Musnud, and to conquer his dominions; for this purpose a force is gone in pursuit of Bajee Rao, which will allow him no rest; another is employed in taking his forts; a third has arrived by the way of Admednuggur; and a greater force than either is now entering by Khandesh, under the personal command of His Excellency Sir Thomas Hislop; a force under General Munro is reducing the Carnatic; and a force from Bombay is taking the forts in the Konkan, and occupying that country, so that, in a short time, no trace of Bajee Rao will remain. The Raja of Satara, who is now a prisoner in Bajee Rao's hands, will be released, and placed at the head of an independent sovereignty, of such an extent as may maintain the Raja and his family in comfort and dignity; with this view the fort of Satara has been taken, the Raja's flag has been set up in it, and his former Ministers have been called into employment. Whatever country is assigned to the Raja will be administered by him, and he will be bound to establish a system of justice and order. The rest of the country will be held by the Honorable Company. The Revenue will be collected for the Government, but all property, real or personal, will be secured. All Wutuns, and Inams (hereditary lands), Wurshashuns (annual stipends), and all religious and charitable establishments, will be protected, and all religious sects will be tolerated, and their customs maintained, as far as is just and reasonable. The farming system is abolished,—Officers shall be forthwith appointed to collect a regular and moderate Revenue, on the part of the British Government, to administer justice, and, to encourage the cultivators of the soil, they will be authorized to allow remissions in



consideration of the circumstances of the times. All persons are prohibited paying revenue to Bajee Rao, or his adherents, or assisting them in any shape; no reduction will be made from the revenue on account of such payments. Wutundars and other holders of lands, are required to quit his standard, and return to their villages, within two months from this time. The Zumindars will report the names of those who remain, and all who fail to appear, in that time, shall forfeit their lands and shall be pursued without remission, until they are entirely crushed.

All persons, whether belonging to the enemy, or otherwise, who may attempt to lay waste the country, or to plunder the roads, will be put to death, whenever they are found.

(Signed) M. ELPHINSTONE.

*Dated the 11th February 1818.*

*Propositions made to Bajee Rao on the 1st June 1818, and accepted by him<sup>1</sup>*

I. That he shall resign, for himself and successors, all right, title, and claim over the Government of Poona, or to any sovereign power whatever.

II. That Bajee Rao shall immediately come with his family and a small number of his adherents and attendants to the Camp of Brigadier General Malcolm, where he shall be received with honor and respect, and escorted safe to the city of Benares, or any other sacred place in Hindoostan, that the Governor General may, at his request, fix for his residence.

III. On account of the peace of the Deccan and the advanced state of the season, Bajee Rao must proceed to Hindoostan without one day's delay; but Brigadier General Malcolm engages, that any part of his family that may be left behind, shall be sent to him, as early as possible, and every facility given to render their journey speedy and convenient.

IV. That Bajee Rao shall, on his voluntarily agreeing to this arrangement, receive a liberal pension from the Company's Government for the support of himself and family; the amount of this pension will be fixed by the Governor General, but Brigadier General Malcolm takes upon himself to engage that it shall not be less than eight lacs of Rupees per annum.

V. If Bajee Rao, by a complete and ready fulfilment of this Agreement, shows that he reposes entire confidence in the British Government, his requests, in favor of principal Jageerdars, and old adherents, who have been ruined by their attachment to him, will meet with liberal attention. His representations, also, in favor of Bramins of venerable character, and of religious establishments founded or supported by his family, will be treated with regard.

VI. The above propositions must not only be accepted by Bajee Rao, but he must personally come into Brigadier General Malcolm's Camp

<sup>1</sup> Treaties, Agreements, and Engagements, between the Honorable East India Company and the Native Princes, Chiefs, and States, in Western India; The Red Sea; The Persian Gulf; etc. also between Her Britannic Majesty's Government, and Persia, Portugal, and Turkey—by R. HUGHES THOMAS—Bombay, 1851,—page 542.

within twenty-four hours of this period, or else hostilities will be recommenced, and no further negotiations will be entered into with him.

(True copy)

(Signed) A. MACDONALD,  
Assistant.

*Dated 1st June 1818.*

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## Annex E. No. 13

*Record Office, Bombay*

## REVENUE DEPARTMENT

*Vol. No. 200 of 1845*

From

The Governor General of Goa,

To

The Hon: Sir George Arthur,  
Governor of Bombay,

Dated 25th September 1844.

Most Ill: and Exc. Sir,

Not long ago, Your Excellency was pleased, as an act of unquestionable justice, to declare, that the produce of the villages in the Purgunnah Nagar Hevellee, exported for consumption to Damaun, should be free of duty.

Under the same principle, it is hoped, that articles from Damaun, which are intended for the market at the said villages, should likewise be exempted from the payment of duties.

Such is unhappily the state of poverty amongst the inhabitants, that even this grant would appear too small an indulgence, considering that in consequence of the heavy imposts they have been reduced to the necessity of abstaining from the use of salt in cooking their food, which measure proves highly prejudicial to their health, but to which they are compelled to resort with the view to be enabled to meet the demands thus made on them, as if they were the inhabitants of a British territory. Perhaps the same Revenue system, which is observed with the produce of the said villages may be made to apply to articles exported from Damaun, the passes being signed by the Governor.

I reckon upon a favourable reply to my proposal which is based on justice and remains to be decided by your Excellency.

I have the honor to be your Excellency's,

Most Attentive Servant,

Nova Goa, 25th Sept., 1844.

*(Signed)* JOSE FERREIRA PESTANA

True Translation,

Portuguese Translator to Government.

*R.D. Vol. 200 of 1845*

From

The Governor General of Goa,

To

The Hon: Sir George Arthur,  
Governor of Bombay.

Dated Nova Goa, 23 November 1844.

Most Illustrious and Excellent Sir,

On the 25th of September last, I had the honour to address Your Excellency, submitting a request, for the abolition of the transit duties on articles from Daman (Portuguese territory) which might be taken for consumption to the Pargana Nagar Haveli (also Portuguese territory) as have been conceded in the opposite case.

On that occasion, I laid before Your Excellency the State of poverty in which these people lived, and the privations they endured to the prejudice of their health; and now being again informed, that the disproportion of eight Rupees on account of duty which is levied at the British Mettas (Chowkies) upon one Rupee's worth of salt, as well as relative to the price which is there fixed for salt fish, has increased the privations of those unfortunate people. I hasten to solicit Your Excellency's decision upon the above mentioned representation to which I reckon upon a successful reply, because it is founded on justice.

I have the honour to be with the highest consideration.

Your Excellency's  
Attentive servant

True Translation.

*(Signed)* Illegible.

Portuguese translator to the Government of India.

*R.D. Vol. 200 of 1845.*

No. 1476 of 1844.

Territorial Department Revenue

To

E. H. Townsend, Esquire,  
Secretary to Government  
Bombay.

Sir,

I have the honor to state my opinion in reference to the accompanying letters from His Excellency the Governor of Goa, that it would be highly unpolitic to comply with the request therein made as the effect thereof would be at once to raise the port of Daman into importance to the detriment of our own interests, for if goods are allowed to be exported from Daman across our frontier into Naggur Havellee under the same

terms as is now done in regard to import therein from the latter place, the Portuguese have only to lower their tariff and rate of duty to inflict serious injury on our customs Revenue and as regards the excise on salt, I would observe as no higher duty is expected from Portuguese than from our own subjects, it seems unreasonable to expect that the duty should be reduced in favour of the former, however if the Portuguese Government will agree to give up the management of their present salt works at Daman to us, and to agree that no more pans than those at present in operation shall be opened, and also allow us to participate to the extent of 2/3rd in the customs at Daman in this case I fancy the proposition might be reasonably acquiesced in, but not otherwise.

On Circuit Vingorla,  
Off: of Collector  
of Cont. Ensts. &  
Ex:  
31st December, 1844.

I have the honor to be,  
Sir,  
Yours most obedt: Servant.  
(Signed) Illegible.  
Collector of Cont. Custs. & Ex.

R.D. Vol. 200 of 1845

Territorial Department Revenue.

Referred for the opinion and report of the Revenue Commissioner Northern Division.

By order etc.,  
(Signed) Illegible  
Secy. to Government.

Bombay Castle,  
17th January, 1845.

No. 139 of 1845.

Ter: Dept. Revenue

To

E. H. Townsend, Esq.,  
Secretary to Government  
Bombay.

Sir,

I have the honor to return the papers on the subject of the customs on the Daman frontier, received for my report under your endorsement dated the 17th instant:

2nd. I can readily believe it to be both inconvenient and unpalatable to the Government of Daman that there should be any restriction on the freedom of its traffic with a detached dependency such as Nagar Aveli, and if it could be relaxed without material risk to our revenue it might be politic and courteous to concede the point, if however this could not be done, it does not appear to me that the Portuguese Government has any reasonable ground to expect that its subjects in that district

should be placed on a more favourable footing than our own, with whom they are at present in every respect on an equality:—

3rd. As regards the practicability of making such a concession without material risk to the revenue I entertain great doubts; it could only be done by carrying out custom stations round this detached district, which would I apprehend (although I have no very correct knowledge of the localities) add considerably to their cost and impair their efficiency. It may also be observed that although this would open a free communication between this dependency and the seat of its Government, it would place its traffic with our districts under restriction from which it is at present free — Besides which it may admit of some doubt whether clause VII of Act I of 1838, which authorizes the levy of customs duties on goods passing by land into or out of Foreign European settlements situated on the line of Coast would extend to portions of those settlements cut off from the line of coast.

I have the honor to be Sir,  
Your Most Obedient Servant,

(Signed) Illegible.

Revenue Commissioner.

Rev. Commr. Camp  
Nagotna 31st Jany 1845.

R.D. Vol. 200 of 1845.

No. 1069 of 1845.

T. D. Revenue.

To

The Most Illustrious and Excellent  
Senhor Jose Ferreira Pestana,  
Governor General of the Portuguese  
States in India—Goa.

Most Illustrious and Excellent Sir,

We have had the honour to receive your Excellency's letters, dated respectively 25th September and 23rd November last, requesting that the transit duties levied on articles exported from Daman across the British Frontier into the Nagar Aveli, may be abolished, and to express our regret of the inability of this Government to accede to Your Excellency's request, consistently with the security of the Customs Revenue of the British Government.

Id. Illegible.

(Signed) Illegible.

1st March 1845.

*R.D. Vol. 200 of 1845.*

No. 23.

From

The Governor General of Goa.

To

The Hon: Sir Geo: Arthur,  
Governor of Bombay,

Nova Goa, 12th February, 1845.

Most Ill: and Exct: Sir,

Your Exclty: having admitted the propriety of exempting from the payment of duties at the British Metas, such of the produce of the villages belonging to the Pargana Nagar Aveli as were intended for consumption at Daman, I had the honour in my despatch of the 25th September and 23rd November last, to observe, that under the same principle an exemption of duties might be allowed in the British territory, with regard to articles taken from Daman into those villages, which are very poor.

Your Exclty: has not yet been pleased to give me a reply on the subject, but I trust you will do it, as soon as possible, and at the same time, extend the above measure as respects the articles from Dabel, Coli, Coxi, and the remainder of the Country to the east of Daman, (both big and small) which are brought into small Daman through the British village called Cunta; as well as such articles as go from those villages into Daman, I mean articles which are transported to Daman through Cunta with the view to avoid the marshy grounds near the salt pans.

Relying on Your Excellency's rectitude and favour, I expect a favourable decision.

I have the honor to be with the highest consideration.

Your Excellency's  
Attentive Servant.  
(Signed) Illegible.

True Translation.  
(Signed) Illegible.  
P.T. to Government.

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No. 1283 of 1845.

Revenue.

To

The Most Illustrious and Excellent  
Senhor Jose Ferreira Pestana,  
Governor General of the Portuguese States  
in India,

Goa.

Most Illustrious and Excellent Sir,

We have had the honour to receive Your Excellency's letter, dated 12th ultimo, soliciting an answer to Your letter of the 25th September and 23rd November last, in which you request that the transit duties levied on articles exported from Daman across the District frontier

into the Nagar Aveli may be abolished and in reply we beg to refer Your Excellency to the reply to those letters contained in our despatch dated the 1st March which we trust Your Excellency will have received before this reaches you.

(Signed) Illegible.

B.C.

19th March, 1845.

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**Annex E. No. 14**

*National Archives, New Delhi*

1878

Government of India. Foreign Department, Secret No. 78,  
pp. 63-64, 90-98.

No. 14, dated 16th September 1870

From

Government of India,

To

His Grace the Duke of Argyll, K.T., Secretary of State for India.

The Government of Bombay have again represented to us the very serious inconvenience which is caused by the continuance of the privilege enjoyed by Portuguese commerce at their Surat factory, viz., exemption from any higher customs duty than 2½ per cent.

2. This matter formed the subject of repeated correspondence, as is noted in the margin <sup>1</sup>, between the Government of Bombay, or predecessors, and the Hon'ble Court of Directors. In their latest letter on the subject, dated 4th August 1852, the Hon'ble Court, while defining the meaning and extent of the privileges in question, supposing them to be continued, announced their intention of communicating at a future date their instructions on this the main point, viz., whether the continuance of the privileges was to be conceded or not. The above intention was, however, never fulfilled; and the matter now presses for prompt decision, for the letter of the Bombay Government, No. 2511, dated 26th May last, which gives a full historical account of the different

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<sup>1</sup> From Government of India, to Government of Bombay, dated 6th April 1821; Consultation 6th April 1821, No. 6.

From Government of Bombay, to Court of Directors, No. 5, dated 25th May 1821.

From Court of Directors, to Government of India, dated 19th August 1829.

From Government of Bombay, to Government of India, No. 721, dated 29th February 1844; Consultation, 20th July 1844, Nos. 5 to 8.

From Government of India, to Court of Directors, No. 10, dated 20th July, 1844.

From Government of Bombay, to Court of Directors, dated 31st March 1845.

From Government of India, to Court of Directors, dated 12th April 1845.

From Government of Bombay, to Court of Directors, dated 6th April 1846.

From Government of India, to Court of Directors, dated 12th June, 1847.

From Court of Directors, to Government of India, dated 23rd February 1848.

From Government of India, to Court of Directors, dated 4th August 1852.



phases through which the correspondence regarding these privileges has passed, contains also lively illustrations of the loss to which the revenue of British India is exposed from their continuance. Nor possibly will the mischief stop with the enjoyment of exceptional advantages by Portuguese commerce at Surat. It is impossible to say what dormant privileges the Portuguese themselves may not claim in other Indian ports in virtue of similar documents, bearing in mind the well-known fact that in early days they obtained many such concessions from the Chiefs on the Malabar Coast. It is, moreover, at any time open to traders of other nations, to proffer demands for participation in these exceptional privileges. In our commercial treaties, not only with European Powers, but with Asiatic States, such as Persia and Muscat, trade is, almost without exception, put upon the footing of that of the most favored nation; and if any concessions whatever are given to the Portuguese, the same might be claimed as of right by every nation in the world with which we have a commercial treaty containing the most favored-nation clause.

3. The exemption in question is based on a firman of the Mogul Emperor Furokhseer issued in the year 1714; and during the time when the correspondence already referred to was going on with the Home Government, their continuance, for the time being, was recognized on several occasions by Acts of the Indian Executive and Legislature.

4. The question thus resolves itself into the consideration of two points, viz., our obligation to continue these privileges in virtue of the Emperor's firman, and our obligations to do so in virtue of our own admissions.

*First*, then, as to the *firman*. This document was not a treaty, but a mere charter of privileges conferred by the Government of the day, entitling the Portuguese to be treated like the Mohamedan subjects of the Mogul—to be, that is, relieved from the exceptionally high duties levied from traders of other religions generally. As such, it would not be extinguished merely by the cessation of the power of the Mogul. Privileges of this kind belonging to the class known as *servitutes juris gentium* do not, we admit, cease with the extinction of the power that granted them. But there are other grounds on which the document must be considered as having no permanent binding force. It appears clear from the correspondence on record that the firman was never intended to confer greater privileges than those enjoyed by the Mogul's own subjects, and that when extra duties were imposed as a war tax, they were levied from the European factories which held firmans, as well as from the subjects of the Empire. It is also quite certain that firmans were not treated by the Emperors as of perpetual obligation, but were liable to be cancelled or altered at pleasure. They were so understood by the English; and it is clear that the Dutch so understood them, because they took good care to secure from each successive Emperor a renewal of their privileges, based on similar firmans. It will hardly be pretended then that privileges, the grant of which was revocable at the pleasure of the Mogul Emperors, must be continued against the pleasure of the British Power, their successors in the government of the country. Still less, we conceive, can it be pretended that documents, the object of which was to put certain foreign traders on the same footing as the most favored subjects of the Government of *that* day, can be of force to put

them, and not only them, but, as a consequence, foreign traders generally, on a footing superior to that occupied by the subjects of the Government of *this* day.

*Secondly as to our admissions.* They are contained in Section 6 of Act 1 of 1838, and Section 19 of Act I of 1852; but there is no allusion to these privileges in the Consolidated Customs Act VI of 1863, by which the previous Acts were repealed. The privileges are now continued by an Executive Order of the Local Government passed under the empowering Section 19 of the Consolidated Act. It is, to our mind, clear that these enactments admitted nothing more than the fact of the existence of the firman privileges, without in any way affecting their revocable character, which had, indeed, been asserted in the most unmistakable terms in our predecessor's letter dated 6th April 1821 to the Government of Bombay.

5. In a few words, then, the matter stands thus: The Mogul Emperor granted to the Portuguese at Surat in 1714 a revocable privilege, which survived and retained its revocable character when the British Government took the place of the Mogul. The Acts of the Indian Legislative Council in substance ordered the officers of Government to respect it. Those Acts have since been repealed, but the Executive Government have been empowered to exempt, and have exempted, the Portuguese from the payment of duties higher than those specified in the firman. If that order be rescinded, the duty will be leviable under the general law of the Empire. The question then arises whether the revocation of the firman or the rescission of the exemption would be a breach of the treaty obligations of England to Portugal, we think not. The treaty now in force is that of 1842, which provides that each power is to put the other on the footing of the most favored nation,—a provision which in no way imposes upon us the obligation to maintain, in favor of the Portuguese, any exceptional revocable privilege granted by the former Sovereigns of India.

6. Unless, therefore, Your Grace should take a view of the matter different to our own, we purpose to inform the Government of Goa that the exemption in question will cease on the 1st April 1872, and we therefore solicit the favor of an early reply to this despatch.

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Dated India Office, 18th December 1872.

From

Under-Secretary of State for India,

To

Under-Secretary of State for Foreign Affairs.

With reference to former correspondence terminating with your letters of the 20th August and 5th November 1872, relative to the commercial advantages of the Portuguese traders at Surat in British India, I am directed by the Duke of Argyll to forward to you ten printed copies of the memorandum asked for in your letter of the 20th August last, containing a narration of the past proceedings in the matter, and a statement of its present position.

From this document it will be obvious that the privilege, which the British Indian Government is under no obligation to continue, has been most unduly stretched, and that the traffic now carried on under it is of a totally different character from that originally contemplated, and is, in fact, a gross abuse of the privilege.

I am to add that, as already intimated in my letter of the 2nd March 1871, His Grace, while anxious to avoid any step which could give reasonable ground of umbrage to a friendly power, entirely concurs in opinion with the Governments of India and Bombay that it is absolutely necessary in the interests of the revenues of British India finally to terminate a commercial preference which has been stretched so far beyond its legitimate limit or intention.

P.S. I am to point out that the second part of the memorandum, commencing at page 21, and marked confidential, has been so printed that it can, if needful, be detached, should it be considered by Earl Granville advisable to submit the former part of the statements for the consideration of the Government of Lisbon.

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## MEMORANDUM

### *Portuguese Commercial Privileges at Surat*

1. The privileges claimed on behalf of the Portuguese factory at Surat originated in a firman granted by the Emperor of Delhi in 1714. At that time merchants of other nations were also trading in Surat under special privileges conceded by the same potentate; and it seems necessary, in order to place the subject in a clear light, briefly to describe the conditions under which the several European factories were established, the nature of their privileges, and the state of Surat at the period when those privileges were granted.

2. Surat in the seventeenth century was a dependency of the Mogul Empire, governed by a resident (Mussulman) Nawab. It was the chief emporium and port of Western India, and was the centre of an extensive trade with the Persian and Arabian Gulfs. It was the port whence the Mahomedan devotees of the whole Mogul Empire set sail on their pilgrimages to Medina and Mecca. Its rulers were very jealous of strangers, and no foreigner could reside or trade there without the permission of the Emperor himself. It had two Custom-houses, the "Phoorza", at which sea customs were levied, and the "Khooshkee", for the collection of land customs. The rates of duty levied at both Khooshkee and Phoorza from the natural-born subjects of the Empire were as under—

Mahomedans paid  $2\frac{1}{2}$  per cent. *ad valorem*.

Hindoos paid 5 per cent. *ad valorem*.

These duties, as well as those subsequently levied from foreigners under firman privileges, were payable on goods of every description, whether imported or exported by sea or by land; and the payment of land customs on goods imported at the Khooshkee did not exempt the

same goods from sea customs on exportation through the Phoorza, neither did payment on import at the Phoorza clear goods through the Khooshkee. The Armenians and Jews had a factory of their own from an early date, and paid customs duties under a firman at the rate of  $3\frac{1}{2}$  per cent.

3. In 1612 the representatives of an association of English merchants, which afterwards grew into the East India Company, succeeded in obtaining permission to settle at Surat, and opened a factory under a firman granted by the Emperor of Delhi, which authorized them to trade on payment of customs duties at the rate of  $3\frac{1}{2}$  per cent. *ad valorem* on both exports and imports. They were followed by merchants of the Dutch Batavian Company in 1617, who also obtained the Emperor's permission to trade on similar terms. In 1649 the Dutch succeeded in gaining further concessions from the Emperor, one of which was the reduction of customs duties on their trade to 2 per cent; and in 1667, through the good offices of the Nawab, who then ruled in Surat, the British factory was admitted to similar privileges under a firman granted by Aurungzebe. There had always been great competition and rivalry between the two factories, and for a time the Dutch were both feared and favoured more than the English merchants; but the acquisition by the British of the Island of Bombay, the arrival of troops and ships of war from England, the gallant and successful defence of the English factory when Shiwajee sacked Surat in 1664, and the treaty concluded between the Company and Shiwajee ten years later, contributed to turn the scale in favor of British ascendancy; and the commencement of the eighteenth century found the English factory in a more flourishing condition and possessed of greater privileges than the Dutch. The Dutch at that period continued to pay export and import duties of 2 per cent *ad valorem*, but the English had commuted their customs liabilities for a fixed tribute of Rupees 10,000 a year, and had established a Custom-house of their own, where they levied duties at 4 per cent. from all persons trading at the port under their protection.

4. Such was the position of affairs when the Portuguese opened their factory under the firman of 1714. So far as is known, the original firman has not been preserved, and it is certain that no copy<sup>1</sup> of it is extant either on the records of Government or of the Portuguese factory. But the claims made under it have always been limited to the admission of goods to export and import on payment of an *ad valorem* duty of  $2\frac{1}{2}$  per cent.

<sup>1</sup> There is on the records of the Secretariat copy of a translation of a mandate issued by the Nawab of Surat to the officers of the Surat Custom-house in 1714, in connexion with the firman granted to the Portuguese by the Emperor of Delhi in that year. In it the rate of customs duties leviable from the Portuguese traders is stated at  $2\frac{1}{2}$  per cent., and it is added that the rate is the same as that levied from Dutch merchants. But it is clear, from the translation of the firman granted to the English factory (vide page 783 of Thomas' "Treaties, Agreements, and Engagements"), that the rate levied from the Dutch was only 2 per cent. The document appears to have been furnished to the Chief of Surat by the Nawab in 1796, and from the difference above noticed, and from discrepancies between the preamble and body of the document, which are apparent on perusal, I am inclined to doubt its authenticity. Translations of it and of the firman granted to the English in 1667 are appended to this memorandum.

5. The firman of 1714 *did not admit the Portuguese traders to the privileges of the then most favored nation*, as the concessions under which both English and Dutch factories were trading were superior to those granted to the Portuguese. The most that can be made out of the facts in favor of the Portuguese is that they were allowed to trade *on equal terms* with the Mahomedans, the most favored community of the Emperor's natural-born subjects.

6. The French established a factory in 1668 under a firman, but their factors traded so recklessly that they soon became involved, and were obliged to abscond from Surat, leaving a number of debts unpaid. Some years afterwards they attempted to obtain permission to re-open their factory, but without success. Many years later, when the British had obtained a share in the administration of the port, French trade revived for a time, but both French and Dutch factories were abandoned during the European wars at the close of the eighteenth century; and when merchants of those nations returned to Surat, after the general peace of 1815, the Bombay Government declined to re-admit them to firman privileges, and they soon left the port.

7. On the 7th February 1747, under the orders of the Mogul Government, the rates of customs duties levied at Surat were increased all round by the imposition of an additional ekotra, or tax of one per cent. It is plain, therefore, that *the Moguls did not themselves consider the privileges conceded under their firmans to be immutable*.

8. Again, on the 14th March 1759, after the acquisition by the British of the Castle of Surat and the charge <sup>1</sup> of the Mogul fleet, a second ekotra was imposed on the whole trade of the port, as a sort of war tax, for the purpose of indemnifying the Company for the cost of the expedition. This impost continued in force until 1795, a fact which shows that in the earliest days of their power at Surat, the Company, like the Mogul Government, *did not scruple, on occasion, to increase the rates of firman duties*.

9. In 1795 the rates of duty leviable at the Company's Customhouse in Surat were generally reduced to 2½ per cent., in assimilation to the practice at Bombay; but after a long correspondence with the Supreme Government it was decided that the former, or modified rates of duties, should be re-imposed, and that at the same time an additional duty of one per cent. should be levied for "Marine charges".

10. On the 13th May, 1800, Surat, with its territories and dependencies, was ceded by the Nawab to the East India Company, and in the following month a Regulation (No. IX of 1800) was passed by the Governor of Bombay in Council, defining and determining the customs duties leviable at that port. Allusion is made to the firman privileges of the Portuguese, etc., in Clause 2, Section VII, in the following terms:—

"With respect to the ships, vessels, and commerce of those European nations possessing firman from the Great Mogul, the same rules, pre-

<sup>1</sup> The British at the same time acquired a share of the general customs duties of the port. The arrangement was as follows:—

"The British took the whole of the war ekotra, and one-third of the customs levied at the Phoorza and Khooshkee; the Mahrattas took the chout, which had been ceded to them after Shiwajee had overrun Guzerath, and the Moguls retained the balance."

cautions, and observances are to be followed in the department of the Phoorza as have hitherto obtained, as well in respect to their European as Indian commerce, adhering to the established practice in regard to each branch; the Collector being attentive to report to Government, and to propose the correction of any abuse that experience may show to exist therein."

But it is very noticeable that Section XII, which fixes the tariff, while expressly exempting goods landed or shipped under firman privileges from the double<sup>1</sup> valuation imposed on foreign trade generally, makes them liable to the one per cent. extra duty for Marine charges noticed at the conclusion of the last paragraph. This fact is important, as showing that the Company, in its earliest enactment for regulating customs duties at Surat, though recognizing the "rules, precautions, and observances," and the "established practice" in regard to firman privileges, thought it no infringement of those privileges to increase the rates of duty payable by persons trading under them.

11. Another instance of enhancement of the firman duties occurred in 1806. Up to the previous year trade with the Persian and Arabian Gulfs had been specially exempted from the double valuation imposed on foreign trade under the provisions of Clause 3, Section XII, Regulation IX of 1800; but this exemption was withdrawn by order of the Bombay Government in 1806, even in the case of goods imported into the Portuguese factory at Surat. Payment on the increased valuation was at first resisted by the Director of the Portuguese factory, but his objections were overruled, and the orders of the Government were carried into effect.

12. The first allusion made by the Court of Directors to the firman privileges is contained in a letter addressed by the Hon'ble Court to the Chief of Surat in the year 1779, and is to the following effect:—

"The firmans, general as they are, are not to be construed as universal, but are to be understood with this limitation, that they do not operate to the prejudice of any subsisting right or usage, much less of such rights as could not be abolished without a considerable diminution of the public revenues."

The language used is not very clear; but the Court evidently intended to convey to the Chief instructions to permit the continuance of the privileges only so far as they did not prejudice any rights which had accrued to the Company.

13. In 1786 the Government of Bombay decided that only such goods as were bona fide the property of the Portuguese should be admitted to the firman privileges.

14. In 1799 the privileges were further limited to goods both owned by Portuguese and carried in Portuguese vessels.

15. In 1818 a Committee assembled at Surat under orders of the Bombay Government to make a general inquiry regarding firman privileges. They submitted a long report in the month of February of the following year, the general tenor of which was to show that the

<sup>1</sup> The duties imposed by the regulation were *ad valorem*, and goods imported or exported on foreign bottoms were appraised at rates 60 per cent. in excess of their invoiced value.

continuance of the privileges would operate to the Company's prejudice, that they were enjoyed by favor and not by right, and that the British Company was clearly entitled to abrogate them at its pleasure. In forwarding this report to the Supreme Government, the Government of Bombay remarked that, "under the circumstances under which the firman privileges were granted, the Portuguese could not justly expect more than to be allowed to trade on the same terms as British merchants, which would exempt them from the payment of double duties at Surat, to which they are subjected in every other port in India"; and they recommended the withdrawal of all other privileges. A letter was received in reply from the Supreme Government asking for further information on several points, which was supplied; but no further notice seems to have been taken of the matter by the Supreme Government.

16. In a letter from the Government of Bombay, dated the 18th October 1820, the Chief of Surat was directed to levy town duties on the trade of the Portuguese factory in addition to the  $2\frac{1}{2}$  per cent. customs duty imposed by their firman.

17. In the same year a correspondence took place between the Government of Bombay, the Chief of Surat, and the Director of the Portuguese factory regarding the imposition of land customs duties on goods exported in land by the Portuguese factory, in addition to the sea customs paid on their importation. The Bombay Government decided that the levy of such duties was in accordance with the practice of the Mogul Government, and directed that they should be imposed accordingly.

18. The tariff imposed under Regulation XIV of 1800 made a difference of  $1\frac{1}{2}$  per cent. only in favor of the Portuguese trade, and it appears, from a letter written by Mr. Agar, Chief of Surat in 1820, that the trade of the factory had by that time fallen off to a considerable extent. The additional imposts noticed in the two preceding paragraphs reduced it still further, as their effect was to raise the firman duties to the level of those imposed on unprivileged trade. And this is probably the reason why the records of the Secretariat for many years subsequent to 1820 are silent on the subject of firman privileges.

19. Regulation IX of 1800 (except Clause 2, Section VII, quoted in paragraph 10) was repealed by Act I of 1838, the first Consolidated Customs Act passed by the Supreme Government. Its general effect was to reduce the tariff; and for the first time certain classes of goods were admitted to free import and export, and high tariff duties were imposed on a few articles of import. Firman privileges were alluded to in the following terms (Section VI):—

"Provided always that the ships of any European nation having firman privileges in the port of Surat shall not be subject to further duties of import or export than may be prescribed by their firmans, respectively, anything in the schedules or in this Act notwithstanding."

And yet the Portuguese trade (the only firman trade remaining) enjoyed the full benefit of the reductions of tariff in cases in which tariff rates were lower than firman rates, and the total exemption from customs on free goods. It seems curious that this provision should have been made by the Supreme Government without communicating its reason to the Government of Bombay, although the non-existence of the firman, or copy thereof, had been officially declared, and the abolition of all firman privileges had been recommended.

20. In 1841 the Director of the Portuguese factory endeavoured to pass through the Surat Custom-house, on payment of firman duties, a quantity of tobacco which had been shipped from Cambay to Damaun, and thence in Portuguese boats and in the name of a Portuguese owner to Surat, the firman duties being lower than the tariff rates on tobacco. The case was reported to the Government of Bombay, who prohibited the entry of the tobacco, except on payment of tariff duty, and took the opportunity of declaring that the firman privileges were applicable only to goods imported in Portuguese ships, and not to the Portuguese coasting trade. *The effect of this order was the virtual suspension of the firman privileges*, as the ocean trade of the factory had ceased many years before.

21. In 1840 the trade of the factory had dwindled down to the import of goods of the gross value of Rupees 817, the duty on which at tariff rates amounted only to Rupees 29, and at firman rates to Rupees 20. The ruling noticed in the preceding paragraph was relaxed in 1845, when the coasting trade was again admitted to firman privileges; but the factory showed but little vitality, as the average value of its trade for the next seven years<sup>1</sup> amounted only to Rupees 641 per annum, chargeable at tariff rates in the amount of Rupees 32, and at firman rates in the amount of Rupees 20.

22. In 1852 the second Consolidated Customs Act (Act I of 1852) was passed, repealing Act I of 1838, and still further reducing the tariff and increasing the list of free goods. The continuance of firman privileges was provided (Section XIX) in the same terms as those used in Act I of 1838. During the next ten years<sup>2</sup> the Portuguese factory trade improved considerably, its total value averaging Rupees, 5,123 per annum, liable to tariff duties of Rupees 415, and to firman duties of Rupees 128. This improvement was due to the increased importations of salted fish and cocoanuts from Damaun and Goa. These commodities could be imported under firman privileges at a good profit, as salt is not subjected to any excise in the Portuguese territories in India, and the duty on cocoanuts was considerably increased by the Tariff Acts passed to amend the rates prescribed in Act I of 1852. These Acts also considerably increased the duties leviable on most imports.

23. The Customs Act now in force, repealing Act I of 1852, was passed in 1863, and contains provision (Section XIX) for the continuance of the firman privileges of the Portuguese factory *at the discretion of the Local Government*.

A reference was made on the subject by the Commissioner of Customs, and Government in their Resolution No. 1682, directed the Commissioner to continue the privileges, at the same time remarking (paragraph 4):—

“It appears, however, hardly necessary to move the Secretary of State in the matter of withdrawing firman privileges, as all exports are free; and as the import duties (the present high rates of which appear to be only temporary) were, until recently, only 3 per cent. on most articles, or half per cent. only above the firman rates.”

24. In the same year the Director of the Portuguese factory attempted to introduce Damaun salt into Surat under firman privileges, but his

<sup>1</sup> 1845-46 to 1851-52.

<sup>2</sup> 1852-53 to 1861-62.



request was peremptorily refused by Mr. Elliot, Deputy Commissioner of Customs, N.D. On his repeating the attempt in 1868, the subject was brought to the notice of Government, who, in their Resolution No. 1226, dated 29th March of that year, confirmed Mr. Elliot's action in the matter.

25. In 1870 the Director attempted to pass piece-goods which had been exported out of bond in Bombay to Damaun, and carried thence to Surat in a Portuguese pattimar under firman privileges. But this was opposed by the Customs authorities, and disallowed by Government.

26. Between 1862-63 and 1867-68 the trade of the factory again showed a slight improvement, its value in that period averaging Rupees 6,450 per annum, liable to duties at tariff rates, amounting to Rupees 636, and at firman rates to Rupees 161. But in 1868-69 a new trade sprung up, with which Government has not as yet directly interfered, and which has had a very serious effect on the customs revenues.

27. In that year a quantity of Portuguese wines and spirits from Goa were presented for import under firman privileges, and were passed without any reference to Government. The difference between tariff and firman rates on these imports amounted to Rupees 2,307. In 1869-70, on a similar consignment being offered for clearance by the Director of the Portuguese factory, Mr. Dalzell, Deputy Commissioner, N.D., refused to admit it to firman privileges, and levied full tariff rates upon it. The matter was then referred to Government, who, in their order No. 1633, dated 4th April 1870, resolved as follows:—

“As the privilege claimed by the Director of the Portuguese factory at Surat has on more than one occasion been recognized by the legislature, and has been conceded by Government up to the present time, it must be admitted in this instance, and the difference between the full duty levied and  $2\frac{1}{2}$  per cent. valuation must be refunded.”

28. On the 26th May following the Government of Bombay addressed the Government of India on the subject of the Portuguese firman privileges in their Chief Secretary's letter No. 2511, which contains a resumé of the history of the privileges and of the action of Government with reference to them, and concludes with a strong recommendation that the privileges be forthwith discontinued.

29. On the 23rd June 1870 Government resolved, in their Resolution No. 2998, to admit to firman privileges some gin which had been brought from Damaun, and which the Deputy Commissioner, N.D., had refused to pass without instructions. The circumstances under which these were imported via Damaun was not fully reported to Government at the time, and from their admission dates the monstrous abuse of the privileges which has continued up to the present date. In 1870-71 the value of wines and spirits imported under firman privileges into Surat reached the sum of Rupees 54,017, and the loss of customs on the importations amounted to Rupees 29,432. In 1871-72 the value of importations rose to Rupees 6,54,196, and the loss of revenue to Rupees 2,83,719; and the value of the importations of the last three months has reached Rupees 7,22,586, and the loss of revenue Rupees 2,96,262.

30. The total loss of revenue during the two years between June 1870 and June 1872, resulting from the admission of this trade to firman privileges amounts to Rupees 6,09,413.

31. All these wines and spirits, except a small quantity of Tinto, Branco and other Portugal wines, and about 20,000 cases of brandy, which were landed at Damaun from a French ship which discharged there in the cold weather, were first imported into bond into Bombay by merchants trading at the port under British protection, and then exported out of bond to Damaun duty free, as Damaun is a foreign port. On arrival at Damaun they were transhipped into Portuguese pattimars, and cleared through the Custom-house for export to the Portuguese factory as the property of the agents, Portuguese subjects, who had consigned them from Bombay. After being landed at Surat, they were admitted to firman privileges, on the application of the Director, as the certified property of Portuguese subjects freighted on Portuguese bottoms, and the greater portion was carted straight to the railway station as soon as cleared through the Customhouse, and sent back to Bombay by train, thus evading the payment of full tariff dues by a false representation and subterfuge. It was not a friendly act on the part of the Portuguese officials at Damaun to grant certificates of Portuguese ownership with so little care and inquiry, and the act of the Director in claiming to pass these goods under the provision of his firman, constitutes a flagrant abuse of the privileges which have been continued to his factory through the favor of the British Government. The case is precisely similar to one reported in the diary of the Chief of Surat for the year 1720. It is there shown that both the Dutch and English factories very nearly lost their firmans in that year in consequence of having attempted to pass goods, the property of Hindoo merchants of Surat (which were liable to a duty of 5 per cent.) for exports as their own property. The Nawab was only appeased by the receipt of handsome presents, and solemn undertakings on the part of the Directors of both factories to abstain from all such interference with the Government rights in future.

32. On the 30th April last, in their Resolution No. 2086, Government ordered that the difference between the tariff and firman duties should be levied on all wines and spirits entered under the firman privileges on export beyond the walls of Surat. But this has not stopped the importations under firman privileges of the nature described in the last paragraph. Between the 1st of May and the setting in of the monsoon, 107,907 gallons were imported via Damaun, and this stock is now held in Surat in the expectation either that the orders of the 30th April last will be withdrawn, or that some interval, during which the trade will be again opened, will intervene between the issue of orders for the abolition of the privileges and the date of their abrogation.

33. It is not quite clear who were the founders of the Portuguese factory, or how they obtained their firman. The records in the Secretariat relating to the period when the Portuguese first settled in Surat are very meagre, and merely alluded to the factory as being in existence. But nothing on the Government records or in histories leads to the supposition that the Portuguese Government had any interest in the trade of the factory, or that its accredited envoys were concerned in obtaining the firman under which it traded. It is well known that bands of Portuguese adventurers were constantly wandering about the western coast of India in the seventeenth century, and that they founded trading depots at Cambay, Ahmedabad, Carwar, Cochin, and other places, which were the property of private individuals, though to a certain extent under the

protection of the Portuguese flag; and it seems most probable that their factory at Surat, like ours and the Dutch, was founded by such adventurers, and that its privileges were as jealously monopolised by the few who owned the venture as were those of the Dutch and English factories by their respective factors. The diaries of the English factory of 1719 and 1720 contain accounts of several instances in which the European factories made common cause against European strangers who attempted to open a trade in Surat, and the resistance and obstruction which the Company offered to private traders,—“interlopers”, as they were called in those days,—is a matter of history. A further reason for concluding that the Portuguese Government and nation had no direct concern in the firman or factory is to be found in the fact that neither the Home nor Indian Government of the Portuguese have ever interfered to support the claims of the Director of the factory, though he himself has been loud and persistent in his complaints, on the many occasions on which the practice and privileges of the factory have been restricted and curtailed, and especially during the period from 1841 to 1845 when the privileges were entirely suspended. Not a letter is on record from any Portuguese officer, other than the Director of the factory, on the subject of firman privileges.

34. The direct trade of the factory has long since ceased, and the Director now is merely an agent, who passes (so-called) Portuguese goods through our Custom-house. He is appointed by the Governor of Damaun, and, until quite recently, was in the habit of remunerating himself by the levy of a duty on all goods admitted to firman privileges of  $2\frac{1}{2}$  per cent, in addition to the duties payable at our Custom-house. It is not clear when this practice commenced, but it was in existence in 1820, and was noticed and strongly objected to by the Government of Bombay in a letter which they addressed to the Supreme Government in that year. In June 1872 a new Director was appointed on a fixed salary, and with instructions to hold the extra duties levied by him at the factory *to the credit of the Portuguese Government*. This is the first instance on record in which the Portuguese Government have attempted to derive a revenue from the trade of the port of Surat, and is, it is submitted, an act in direct violation of the sovereign rights of Her Majesty the Queen.

35. The above is all the information which it has been possible to collect, which seems calculated to assist in the determination of the question of the continuance or revocation of firman privileges. It has been shown that the effect of the firman at the time when it was granted was simply to place the merchants of the Portuguese factory *on an equality*, as regards trade in the port of Surat, with the most favored of the native communities, *and in an inferior position to that then held by the Dutch and English Companies*; that the rate of firman duties was raised by the Mogul Government along with the rates of duty payable by unprivileged trade in 1747; that the rates of duty were still further increased to the same extent as ordinary customs duties, under the joint administration of the Nawab and the Company; that the Company's earliest legislation maintained such increased rate of firman duties; that trade admitted to firman privileges has been from time to time subjected to additional imposts, and that the conditions of admission of trade to firman privileges have been subject to frequent alteration, curtailment, and restriction, both by the Company and the Crown; that the privileges

have from the first been treated as uncertain and of doubtful validity, and have been continued as a matter of favor and not as a matter of right; that the privileges have never been claimed on behalf of the Portuguese nation, and that the Portuguese Government had never interfered concerning them; and lastly, that the recent importations of wines and spirits into Surat, under cover of firman privileges, constitute a flagrant abuse of those privileges.

36. There can be no doubt that the continuance of these privileges is quite incompatible with the continuance of our present system of customs administration, however little inconvenience may have arisen from their exercise at a time when they were limited to the legitimate trade of a private factory, and all imports and exports were subject to an uniform *ad valorem* tariff but little in excess of firman rates. The Portuguese factory, as it was when it received its firman, has long ceased to exist. It has lately degenerated into an agency for the colourable evasion of our customs laws, and has forfeited all claims to consideration at the hands of Government. Nor does it appear that such Portuguese subjects as have used it for legitimate trade, according to the practice of the last few years, will have just reason to complain of the abolition of its privileges as they have lately been admitted to trade in all our ports on a perfect equality with British subjects; all exports and many imports have been made free, and transit duties have been done away with throughout our dominions,—concessions which are infinitely more valuable to the Portuguese people than the petty exemptions of which the few of their number who trade to Surat will be deprived.

37. A statement giving details of the Portuguese firman trade since 1840 is appended to this memorandum. It will be noticed that the ordinary trade of the factory has quite ceased since the importations of wines and spirits commenced.

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## Annex E. No. 15

### Part 1

## THE SEA CUSTOMS ACT, 1878

### CHAPTER IV

#### PROHIBITIONS AND RESTRICTIONS OF IMPORTATION AND EXPORTATION

. . . . .

18. No goods specified in the following clauses shall be brought, whether by land or sea, into British India:—

(a) any book printed in infringement of any law in force in British India on the subject of copyright, when the proprietor of such copyright, or his agent, has given to the Chief Customs Authority a notice in writing that such copyright subsists, and a statement of the date on which it will expire:

(b) counterfeit coin: or coin which purports to be Queen's coin of India, or to be coin made under the Native Coinage Act, 1876, but which is not of the established standard in weight and fineness:

(c) any obscene book, pamphlet, paper, drawing, painting, representation, figure or article:

(d) articles bearing any names, brands, marks being or purporting to be, names, brands or marks of manufactures resident in the United Kingdom or British India, and not made by such manufactures.

19. The Governor General in Council may from time to time by notification in the Gazette of India, prohibit or restrict the bringing or taking by sea or by land goods of any specified description into or out of British India or any specified part of British India.

. . . . .

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**Part 2**

**FINANCE & REVENUE DEPARTMENT**

Notification No. 171, dated 12th January 1892

In exercise of the powers conferred by section 19 of the Sea Customs Act, 1878, (VIII of 1878), the Governor General in Council is pleased to prohibit, with effect from the 15th January 1892, the bringing or taking by sea or by land into any part of the Presidency of Bombay of country liquor produced or manufactured in any part of the Indian Possessions of His Majesty the King of Portugal and Algarves.

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**Annex E. No. 16**

*Gazette of India, 1908, Pt. I, p. 32*

Notification

*No. 127-4, dated the 9th January, 1908*

In exercise of the powers conferred by section 19 of the Sea Customs Act, 1878 (VIII of 1878), the Governor General in Council is pleased to prohibit the taking by sea or by land of Mhowra flowers from any part of British India to any part of the Indian Possessions of His Majesty the King of Portugal and Algarves.

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## Annex E. No. 17

1910

Government of India. Finance Department. Separated Revenue. A.  
Proceedings August 1910. Nos. 472-479

Dated the 21st December 1909.

From

His Excellency the Governor General of Portuguese India,

To

His Excellency Sir G. S. Clarke, G.C.M.C., G.C.I.E., Governor  
of the Presidency of Bombay.

After having resumed charge of my office on my last return from Portugal, the Chief Secretary to Government of this Province laid before me letter No. 4347, dated the 21st June last, from the Secretary to Government of the Bombay Presidency.

2. After carefully going through the contents of the letter in question, I had to get together all the documents extant relating to the subject, as well as obtain all the various information from competent authorities in view to form a correct idea on the points under discussion. It has thus been easy for me to arrive at conclusions sufficiently accurate to deal with the question with due deliberation and exactness.

3. I have consequently verified that under the special situation in which the Portuguese territories of Daman and Nagar Avelly are found to stand in relation to the adjoining British territories, a series of circumstances occur giving rise to motives for complaints on both sides more or less justifiable, and which the local authorities often bring to the notice of their respective Governments.

4. I have also verified that the effects produced by these self same circumstances could be easily removed, had there been a mutual agreement between both the Governments, namely, that of Bombay and of Portuguese India, in view to safeguard the legitimate public interests of both the parties concerned.

5. Granting this, it appears to me that such an agreement should be entered into without delay for mutual convenience and that it should, if possible, be made in the manner I have already referred to, that is, comprising not only the question of the system of distillation and sale of country liquor, but also in a special manner the question of transit of productions across the respective frontiers between the two Portuguese territories of Daman and Nagar-Avelly and between the parts of the latter intersected by the British territories,—a question intimately connected with the former and which cannot be left out of consideration in entering into this agreement.

6. In this manner a *modus vivendi* would simultaneously be established satisfactory to the national interests which each of the two Governments are legitimately bound to protect in the territories of their jurisdiction.

7. Convinced that Your Excellency will be pleased to consider that this my view of the question is correct, and that you also will be disposed

to deal with the subject, as it appears to me convenient for both the Governments, I have the honour to inform Your Excellency with much pleasure that I have been authorised by the Government of His Most Faithful majesty, through the Secretary of State, Colonial and Marine Department, to negotiate with Your Excellency's Government regarding the agreement above referred to, and which I expect will correspond as far as possible with the proposals contained in the letter from the Secretary to Government of the Presidency of Bombay above mentioned.

8. Should Your Excellency be pleased to consent in dealing with the question according to the views above expressed by me, it would be convenient, in my opinion, on account of the complexity of matters, that two official delegates may be appointed, one on behalf of Your Excellency's Government and the other on that of mine, entrusted to study, discuss and elaborate a project of the agreement, meeting for this purpose either in the British or the Portuguese territory as Your Excellency may choose.

9. It does not appear to me difficult to arrive in this manner, in a short time, at a satisfactory settlement of this business, since the object in view is to secure harmony in the interests relative to the public administration of the territories under the dominion of the two nations, such as ours, traditionally allied, and the relations or cordial friendship of which have been drawn closer and closer, and are always progressing for the general welfare of both.

10. The agreement referred to, which the Portuguese Government wish to enter into and is also wished for by the British Government, as the Secretary to the Government of Bombay has properly said in his letter, becomes the more easy as it is certain that the object of the two Governments is to safeguard their legitimate interests and to respect loyally all the interests of the neighbouring territory. Such will be the instructions which I shall give to the delegate of this Government, in the event of Your Excellency agreeing with the proposal herein made.

11. In conclusion I have to state that, according to the instructions which I have received, whatever may be the conditions of the agreement arrived at between both the Colonial Governments, I will have to submit it for the sanction of the Home Government in order to put it into force.

12. I await, therefore, Your Excellency's satisfactory answer, and for which I thank you cordially in anticipation. God preserve Your Excellency.

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No. 3162, dated the 8th April 1910.

From

The Honourable Mr. G. CARMICHAEL, I.C.S., Acting Chief Secretary to the Government of Bombay,

To

The Secretary to the Government of India, Finance Department.

With reference to the correspondence ending with Mr. Jukes' letter No. 4557-Exc., dated 11th September 1909, regarding the prohibition of the export of mhowra flowers to Portuguese India, I am directed to forward a copy of the reply, dated 21st December 1909, from His Excel-

lency the Governor General of Portuguese India to this Government's letter No. 4347, dated 21st June 1909, a copy of which was forwarded to the Government of India with letter No. 6531, dated 6th July 1909. It will be seen that the reply of the Portuguese Government is vague and makes no advance towards the solution of the question at issue. That Government apparently wishes to bring under review the whole question of customs arrangements on the frontier, and especially the treatment of goods in transit from one part of the Portuguese possessions to another. The Governor in Council is strongly of opinion that this ought not to be allowed. The sole question for consideration is upon what terms as to the manufacture and sale of country liquor in Daman and Nagar-Avely, the British Government will withdraw their Notification No. 127-4, dated 29th January 1908, prohibiting the export of mhowra flowers from British districts into the Portuguese territory; and the Governor in Council is of opinion that the negotiations with the Portuguese Government should be confined to that point only.

2. The Governor in Council further considers that it would be premature to appoint an officer to discuss the matter with the Portuguese authorities until the scope of the negotiations is settled. When this stage is reached, as the British delegate will have authority to conclude an agreement, it should be insisted upon that similar authority be delegated to the Governor General of Portuguese India or his representative. It will be mere waste of time if the arrangements are to be referred to the Lisbon Government for ratification.

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**Annex E. No. 18**

*Record Office, Bombay*

1912

Revenue Department. No. 1948. Frag. A.

GOVERNMENT OF INDIA

Department of Commerce and Industry  
(Customs)

No. 117-47, dated 6th January 1912

NOTIFICATION

In exercise of the powers conferred by section 19 of the Sea Customs Act, 1878 (VIII of 1878), the Governor-General in Council is pleased to prohibit the taking of dates from any part of British India into that portion of the Indian possessions of the Government of Portugal which is known as the Pargana of Nagar Avely.

R. E. ENTHOVEN,  
Officiating Secretary to the Government of India.

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**Annex E. No. 19***Record Office, Bombay*

1912

Revenue Department. No. 1948. Frag. B.

GOVERNMENT OF INDIA

Department of Commerce and Industry  
(Excise)

No. 7668-212, dated 12th October 1912

## NOTIFICATION

In exercise of the powers conferred by section 19 of the Sea Customs Act 1878 (VIII of 1878), the Governor General in Council is pleased to prohibit the taking of *jagri* from any part of British India into that portion of the Indian possessions of the Government of Portugal which is known as the Pargana of Nagar Avely.

R. E. ENTHOVEN,  
Secretary to the Government of India.

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**Annex E. No. 20***Record Office, Bombay*

1913

Revenue Department. No. 1948. Frag. A.

GOVERNMENT OF INDIA

Department of Commerce and Industry  
(Excise)

## NOTIFICATION

No. 9540-212, dated 4th January 1913

In exercise of the powers conferred by section 19 of the Sea Customs Act, 1878 (VIII of 1878), the Governor General in Council is pleased to prohibit the taking of molasses wherever manufactured from any part of British India into that portion of the Indian possessions of the Government of Portugal which is known as the Pargana of Nagar Avely.

R. E. ENTHOVEN,  
Secretary to the Government of India.

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## Annex E. No. 21

*Revenue and Statistics Department, No. 3722*

Dated 2nd December 1912.

From

Senhor EUSEBIO DA FONSECA, Director General of the Portuguese Colonial Office,

To

F. C. DRAKE, Esq., Secretary, Revenue and Statistics Department, India Office.

I have the honour to transmit to you the enclosed Bases of the Convention to be realised between the Government of the Portuguese Republic and the Government of His Britannic Majesty, tending to establish an equal regime of the manufacture and the sale of spirits in the Portuguese territories of North India, and in the adjoining British territories, without the exclusion of those forming the Native State of Dharampur.

2. In harmony with the verbal proposals which I made to you at our last conversation on the 25th ultimo, I have formulated the Articles or bases that I believe will regulate the transit of spirit and salt between the Portuguese Dominions of North India, as well as those principles that I think necessary to establish on the importation of salt from Damao into the maritime ports of British India with payment of duties and the prescription of formalities that will entirely safeguard the interests of the British Government.

3. I wish to make clear that in Article 8th I have fixed at 500,000 Imperial gallons the maximum quantity of spirit for free transition for the group of villages of Dadra, because the population being 1,153 inhabitants by the census of 1910, and establishing in Article 5th one Imperial gallon per day for each inhabitant, it results that the ordinary consumption in 365 days would be of 410,845 gallons; but it being necessary to remember the cases foreseen in the said Article 5th, native festivals, marriages, etc., it appears to me not being an excessive allowance 89,155 gallons, as a maximum limit for the extraordinary consumption of all the population of the small district (enclave), and so much so that the resulting extraordinary capitation is of 76 gallons per year.

4. According to the last census the population of Nagar Avely was of 29,020 inhabitants. Considering that each inhabitant needs the minimum of 15 lbs. of salt, it does not seem exaggerated to allow the margin of 65,000 lbs. for the extraordinary consumption; henceforth the reason which made me propose (Article 8th) 500,000 lbs. as a maximum limit for salt from Damao in free transit for Nagar Avely across the British territory.

An equal criterion I applied to the cipher of 20,000 lbs. as being the maximum limit for Damao salt to be introduced, free of duty at British ports, in the district (enclave) of Dadra.

5. As I do not yet possess the necessary elements of information, I leave undetermined the quantity of mhowra flower referred to in Article 7th, as well as the minimum sale prices of spirits when the hypotheses foreseen in Article 4th will occur.

*Bases of Convention*

Article 1st.—The Portuguese Government will suppress, within the period of three months counting from the date of the exchange of the ratifications of the present Convention, the outstills now in existence in their territories of North India-Damao, Nagar Avely and the group of villages of Dadra, Demny and Tigra—establishing in their place only two central (official) distilleries, one at Damao, at the greatest convenient distance from the frontier, and another at Nagar Avely, in the chief town of the north district, Villa Paço d'Arcos or Silvassa.

However, for the facility of providing for all the territory, the Portuguese Government may establish an official depot in each of the chief towns of the two remaining districts of Nagar Avely and a third one in the village of Dadra.

Article 2nd.—The grades of the spirits manufactured in the central distilleries referred to in the previous Article will be always equal to those manufactured in the territories of British India and in those of the Native State of Dharampur; it being agreed, until alteration by common consent of the two Governments, that the strength of the spirits will be of 25° U.P. and of 60° U.P.

Article 3rd.—The Portuguese Government will collect on the spirits manufactured in the distilleries referred to in Article 1st, still-head duties equal to those collected in the territory of British India and in the Native State of Dharampur on spirits of the same grade; it being agreed, save the modification made by common consent of the two Governments, that the taxes will be two rupees on each Imperial gallon of spirits of 25° U.P. and one rupee on equal measure of spirits of 60° U.P.

Article 4th.—It is understood that if the Portuguese Government desire to adjudicate to an individual or society the exclusive right of the manufacture and sale of spirits in their Northern Indian territories, in all of them or separately, they will be able to do so, having in this case and in the territories where the regime of exclusiveness will be in force, to be fixed the minimum price of the sale of mhowra spirits in the public houses of the monopolist, which will be equal, for spirits of the same grade, to the sale price at the border territories both of British India and the Native State of Dharampur; and whilst not modified by mutual consent of the two Governments, the price will be for an Imperial gallon of spirit of 25° U.P., Rs., and for equal measure of spirit of 60° U.P., Rs.

Article 5th.—It is prohibited, both in Portuguese and British territories of India as well as in those of the Native State of Dharampur, to sell in the public houses more than one Imperial gallon or six quart bottles of native spirit at one time in each day and to any person, except on festival occasions, marriages, etc., when the purchaser will present a permit from the local fiscal authority, who will only issue it after enquiring into the alleged necessity.

Article 6th.—There will be prohibited in Nagar Avely the establishment of public houses within half a mile from the British frontier. Simultaneously an identical prohibition will be adopted in the British territory within half a mile from the Portuguese frontier.

Article 7th.—The British Government bind themselves to allow to get out of their territories, by land or water and free of any duties and taxes, the mhowra flower required for the manufacture of spirits for the use of the population of the Northern Indian Portuguese territories; it being consequently agreed and settled that in the said Portuguese territories the importation from British territories of mhowra flower shall be allowed up to the maximum limit of     tons in each year.

Article 8th.—The free transit is permitted without payment of duty at the customs posts of British India, of spirits manufactured in the central distilleries of Damao and Nagar Avely for the group of Portuguese villages—Dadra, Demny and Tigra, up to the maximum quantity of (500,000) five hundred thousand Imperial gallons per year.

Article 9th.—The free transit is permitted, without payment of duty at the customs posts of British India, of salt from Damao for consumption and domestic use of the population of the territories of Nagar Avely and of the group of villages of Dadra, Demny and Tigra, up to the maximum quantity per year of 500,000 lbs. for the former and of 20,000 lbs. for the latter.

Article 10th.—The free transit is permitted between Damao and the territories of Nagar Avely and those of the villages of Dadra, Demny and Tigra, without payment of duty in the customs posts of British India, of the quantity of salt of inferior quality, or salt produced spontaneously, that they may need bona fide, for the culture of the coconut tree or for any other culture requiring this quality of manure.

Article 11th.—The free transit is permitted, without payment of any duty at the Portuguese customs posts, of goods of British origin that cross the territory of Nagar Avely.

Article 12th.—The Portuguese Government will take the necessary measures so that from the regime of free transit established by Articles 8th, 9th and 10th the slightest loss will not result to the other High Contracting Party. And for this the products of Damao in transit for Nagar Avely, and vice versa, and also the products in transit from Nagar Avely and Damao for the villages of Dadra, Demny and Tigra, will be accompanied by an escort composed of regular troops and passes sealed and signed in the Administration Office, in which will be stated the quality and quantity of the goods, the name of the exporter, the route of transit to be followed, the manner of transport to be used and the name of the conductor. These passes must be shown at the British posts situated along the Portuguese Dominions to which the goods are consigned, there being registered, so that any infringer may be proceeded against.

Article 13th.—The importation will be permitted in any of the ports of British India, and by vessels of less than 300 registered tons, of salt produced in the Damao beds, paying in those ports the respective duty.

The Chief of the Damao Customs will make known by the quickest way to the British authority of the port of destination the departure of the vessel, the exporter having to produce later a certificate from the respective British Customs proving that the salt has been there disembarked and cleared.

Article 14th.—The Portuguese Government will select the necessary staff for the rigorous fiscalisation and execution of the different bases of the present Convention.

Article 15th.—The present Convention shall come into force at the expiration of three months after the day of the exchange of ratifications, and shall remain in force for the period of twelve years; and in case neither of the High Contracting Parties shall have notified to the other twelve months before the expiration of the said period of twelve years its intention to put an end to its operation, the Convention shall continue in force for another period of twelve years, and so on for successive periods of twelve years, until the expiration of a year counting from the day on which one or the other of the High Contracting Parties shall have announced its intention to put an end to it.

Article 16th.—The present Convention shall be submitted for the ratification of the High Contracting Powers, and the ratifications shall be exchanged at Lisbon or at London as soon as possible.

London, December 2nd, 1912.

S. Eusebio DA FONSECA.

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Annex E. No. 22

1918

Government of India, Department of Commerce and Industry.  
Excise General.

July. A. Proceedings. Nos. 7-10.

BASES OF CONVENTION

1st

The Portuguese Government engage to suppress the distillery at Dadra within the period of three months from the date of the ratification of the Convention, keeping in Damaun only one at Bonsolor, and in Nagar-Avely one at Amlí, and another at Candoli.

2nd

The Portuguese Government engage that the strength of the spirits manufactured in the central distilleries referred to in the foregoing article shall be always equal to that manufactured in British Indian territories being agreed to that, until further alteration by mutual accord of both Governments the strength of the spirits shall be of 25° and 60° a.p. 1, the former being allowed to be raised up to 27° and the latter up to 66°.

3rd

The Portuguese Government engage to collect on the spirits manufactured, at the distilleries referred to in bases 1st, the same rates of distillation as are levied in British India territory on the spirits of the same strength.

## 4th

The Portuguese Government engage to cause the spirits of mhowra flower to be sold in northern territories at the lowest price that should be established in British India.

## 5th

The Portuguese Government reserve to themselves the right of giving to any person or company the exclusive right of manufacturing and selling spirits in all their northern territories either together or separately, engaging that the sale price of the mhowra spirits in the Monopoliser's spirits shop shall be the lowest established in the preceding bases.

## 6th

The Portuguese Government engage not to allow in the native liquor shops to sell daily to one and same person a quantity of native spirits more than one imperial gallon, except on occasions of festivals, weddings, etc., under a license obtained by the purchaser from the local authority who shall grant it after making enquiries about the alleged demand.

## 7th

The Portuguese Government engage to cause the removal of the native liquor shops to a distance of half a mile from the frontier.

## 8th

The Portuguese Government engage to allow free transit of British products that pass through their territories, under the same condition as may be done by the British Government.

The British Government should take the following engagements.

## 9th

That in the territory of the Raja of Darampur bounded by some villages of Nagar-Avely, provisions similar to those mentioned in the bases 2nd, 3rd, 4th, 6th and 7th shall be adopted, the latter two being also adopted in British territories.

## 10th

To allow the export to the Portuguese northern territories, free of duties, of the quantity of the mhowra flower or another substance necessary for the manufacture of the native spirits for the consumption of the respective population estimated in the last census.

## 11th

To allow the native liquor shops of the villages of Dadra, Demni and Tigra to be supplied with spirits for the consumption of the respective population estimated in the last census from the distilleries of Nagar-Avely, being the spirits transported under a pass granted with legal formalities. Without this clause the distillery of Dadra cannot be suppressed.

## .12th

To allow the salt produced in the salt-works of Damaun to be exported not only to any place of British India but also to any of the Native States, in boats of any tonnage, by paying at respective ports the customs duties which should not be higher than those collected at present.

## 13th

To allow the products of Damaun and Nagar-Avely to be freely exchanged without the payment of duties at the British Customs posts up to such quantities as may be fixed according to the Customs statistics and enquiry to be held.

The Portuguese Government will take the necessary measure in order that by these concessions the other high contracting party may not suffer any injury and engage—

1st.—The quantity of salt shall be regulated at 14 pounds per head. To prevent any embezzlement or misdirection it shall be sent under a pass granted with the legal formalities accompanied by an escort from Damaun to Nagar-Avely, and stored in two depots established one at Silvassa and the other at Dadra. From these places it shall be distributed to the heads of families on the production of passes as it was done when the treaty of 26th December 1878 was in force.

2nd.—When salt is exported by sea the Chief Custom Officer at Damaun shall inform of its shipment, by the shortest route, the authority of the port of destination, and the exported shall be responsible to produce a certificate from the respective Customs stating that the salt shipped was discharged and cleared there.

3rd.—The products of Damaun in transit to Nagar-Avely and vice versa shall be accompanied by a pass signed and sealed at the Administrator's office stating the quality and quantity of goods, the name of the exporter, the route of transit to follow, the nature of conveyance and the name of the driver. These passes shall be presented at the British Custom posts and registered there, in order to institute legal proceedings against any person committing embezzlement or misdirection. Should it deem necessary, these products in transit may be also accompanied by an escort of regular troops in the same way as it is to be done with the salt.

## 14th

The British Government engage not to collect any duty on all British products which may be imported into Portuguese territories of Damaun and Nagar-Avely.

## 15th

This agreement shall last for period of ten years and it may be renewed every ten years by mutual accord of both parties.

## BASIS 13th

1st—Export from Nagar-Avely to Damaun—

- (a) Unlimited quantity:—Machines, agricultural tools, manure, furniture and utensils of material, forest products, linen,

cotton, oxen, buffaloes, goats, sheep, hide and skins, fowls, eggs, ghee, honey, game (animals shot by sportsmen) and fruits of all sorts.

(b) Limited quantity—

Unhusked rice . . . . .	5,000 aras or 100,000	Indian maunds.
Nacheny . . . . .	500 " "	15,000 " "
Codra . . . . .	30 " "	900 " "
Grains not specified . . . . .	20 " "	600 " "
Different sort of beans . . . . .	80 " "	2,400 " "
Jaggery of sugarcane . . . . .	4,000 lbs.	

2nd—Export from Damaun to Nagar-Avely—

(a) Illimited quantity:—Machines, agricultural tools, manures, furniture and utensils of any material, oxen, buffaloes, goats, sheep and pork, fowls, birds, game, fresh fish, mollusks, vegetables, fruits of all sort, fresh and salt meat, boots and shoes, wearing apparel, bread, flour, Portuguese coin, wearing jewellery and seeds of all sorts.

(b) Quantity limited

Salt . . . . .	500,000	lbs.
Bombay-ducks (bombilins). . . . .	40,000	"
Dry or salt fish of different varieties . . . . .	4,000	"
Toddy vinegar . . . . .	1,000	bottles.
Cocoanuts . . . . .	30,000	"
Claret wine . . . . .	1,800	"
Port wine . . . . .	50	"
Madeira wine . . . . .	50	"
Wine branco . . . . .	150	"
Soda, lemonade and other refreshing beverages without alcohol . . . . .	2,000	"
Champagne . . . . .	24	"
Cognac . . . . .	24	"
Olive oil . . . . .	300	"
Vegetables in tins . . . . .	100	lbs.
Dry beans (legumes) . . . . .	100	"
Dry fruit . . . . .	50	"
Fish in tins . . . . .	200	"
Curry in tins . . . . .	100	"
Dry cod . . . . .	150	"
Atum in tins . . . . .	100	"
Sardines in tins . . . . .	250	"
Preserved fruit (in tins or bottles) . . . . .	200	"
Jelly of fruit (in tins or bottles) . . . . .	200	"
Meat in tins . . . . .	100	"
Condiments for curry (in tins) . . . . .	50	"

3rd.—Free transit is permitted to all merchandise coming from, and going to, any part of British India, and Nagar-Avely and Damaun, or vice versa, with the exception of distillable substances whose variety and the respective limits are fixed in No. 5th.



4th.—Free transit is permitted to all merchandise between the Fort at Diu and the island of Simber and vice versa.

5th.—Yearly import of distillable substances—

(a) Into Nagar-Avely (Silvassa)—

Mhowra flower or jaggery or date . . . . . 293,000 lbs.

(b) Into Damaun—

Mhowra flower or jaggery or date . . . . . 180,000 „

(c) Into Diu—

Mhowra flower or jaggery or date . . . . . 143,000 „

Unique.—The maximum limit established in no way can be exceeded to, i.e., the total of the quantity imported either of one kind, or of two, or of three together cannot exceed to the fixed limit.

6th.—Free transit is yearly permitted to spirits mentioned below, from Silvassa to Portuguese villages of Dadra, Demni and Tigra.

Spirits of 25° a.p. 1 . . . . .	200 imp. gallons.
Spirits of 60° a.p. 1 . . . . .	800 imp. gallons.

#### BASIS UNDER WHICH CALCULATION HAS BEEN MADE

1st.—Import from Nagar-Avely into Damaun of unhusked rice—  
Population of Damaun according to the last census (1910), 18,300  
Normal consumption per head, 24 paras yearly—

$$18,300 \times 24 = 499,200 \text{ paras.}$$

The production of Damaun is sufficient to feed two-thirds of the population . . . . .	9,150 aras.
Wanted 4,575 aras (one-third) or in round figures per year . . . . .	5,000 „
Free transit every year, maximum or, say 100,000 Indian maunds . . . . .	5,000 „

2nd.—Salt from Damaun to be imported every year into Nagar-Avely—

Total population of the district, 29,020. At the rate of 14 lbs. of salt per head . . . . .	406,280 lbs.
20 per cent. for breakage . . . . .	81,256 „
Total of import . . . . .	487,536 „
Round figures . . . . .	500,000 „
In the deposit at Dadra 14 lbs. multiplied by 1,153 (population of the three villages) are to be kept . . . . .	16,142 „
20 per cent. for breakage . . . . .	3,228 „
Total . . . . .	19,370 „

Round figures . . . . .	20,000	„
In the deposit at Silvassa 14 lbs. multiplied by 27,867 (population of Nagar-Avely, ex- cluding the villages of Dadra, Demni, and Tigra) . . . . .	390,138	„
20 per cent. for breakage . . . . .	78,028	lbs.
Total . . . . .	468,166	„
Round figures . . . . .	480,000	„
Total import . . . . .	500,000	„

3rd.—*Materia prima* to be imported (mhowra flower or jaggery or date)

(a) District of Nagar-Avely—

One candy of mhowra flower 750 lbs. produces spirits of 60° (average of 4.5 gallons per every maund) . . . . .	900	gallons.
It is required every year 29,200 gallons of spirits of 60° and this requirement demands candies of mhowra flower or jaggery or date or lbs. . . . .	325	„
Plus 20 per cent. for breakage and any damages . . . . .	48,750	lbs.
Quantity to be imported every year . . . . .	292,500	lbs.
Round figures . . . . .	293,000	„

(b) Quantity of spirits requiring free transit from  
Silvassa to Dadra, Demni and Tigra—

Population of three villages . . . . .	1,163	
At the rate of 6 bottles per head or 1,153 gallons of spirit of 60° . . . . .	6,918	bottles.
The spirits requiring free transit are therefore—		
of 25° . . . . . 192 gallons equal to	384	of 60°.
of 60° . . . . . 769 „ „ „	769	
	1,153	of 60°.

Remark.—A candy from Surrate has 20 maunds and each maund 40 seers or lbs. 37.5.

(c) District of Damaun—

Population . . . . .	18,300	
At the rate of 6 bottles per head of spirits of 60° or 18,300 gallons . . . . .	109,800	bottles.
Candies of mhowra flower or jaggery or date 204 or . . . . .	150,000	lbs.
Plus 20 per cent. for breakage . . . . .	30,000	„
Quantity to be imported yearly . . . . .	180,000	„

## (d) District of Diu—

Population . . . . .	14,170
At the rate of 6 bottles per head . . . . .	85,020
Bottles of spirits of 60° or 14, 170 gallons.	
Candies required of mhowra flower or jaggery or date 157 or lbs. . . . .	118,500
Plus 20 per cent. for breakage . . . . .	23,700
Quantity to be imported every year . . . . .	142,200
Round figures . . . . .	143,000

No.  $\frac{10316}{450}$  Conf., Bombay Castle, dated the 6th December 1918

From

The Governor of Bombay,

To

His Excellency, SENOR JOSE DE FREITAS REBEIRO, Governor-General of Portuguese India.

I have the honour to refer to the correspondence ending with your Excellency's No. 231, dated the 21st July 1916, on the subject of the Customs, Salt and Excise arrangements in Daman and Nagar-Aveli and the adjoining districts of British India, and to inform Your Excellency that the British Government, having carefully considered the suggested "Bases of Convention" set forth in a document communicated by the Consul General for Portugal at Bombay, have decided that they are unable to agree to the further consideration of these clauses which provide for the interchange, free of British customs duty, of local products between Daman and Nagar-Aveli and the exemption from such duty of British products imported into these territories. It follows that the reciprocal clause providing for the free transit of British products through the territories of the Portuguese Government will be excluded from consideration. Your Excellency is doubtless aware that it has already been agreed between the respective Governments that the clause relating to the grant of permission for the export of salt works in Daman to British India and to Native States should be omitted. The further negotiations which it is proposed to undertake will thus be confined exclusively to the settlement of the arrangements in regard to the manufacture and sale of liquor, and the specific clauses of the suggested Bases of Convention which my Government are now prepared to discuss are the following, namely:—

## 1st

The Portuguese Government engage to suppress the distillery at Dadra within the period of three months from the date of the ratification of the Convention, keeping in Daman only one at Bensolor, and in Nagar-Aveli one at Ambli, another at Candoli.

## 2nd

The Portuguese Government engage that the strength of the spirits manufactured in the central distilleries referred to in the foregoing

article shall be always equal to that manufactured in British Indian territories being agreed to that, until further alteration by mutual accord of both Governments the strength of the spirits shall be of 25° and 60° a.p.l., the former being allowed to be raised up to 27° and the latter up to 66°.

## 3rd

The Portuguese Government engage to collect on the spirits manufactured at the distilleries referred to in basis 1st, the same rates of distillation as are levied in the British India territory on the spirits of the same strength.

## 4th

The Portuguese Government engage to cause the spirits of mhowra flower to be sold in northern territories at the lowest price that should be established in British India.

## 5th

The Portuguese Government reserve to themselves the right of giving to any person or company the exclusive right of manufacturing and selling spirits in all their northern territories either together or separately, engaging that the sale price of the mhowra spirits in the monopoliser's spirits shop shall be the lowest established in the preceding bases.

## 6th

The Portuguese Government engage not to allow in the native liquor shops to sell daily to one and the same person a quantity of native spirits more than one imperial gallon, except on occasions of festival, weddings, etc., under a licence obtained by the purchaser from the local authority who shall grant it after making inquiries about the alleged demand.

## 7th

The Portuguese Government engage to cause the removal of the native liquor shops to a distance of half a mile from the frontier.

. . . . .

The British Government should undertake the engagements mentioned below—

## 9th

That in the territory of the Raja of Dharampur bounded by some villages of Nagar Avely, provisions similar to those mentioned in the bases 2nd, 3rd, 4th, 6th and 7th shall be adopted; the latter two being also adopted in British territories.

## 10th

To allow the export to the Portuguese northern territories, free of duties, of the quantity of the mhowra flower or another substance necessary for the manufacture of the native spirits for the consumption of the respective population estimated in the last census.

11th

To allow the native liquor shops of the villages of Dadra, Demni and Tigra to be supplied with spirits for the consumption of the respective population estimated in the last census from the distilleries of Nagar-Avely, being the spirits transported under a pass granted with legal formalities. Without this clause the distillery of Dadra cannot be suppressed.

15th

This agreement shall last for a period of ten years and it may be renewed every ten years by mutual accord of both parties.

2. On receipt of an intimation that Your Excellency agree to the scope of the negotiations being defined as indicated above, the British delegate will be instructed to arrange for a meeting with the delegates of Your Excellency's Government.

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**Annex E. No. 23**

*Gazette of India, 1924, Pt. I, p. 474.*

NOTIFICATION

No. 2145, dated the 2nd June, 1924

In exercise of the powers conferred by section 19 of the Sea Customs Act, 1878 (VIII of 1878), the Governor General in Council is pleased to prohibit the bringing of Saccharine by land into British India from any of the foreign European Settlements, namely, Pondicherry, Karikal, Goa and Daman.

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**Annex E. No. 24**

*Record Office, Bombay*

1914

POLITICAL DEPARTMENT

No. 218. pp. 1, 3, 21.

Service of Republic

Government of Portuguese India.

No. 225, dated Nova Goa, the 2nd December 1913.

The Secretary to the Government of Bombay,  
Political Department.

In August last, it became necessary to send expeditiously from this city to Macau, *via* Bombay, 75 European Soldiers of Infantry.

The Consul General for Portugal having arranged for their passage, the above soldiers were despatched by this Government on their journey, in the belief that they would meet with no difficulty, since they would leave entirely unarmed, just as they were unarmed in the City of Bombay during their short stay there prior to embarkation. The two officers and one Sergeant who accompanied them went armed as is permitted by the agreement of 1908 to officers in transit of both nationalities.

The Portuguese Consul in Bombay in confining himself merely to giving intimation to the Bombay Secretariat was fully under the belief that the agreement contained in the letter No. 8714 of the 7th December 1912 from the Bombay Secretariat to the Consul was applicable.

Similar intimations are also received in this Secretariat from the British-Indian authorities for similar purposes, as will be seen from the accompanying copies of letters of the 15th May and 2nd September of the current year, from the District Magistrate of Ratnagiri and the Superintendent of Police of Kanara.

The Governor General, however, before whom your letter No. 5423 of 15th ultimo was placed, has directed me to state that, while much regretting the present occurrence, which was otherwise quite unintentional, has already issued the necessary instructions in order that it may not be repeated in future.

Health and Brotherhood.

(Signed) F. M. PEIXOTO VIEIRA.  
Chief Secretary.

True Translation.

Joseph BOCANO.  
Portuguese Translator to Government.

No. 458, dated 22nd January 1914

To

The Chief Secretary to the Government of Portuguese India.

Sir,

With reference to your letter No. 225 dated the 2nd December 1913, I am directed to state that the agreement contained in the letter from the Govt. of Bombay, No. 8714, dated the 7th December 1912, to the Consul General for Portugal at Bombay, refers to reciprocal arrangements relating to the passage of Police only and not of troops of the British or Portuguese Governments through intervening Portuguese or British territory; it also requires that previous intimation should be given to the local authorities before parties of police are despatched.

I have etc.

Intd. O.C.

I.N. 20/1

Secretary to Govt.

**Annex E. No. 25***Record Office, Bombay*

1915

**POLITICAL DEPARTMENT**

No. 331. Part. I, pp. 25, 28, 29, 31

CONSULADO GERÁL DE PORTUGAL  
NA INDIA BRITANICA

Bombay, 13th January, 1915.

No. 8.

The Secretary to Government,  
Political Department.

Bombay.

Sir,

I beg to bring to your notice that 11 soldiers duly armed of the Native Regiment of Daman, are transferred to Nagar-Avely and request you to be so good as to make the necessary communications to the competent authorities to allow them to proceed to their destination through the British territory.

Thanking in anticipation,

I have the honour to be,

Sir,

Your most obedient servant,

*(Signed)* Alfredo CASANOVA.**POLITICAL DEPARTMENT**

A. Branch

Reg. No. 451

Letter from the Consul General for Portugal at Bombay.

No. 8 dated 13th January, 1915.

Stating that 11 soldiers, duly armed, of the Native Regiment of Daman are transferred to Nagar-Avely, and requesting to be good enough to make the necessary communication to the authorities concerned.

Submitted.

A copy of the letter may be forwarded to the D.M. Surat, for such action as may be necessary, and the Consul General may be so informed.

Drafts are put up.

With F.C.

Intd. N'A 14/1

No. 266

P.D.

B.C. 15th Jany. '15.

To

The Consul General for Portugal  
at Bombay.

Sir,

With reference to your letter No. 8, dt. the 13th Jany. 1915, requesting the issue of orders for allowing 11 soldiers, duly armed of the Native Regiment of Daman to proceed to Nagar-Avely, I am directed to inform you that the necessary instructions have been issued to the D.M., Surat.

I have etc.,

intd. (illegible) 15/1

O.C.

Dy. Secy. to Govt. \_\_\_\_\_

Below a copy of a letter No. 8, dt. the 13th Jany, 1915, from the Consul General for Portugal at Bombay.

No. 267.

P.D.

B.C. 15th Jany. '15.

Copy forwarded with compliments to the D.M. Surat, for such action as may be necessary.

Intd. (illegible) 15/1

O.C.

Dy. Secy. to Govt. \_\_\_\_\_

**Annex E. No. 26***Record Office, Bombay*

1915

**POLITICAL DEPARTMENT**

No 331. Part I, pp. 131, 133, 134, 135

Bombay, 22nd March, 1915.

CONSULADO GERAL DE PORTUGAL

NA INDIA BRITANICA

No. 86

The Deputy Secretary to Government,

Political Department.

Secretariat,

Bombay.

Sir,

I have the honour to bring to your notice that shortly from Nova-Goa will proceed to Nagar Avely a soldier of the Health Department named



Rafael Sarbinha, and request you to be so good as to instruct the competent Authorities allowing him to proceed to his destination.  
Thanking in anticipation.

I have the honour to be,  
Sir,

Your most obedient servant,  
(Signed) Antonio Pedro J. FERNANDEZ.  
Actg. Chancellor  
for Consul General for Portugal.

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CONSULADO GERAL DE PORTUGAL  
NA INDIA BRITANICA

Bombay, 22nd March, 1915.

No. 87

The Deputy Secretary to Government,  
Political Department.  
Secretariat,

Bombay.

Sir,

I have the honour to inform you that shortly from Damaun will proceed to Nova-Goa a soldier belonging to the Native Regiment, and request you to be so good as to make the necessary communications to the competent Authorities allowing him to proceed to his destination.

Thanking in anticipation,

I have the honour to be,  
Sir,

Your most obedient servant,  
(Signed) Antonio Pedro J. FERNANDEZ.  
Actg. Chancellor  
for Consul General for Portugal.

---

A 2733 Poll.

Submitted.

Vide also R. I.

No. 2734 ante.

The usual drafts are put up.

Intd. N.A. 24/3

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No. 1807

P.D.

B.C. 26th March '15.

To

The Consul General for Portugal  
at Bombay.

Sir,

With reference to your Chancellor's letters Nos. 86 & 87, dt. the 22nd March 1915, requesting the issue of orders allowing a soldier named Rafael Sarbinha to proceed from Nova Goa to Nagar Avely, and another from Daman to Nova-Goa, I am directed to inform you that the necessary instructions have been issued to the Commr. of Police, Bombay.

I have etc.

intd. (illegible)

O.C.

For Dy. Secy. to Govt.

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**Annex E. No. 27**

*Record Office, Bombay*

1915

POLITICAL DEPARTMENT

No. 331. Part. I, pp. 1, 4, 5, 7

CONSULADO GERAL DE PORTUGAL  
NA INDIA BRITANICA

Bombay, 5th January, 1915.

No. 3.

The Secretary to Government,  
Political Department.

Bombay.

Sir,

I beg to inform you that shortly will arrive here 27 soldiers of Native Regiment of Goa on their way to Daman and Diu and request you to be so good as to issue the necessary orders for allowing them to land here and to proceed their destination.

Thanking in anticipation.

I have the honour to be,

Sir,

Your most obedient Servant,  
*(Signed)* Alfredo CASANOVA.

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## POLITICAL DEPARTMENT

A. Branch

Reg. No. 218

Letter from the Consul General for Portugal at Bombay.

No. 3 dated 5th Jany 1915.

Stating that 27 soldiers of Native Regiment of Goa will shortly arrive B'bay on their way to Daman and Diu, and requesting orders to allow them to land in B'bay, and to proceed to their destination.

Submitted

1. A copy of the letter may be forwarded to the Commr. of Police, Bombay, for such action as may be necessary.

2. The Consul General may be informed of the action taken. Drafts are put up.

With F. C.

Intd. N.A. 7/1

No. 92

P.D.

B.C. 8th Jany. '15.

To

The Consul General for Portugal  
at Bombay.

Sir,

With reference to your letter No. 3, dt. the 5th Jany. 1915, requesting the issue of orders for allowing 27 soldiers of a Native Regiment from Goa to land in Bombay and proceed to Daman and Diu, I am directed to inform you that the necessary instructions have been issued to the Commr. of Police, Bombay.

I have etc.,

O.C.

Dy. Secy. to Govt.

Intd. N.A. 7/1

Below a copy of a letter No. 3, dt. the 6th Jany. 1915, from the Consul-General for Portugal at Bombay.

No. 93

P.D.

B.C. 8th Jany. '15.

Copy forwarded with compliments to the Commr. of Police, Bombay, for such action as may be necessary.

O.C.

Dy. Secy. to Govt.

Intd. N.A. 7/1

## Annex E. No. 28

Record Office, Bombay

1915

POLITICAL DEPARTMENT

No. 331. Part I. pp. 69-70, 73.

CONSULADO GERAL DE PORTUGAL  
NA INDIA BRITANICA

Bombay, 10th. February, 1915.

No. 38.

The Secretary to Government,  
Political Department.

Bombay.

Sir,

I beg to bring to your notice that shortly will arrive here from Goa in order to proceed to Daman 1st. Sergeant of the Native Regiment of Infantry named Jose Azevedo Coelho and two soldiers of the same Regiment, Chondru Colgarcar and Bica Locu Naique, and request you to be so good as to make the necessary communications to the competent authorities allowing them to land here and proceed their destination.

Thanking in anticipation,

I have the honour to be,

Sir,

Your most obedient servant,  
(Signed) Alfredo CASANOVA.

A. 1414 POLL.

Submitted.

The usual communication may be made to the Commr. of Police, B'bay, and the Consul General may be informed accordingly.

Drafts are put up.

With F.C.

intd. N.A. 11/2

Below a copy of a letter No. 38 dt. the 10th Feby. 1915.

No. 904.

P.D.

B.C. 12th Feby. '15.

Copy forwarded with compliments to the Commr. of Police, Bombay, for such action as may be necessary.

intd. (illegible)

12/2

O.C.

Dy. Secy. to Govt.

intd. N.A. 11/2

No. 905.

P.D.

B.C. 12th Feby. '15.

To

The Consul General for Portugal  
at Bombay.

Sir,

With reference to your letter No. 38, dt. the 10th Feby. 1915, requesting the issue of orders allowing the 1st. Sergeant of the Native Regiment of infantry and two soldiers of the same Regiment, who are expected to arrive in Bombay soon, to proceed to Daman, I am directed to inform you that the necessary instructions have been issued to the Commr. of Police, Bombay.

I have etc.

intd. (illegible) 12/2

O.C.

Dy. Secy. to Govt.

intd. N.A. 11/2

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Annex E. No. 29

*Record Office, Bombay*

1915

POLITICAL DEPARTMENT

No. 331. Part I, pp. 95-97, 99.

CONSULADO GERAL DE PORTUGAL  
NA INDIA BRITANICA

Bombay, 8th, March, 1915.

No. 67.

The Secretary to Government,  
Political Department.

Bombay.

Sir,

I beg to bring to your notice that shortly will arrive here from Goa en route to Damaun nineteen soldiers of Infantry Regiment, and request you to be so good as to make the necessary communications to the competent authorities allowing them to land here and proceed their destination.

Thanking in anticipation,

I have the honour to be,

Sir,

Your most obedient servant,  
(Signed) Antonio Pedro J. FERNANDEZ  
Actg. Chancellor  
for Consul General for Portugal.

A. 2190.  
Submitted.

POLL.

The usual drafts are put up. With F.C.  
intd. N.A. 9/3

---

Below a copy of a letter No. 67, dt. the 8th March 1915, from the  
Consul General for Portugal at B'bay.

No. 1457.

P.D.

B.C. 10th March '15.

Copy forwarded with compliments to the Commr: of Police, Bombay;  
for such action as may be necessary.

intd. (illegible) 10/3

O.C.

Dy. Secy. to Govt.

intd. N.A. 9/3

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No. 1456.

P.D.

B.C. 10th March '15.

To

The Consul General for Portugal  
at Bombay.

Sir,

With reference to your Chancellor's letter No. 67, dt. the 8th March  
1915, requesting the issue of orders allowing 19 soldiers of the Infantry  
Regiment, who are expected shortly to arrive in Bombay from Goa to  
proceed to Daman, I am directed to inform you that the necessary  
instructions have been issued to the Commr: of Police, Bombay.

I have etc.

intd. (illegible)

10/3

O.C.

Dy. Secy. to Govt.

intd. N.A. 9/3

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## Annex E. No. 30

*Record Office, Bombay*

1915

## POLITICAL DEPARTMENT

No. 331. Part I, pp. 145-7, 149

CONSULADO GERAL DE PORTUGAL  
NA INDIA BRITANICA

Bombay, 29th. March, 1915.

No. 96.

The Deputy Secretary to Government,  
Political Department,  
Secretariat,

Bombay.

Sir,

I have the honour to inform you that from Damaun will shortly proceed to Nova-Goa 14 soldiers of the Native Regiment, and request you to be so good as to make the necessary communication to the competent Authorities allowing them to proceed to their destination.

Thanking in anticipation,

I have the honour to be,

Sir,

Your most obedient servant,  
(Signed) Antonio Pedro J. FERNANDEZ  
Actg. Chancellor  
for Consul General.

A 2983

POLL.

Submitted with drafts to the Consul General for Portugal and the Commr. of Police, Bombay.

Intd. B.L.B. 30/3/15

No. 1908.

Poll. Deptt.

B.C. 30th March 1915.

To

The Consul General for Portugal  
at Bombay.

Sir,

With reference to your Chancellor's letter No. 96 dated the 29th March 1915, stating that 14 soldiers of the Native Regiment will proceed from

Daman to Nova-Goa, I am directed to inform you that the necessary instructions have been issued to the Commr: of Police, Bombay.

I have etc.

intd. (illegible) 30/3/15  
O.C.  
for Dy. Secy. to Govt.

Below a copy of a letter No. 96 dated the 29th March 1915 from the Consul General for Portugal at Bombay.

No. 1909  
Poll. Deptt.

B.C. 30th March 1915.

Copy forwarded with compliments to the Commr: of Police, Bombay, for such action as may be necessary.

O.C.  
for Dy. Secy. to Govt.

Intd. B.L.B. 30/3/15

**Annex E. No. 31**

*Record Office, Bombay*

1917

**POLITICAL DEPARTMENT**

No. 65, pp. 107, 109, 110, 111, 113.

CONSULADO GERAL DE PORTUGAL  
NA INDIA BRITANICA

Bombay, 10th. February, 1917.

The Deputy Secretary to Government.  
Political Department.  
Bombay.

Sir,

I have the honour to inform you that shortly will leave Damaun for Nagar-Aveli three soldiers of Native Regiment and to request you to be so good as to instruct the competent Authorities at Cunta and Xala to allow them to proceed to their destination.

Thanking you in anticipation.

I have the honour to be,

Sir,

Your most obdient servant,  
(Signed) Alfred CASANOVA.



CONSULADO GERAL DE PORTUGAL  
NA INDIA BRITANICA

No. 36.

Bombay, 10th. February, 1917

The Deputy Secretary to Government.  
Political Department.  
Bombay.

Sir,

I have the honour to inform you that on or about the 20th inst. will arrive here from Nova-Goa in order to proceed to Damaun six soldiers of Native Regiment named Joao Antonio Afonso, Xencora Naique, Joao Piedade Dias, Issub Can, Gopala Matarop Salcar and Xequé Daud and request you to be so good as to instruct the competent Authorities to allow them to land at and proceed to their destination.

Thanking in anticipation.

I have the honour to be,

Sir,

Your most obedient servant  
(Signed) Alfred CASANOVA.

---

Below copy of a letter No. 36, dated the 10th February 1917, from the Consul-General for Portugal at Bombay.

No. 1226.

P.D.

B.C. 14th Feb. 1917.

Copy forwarded with compliments to the Commissioner of Police, Bombay, for necessary action.

intd. (illegible)

14/2/17

for Deputy Secy. to Govt.

The same to the Coll. & P.A., Surat, (with the marginal change)

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No. 1227

P.D.

B.C. 14th Feb. 1917.

To

The Consul General for Portugal  
at Bombay.

Sir,

I am directed to acknowledge the receipt of your letters Nos. 36 and 37, dated the 10th Feb. '17, on the subject of the movements of certain

soldiers of Native Regiment, and to inform you that the necessary instructions have been issued to the authorities concerned.

I have etc.

intd. (illegible) 14/2/17 .  
O.C.

for Deputy Secy. to Govt.

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**Annex E. No. 32**

*Record Office, Bombay*

1917

**POLITICAL DEPARTMENT**

No. 65, pp. 275, 276, 277

CONSULADO GERAL DE PORTUGAL  
NA INDIA BRITANICA

Bombay, 7th August 1917.

No. 49.

The Deputy Secretary to Government of Bombay.  
Political Department,  
Bombay.

Sir,

I have the honour to inform you that shortly will arrive to Bombay, en route to Silvassa, Nagar-Avely, from Goa, Captain Joao Antonio Venceslau Melo together with a soldier named Antonio Paulo Fernandes, and to request you to be so good as to issue necessary instructions for their free transit.

*Thanking in anticipation.*

I have the honour to be,

Sir,

Your most obedient servant.

*(Signed)* B. D'ALPOIM  
Consul General for Portugal.

A. 6944

POLL.

Submitted.

Usual draft letters are put up.

intd. (illegible) 8/8/17

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## POLITICAL DEPARTMENT

No. 5930

Bombay Castle, 10th August 1917.

To

The Consul General for Portugal  
at Bombay.

Sir,

With reference to your letters Nos. 48 & 49, dated the 7th August 1917, regarding the arrival here of two officers and a soldier from Goa *en route* to Damaun and Nagar Avelly, I am to state that the necessary instructions have been issued to the Commissioner of Police, Bombay.

I have, etc.,

intd. (illegible) 10/8

O.C.

for Dy. Secretary to Govt.

Below copies of letters from the Consul General for Portugal at Bombay No. 48 & 49 dated the 7th August 1917.

## POLITICAL DEPARTMENT

No. 5931

Bombay Castle, 10th August 1917.

Copies forwarded with compliments to the Commissioner of Police, Bombay, for the necessary action.

intd. (illegible) 10/8

O.C.

for Dy. Secretary to Govt.

## Annex E. No. 33

Record Office, Bombay

1926-36

## POLITICAL AND REFORMS DEPARTMENT

A. Branch. File No. 3994

Part I. pp. 89, 91, 93

CONSULADO GERAL DE PORTUGAL

NA INDIA BRITANICA

BOMBAIM.

Bombay, 28th January 1933.

No. 36-DV

Proc. 569

The Chief Secretary to the Government of Bombay,  
Political Department,

Bombay,

*Very Urgent*

Sir,

I have the honour to inform you that in connection with the visit to Damao of H.E. the Governor General of Portuguese India a detachment of armed forces will have to move from Nagar-Avelly to Damao (city) and back, between the 30th instant and the 4th February.

2. I should therefore be much obliged by your issuing the necessary instructions to the competent Authorities in order to allow the transit of the said forces in British territory.

3. I would request you to kindly treat this matter as very urgent.

I have the honour to be,

Sir,

Your most obedient servant,  
(Signed) Antonio ALVES  
Consul General for Portugal.

## POLITICAL DEPARTMENT

No. 3994-B

Bombay Castle, 30th January 1933.

From

C. W. A. Turner, Esquire, C.S.I., C.I.E.,  
Chief Secretary to the Government of Bombay,  
Political Department.

To

The Consul General for Portugal  
at Bombay.

Sir,

I am directed by the Governor in Council to acknowledge the receipt of your letter No. 36-DV 569, dated the 28th January 1933, regarding

the proposed movements of a detachment of armed forces from and to Nagar-Avely in connection with the visit of His Excellency the Governor General of Portuguese India to Damao, and to say that the necessary instructions have been issued to the officers concerned.

I have the honour to be,

Sir,

Your most obedient servant,

intd. (illegible) 30/1/33

O.C.

for Chief Secretary to the Government of Bombay,  
Political Department.

---

Below a copy of a letter from the Consul General for Portugal at Bombay No. 36-VD/569, dated the 28th January 1933.

POLITICAL DEPARTMENT

No. 3994-B

Bombay Castle, 30th January 1933.

Forwarded with compliments for information and guidance to:—

The Inspector General of Police, Bombay Presidency.

The Deputy Inspector General of Police,

Criminal Investigation Department.

The District Magistrate, Surat.

The District Magistrate, Thana,

The District Superintendent of Police, Surat,

The District Superintendent of Police, Thana,

The Superintendent of Police, B.B. & C.I. Railway.

By order, etc.

intd. (illegible) 30/1/33

O.C.

For Chief Secretary to the Government of Bombay,  
Political Department.

**Annex E. No. 34***Record Office, Bombay*

1926-'36

**POLITICAL AND REFORMS DEPARTMENT**

A. Branch. File No. 3994

Part. I pp. 95, 97, 99

CONSULADO GERAL DE PORTUGAL  
 NA INDIA BRITANICA,  
 BOMBAIM.

29th June 1933.

No. 419-DV

Proc. 570

*Urgent*

The Offg. Chief Secretary to the Government of Bombay,  
 Political and Reforms Department,  
 Bombay.

Sir,

I have the honour to request you to be so good as to move the competent Authorities to allow free transit to two soldiers accompanying an official of the Portuguese Revenue Department, who will carry funds from Damao to Nagar-Aveli and thence to Bombay on the 7th July next.

I have the honour to be,

Sir,

Your most obedient servant,  
*(Signed)* Antonio ALVES.  
 Consul General for Portugal.

**POLITICAL AND REFORMS DEPARTMENT**

No. 3994-A

Bombay Castle, 30th June 1933.

From

C. W. A. Turner, Esquire, C.S.I., C.I.E.,  
 Chief Secretary to the Government of Bombay,  
 Political and-Reforms-Department.

To

The Consul General for Portugal  
 at Bombay.

*Subject:* Free transit to two Portuguese soldiers accompanying an official of the Portuguese Revenue Department.

Sir,

I am directed by the Governor in Council to acknowledge the receipt of your letter No. 419-DV, dated the 29th instant, regarding the free transit to two soldiers accompanying an official of the Portuguese

Revenue Department, and to say that the necessary instructions have been issued to the officers concerned.

I have the honour to be,

Sir,

Your most obedient servant,  
intd. C.W.A.T. 30/6/33  
O.C.

Chief Secretary to the Government of Bombay,  
Political and Reforms Department.

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POLITICAL AND REFORMS DEPARTMENT

No. 3994-A

Bombay Castle, 30th June 1933.

Forwarded with compliments for information and guidance to:—

The Inspector General of Police, Bombay Presidency,  
The Deputy Inspector General of Police,  
Criminal Investigation Department.  
The Commissioner of Police, Bombay.  
The Collector of Customs, Bombay.  
The District Magistrate, Surat.  
The District Superintendent of Police, Surat,  
The Superintendent of Police, B.B. & C.I. Railway.

By order of the Governor in Council,

(C. W. A. TURNER)

O.C.

Chief Secretary to the Government of Bombay,  
Political and Reforms Department.

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## Annex E. No. 35

Record Office, Bombay

1926-'36

## POLITICAL AND REFORMS DEPARTMENT

A Branch. File No. 3994

Part I, pp. 117, 119, 121

CONSULADO GERAL DE PORTUGAL  
 NA INDIA BRITANICA,  
 BOMBAIM.

Bombay, 26th April 1934.

No. 333-DV

Proc. 570

The Chief Secretary to the Government of Bombay,  
 Political and Reforms Department,  
 Bombay.

Sir,

I have the honour to request you to be so good as to issue the necessary instructions to the competent Authorities to allow free transit to an armed escort of 2 soldiers who, on the 7th. proximo, will move from Damao to Silvassa and from Silvassa to Bombay and vice-versa to accompany a Portuguese Official carrying money to deposit in Bombay.

I have the honour to be,

Sir,

Your most obedient servant,

(Signed) Antonio Pedro J. FERNANDEZ,

Vice Consul,

Acting Consul General for Portugal.

## POLITICAL AND REFORMS DEPARTMENT

No. 3994-A

Bombay Castle, 27th April 1934.

From

C. W. A. Turner, Esquire, C.S.I., C.I.E.,  
 Chief Secretary to the Government of Bombay,  
 Political and Reforms Department.

To

The Vice Consul in charge of the  
 Consulate General for Portugal  
 at Bombay.

Subject:—Free transit to an armed escort of two soldiers accom-  
 panying a Portuguese Official.

Sir,

I am directed by the Governor in Council to acknowledge the receipt of your letter No. 333-DV, dated the 26th April 1934, regarding the free



transit, to an armed escort of two soldiers accompanying a Portuguese Official, and to state that necessary instructions have been issued to the officers concerned.

I have the honour to be,

Sir,

Your most obedient servant,  
intd. (illegible) 27/4  
O.C.

For Chief Secretary to the Government of Bombay,  
Political and Reforms Department.  
(F.C. below)

Below a copy of a letter from the Vice Consul in charge of the Consulate General for Portugal at Bombay, No. 333-DV dated the 26th April 1934.

POLITICAL AND REFORMS DEPARTMENT

No. 3994-A

Bombay Castle, 27th April 1934.

Forwarded with compliments for information and guidance to:--

The Inspector General of Police,  
Bombay Presidency,

The Deputy Inspector General of Police, Criminal  
Investigation Department,

The Commissioner of Police, Bombay,

The Collector of Customs, Bombay,

The District Magistrate, Surat,

The District Superintendent of Police, Surat,

The Superintendent of Police, B.B. & C.I. Railway.

By order, etc.

intd. (illegible) 27/4  
O.C.

For Chief Secretary to the Government of Bombay  
Political and Reforms Department.

**Annex E. No. 36***Record Office, Bombay*

1926-36

**POLITICAL AND REFORMS DEPARTMENT**

A Branch. File No. 3994

Part I, pp. 129, 131, 133, 135

CONSULADO GERAL DE PORTUGAL  
 NA INDIA BRITANICA,  
 BOMBAIM.

Bombay, 15th March 1935.

No. 95-DV

Proc. 570

The Chief Secretary to the Government of Bombay,  
 Political and Reforms Department,  
 Bombay.

Sir,

I have the honour to request you to be so good as to move the competent Authorities to allow free transit to two armed soldiers who will be escorting a Portuguese Government Official on the 26th, instant from Damao to Silvassa and from Silvassa to Bombay and back, as he will be carrying with him money to be deposited in Bombay.

I have the honour to be,

Sir,

Your most obedient servant,  
 (Signed) Carlos DA MESQUITA  
 Consul for General Portugal.

**POLITICAL AND REFORMS DEPARTMENT**

No. 3994-A

Bombay Castle, 19th March 1935.

From

H. T. Lambrick, Esquire,  
 Deputy Secretary to the Government of Bombay,  
 Political and Reforms Department.

To

The Consul General for Portugal  
 at Bombay.

*Subject*:—Free transit to an armed escort of two soldiers accompanying a Portuguese Official.

Sir,

I am directed by the Governor in Council to acknowledge the receipt of your letter No. 95-DV, dated the 15th March 1935, regarding the free transit to an armed escort of two soldiers accompanying a Portuguese

Official, and to state that necessary instructions have been issued to the officers concerned.

I have the honour to be,  
Sir,

Your most obedient servant,  
intd. (illegible) 19/3  
O.C.

Deputy Secretary to the Government of Bombay  
Political and Reforms Department.

Below a copy of a letter from the Consul General for Portugal at Bombay, No. 95-DV, dated the 15th March 1935.

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POLITICAL AND REFORMS DEPARTMENT

No. 3994-A

Bombay Castle, 19th March 1935.

Forwarded with compliments for information and guidance to:—

The Inspector General of Police, Bombay Presidency,  
The Deputy Inspector General of Police, Criminal Investigation  
Department,

The Commissioner of Police, Bombay,

The Collector of Salt Revenue, Bombay,

The District Magistrate, Surat,

The District Superintendent of Police, Surat,

The Superintendent of Police, B.B. & C.I. Railway.

By order, etc.

intd. (illegible) 19/3  
O.C.

Deputy Secretary to the Government of Bombay,  
Political and Reforms Department.

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CONSULADO GERAL DE PORTUGAL  
NA INDIA BRITANICA,  
BOMBAIM.

Bombay, 25th March 1935.

No. 100-DV

Proc. 570

The Chief Secretary to the Government of Bombay,  
Political and Reforms Department,  
Bombay.

Sir,

I have the honour to acknowledge, with thanks, the receipt of your letter no. 3994-A, dated the 19th instant, intimating that the necessary

instructions have been issued to the officers concerned, regarding the free transit to two soldiers accompanying a Portuguese Official.

I have the honour to be,  
Sir,

Your most obedient servant,  
(Signed) Carlos DA MESQUITA  
Consul General for Portugal.

---

**Annex E. No. 37**

*Record Office, Bombay*

1926-36

**POLITICAL AND REFORMS DEPARTMENT**

Branch A. File No. 3994

Part. I, pp. 137, 139, 141, 143

CONSULADO GERAL DE PORTUGAL  
NA INDIA BRITANICA,  
BOMBAIM.

Bombay, 16th July 1935.

No. 226-DV

Proc. 570

The Chief Secretary to the Government of Bombay,  
Political and Reforms Department,  
Bombay.

Sir,

I have the honour to request you to be so good as to move the competent Authorities to allow free transit to an armed escort of two soldiers accompanying a Portuguese Official on the 26th instant, from Damao to Silvassa and from Silvassa to Bombay and back, as the same Official will be carrying with him money to be deposited in Bombay.

I have the honour to be,

Sir,

Your most obedient servant,  
(Signed) Carlos DA MESQUITA  
Consul General for Portugal.

---

## POLITICAL AND REFORMS DEPARTMENT

No. 3994-A

Bombay Castle, 20th July 1935.

From

J. H. Garrett, Esquire, C.S.I.,  
Offg. Chief Secretary to the Government of Bombay,  
Political and Reforms Department.

To

The Consul General for Portugal  
at Bombay.

*Subject*:—Free transit to an armed escort of two soldiers accompanying a Portuguese Official.

Sir,

I am directed by the Governor in Council to acknowledge the receipt of your letter No. 226-DV, dated the 16th July 1935, regarding the free transit to an armed escort of two soldiers accompanying a Portuguese Official, and to state that necessary instructions have been issued to the officers concerned.

I have the honour to be,

Sir,

Your most obedient Servant,  
intd. (illegible) 19/7

O.C.

For Offg. Chief Secretary to the Government of  
Bombay, Political and Reforms Department.

Below a copy of a letter from the Consul General for Portugal at Bombay, No. 226-DV, dated the 16th July 1935.

## POLITICAL AND REFORMS DEPARTMENT

No. 3994-A

Bombay Castle, 20th July 1935.

Forwarded with compliments for information and guidance to:—

The Inspector General of Police, Bombay Presidency,  
The Deputy Inspector General of Police, Criminal Investigation  
Department,

The Commissioner of Police, Bombay,  
The Collector of Salt Revenue, Bombay,  
The District Magistrate, Surat,  
The District Superintendent of Police, Surat,  
The Superintendent of Police, B.B. & C.I. Railway.

By order, etc.

intd. (illegible) 19/7

O.C.

For Offg. Chief Secretary to the Government of Bombay,  
Political and Reforms Department.

CONSULADO GERAL DE PORTUGAL  
NA INDIA BRITANICA  
BOMBAIM

Bombay, 22nd July 1935-

No. 231-DV

Proc. 570

The Chief Secretary to the Government of Bombay,  
Political and Reforms Department,  
Bombay.

Sir,

I have the honour to acknowledge, with thanks, the receipt of your letter no. 3994-A, dated the 20th, instant, intimating that the necessary instructions have been issued to the officers concerned, regarding the free transit to two soldiers accompanying a Portuguese Official.

I have the honour to be,

Sir,

Your most obedient servant,  
(Signed) Carlos DA MESQUITA,  
Consul General for Portugal.

---

**Annex E. No. 38**

*Record Office, Bombay*

1926-36

**POLITICAL AND REFORMS DEPARTMENT**

A Branch. File No. 3994

Part I. pp. 273, 274, 275, 279

No. 3994/10653-A

Political and Services Department.

Bombay Castle, 27th May 1940-

From

Dr. H. T. Sorley, C. I. E.,  
Chief Secretary to the Government of Bombay,  
Political and Services Department.

To

The Chief of the Cabinet,  
Government of Portuguese India,  
Nova-Goa.

Sir,

With reference to your telegram No. 35, dated the 23rd May, 1940, regarding the entry into Bombay on the 5th June, 1940, of armed guard for the purpose of accompanying the treasury officer, Silvassa, who is going to deposit funds in the Bank "Ultramarino" in Bombay City, I

am directed to state that instructions have been issued to the officers concerned for the grant of necessary facilities.

I have the honour to be,

Sir,

Your most obedient servant,  
O.C.

intd. MI 25/5/50

M. ISAAC,

for Chief Secretary to the Government of Bombay,  
Political and Services Department.

POLITICAL AND SERVICES DEPARTMENT

No. 3994/10653-A

Bombay Castle, 27th May 1940.

Copy, with a copy of the translation of the telegram under reference, forwarded with compliments to the undermentioned officers for information and such action as may be necessary.

By order of the Governor of Bombay,  
(Signed) M. ISAAC 25/5/40  
O.C.

For Chief Secretary to the Government of Bombay,  
Political and Services Department.

To

The Inspector General of Police, Province of Bombay,  
The Deputy Inspector General of Police, Criminal Investigation  
Department,  
The Commissioner of Police, Bombay,  
The District Magistrate, Surat,  
The District Superintendent of Police, Surat,  
The Superintendent of Police, B.B. & C.I. Railway,  
The Collector of Salt Revenue,  
The Collector of Customs, Bombay

Copy of the translation of the telegram from the Chief of the Cabinet,  
Nova Goa, No. 35, dated the 23rd May 1940.

“Request you kindly to permit the entry into Bombay on 5th June next of armed guard for the purpose of accompanying the treasury officer, Silvassa, who is going to deposit funds in the Bank ‘Ultramarino’ in that City.”

Service of the Republic  
 General Government  
 Cabinet Department  
 No. 175/G  
 Case No. 53-F/939/59  
 Issue No. 690

Nova-Goa, 30th May 1940.

To

The Chief Secretary to the Government of Bombay,  
 Political and Services Department,  
 Bombay

Most Excellent Sir,

Acknowledging the receipt of letter No. 3994/10653-A of the 27th instant, I have the honour to thank you for the facilities granted.  
 Please accept the assurances of my regard.

(Signed) A. Delduque DA COSTA,  
 Major  
 Chief of the Cabinet.

True Translation  
 (Signed) Louis G. PINTO  
 Portuguese Translator to Government.

Home Department,  
 5th June 1940

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Annex E. No. 39

Act No. XXXI. of 1860

RECEIVED THE ASSENT OF THE GOVERNOR-GENERAL ON THE 17TH JULY,  
 1860

An Act relating to the Manufacture, Importation, and Sale of Arms and Ammunition, and for regulating the right to keep and use the same, and to give power of disarming in certain cases.

Whereas it is expedient to regulate the manufacture, importation, and sale of Arms and Ammunition and the right to keep and use the same, and also to give power of disarming districts and places in certain cases: It is enacted as follows:—

17. No cannon, howitzer, or mortar, and no arms, percussion caps, sulphur, saltpetre, gunpowder, or other ammunition, shall be imported either by sea or by land into any part of the territories in the possession and under the Government of India except under a licence from the Governor-General of India in Council, or from some officer authorised in that behalf by the Governor-General of India in Council.

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## Annex E. No. 40

Record Office, Bombay

1926-36

## POLITICAL AND REFORMS DEPARTMENT

A Branch. File No. 3994

Part. I pp. 211, 213

GOVERNMENT OF THE STATE OF INDIA,

66

Issue No. 52

Nova Goa, 11th January 1939.

To

The Governor of Bombay.

Your Excellency,

I have the honour to request of Your Excellency that the necessary orders may be issued in order that free transit may be allowed to three muskets "Snyder" 14 mm M/94 which are being sent back from Silvassa (Nagar-Aveli) to the headquarters of the Police Force at Damaun and to another three which are being sent from Damaun to that locality to replace the former.

I avail myself of the opportunity to renew to Your Excellency the assurances of my highest regard.

(Signed) Jose CABRAL,  
Governor General.

True Translation

(Signed) Louis G. PINTO,

Portuguese Translator to Government.

Home Department  
16th January 1939.

## POLITICAL AND SERVICES DEPARTMENT

No. 3994-A

Bombay Castle, 25th January 1939.

From

Sir Gilbert Wiles, K.C.I.E., C.S.I.,  
Chief Secretary to the Government of Bombay,  
Political and Services Department.

To

The Chief of the Cabinet,  
Government of Portuguese India,  
Nova Goa.

Sir,

I am directed to acknowledge the receipt of the letter from His Excellency the Governor General of Portuguese India, to His Excellency the

Governor of Bombay, No. 52, dated the 11th January 1939, regarding the transit of three muskets, "Snyder" 14 mm M/94 which are being sent back by the Government of Portuguese India from Silvassa (Nagar-Aveli) to the headquarters of the Police Force at Damaun and of another three which are being sent from Damaun to Silvassa to replace the former and to state that instructions have been issued to the officers concerned for the grant of necessary facilities.

I have the honour to be,

Sir,

Your most obedient servant,  
intd. (illegible) 25/1

O.C.

for Chief Secretary to the Government of Bombay  
Political and Services Department.

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POLITICAL AND SERVICES DEPARTMENT

No. 3994-A

Bombay Castle, 25th January 1939.

Copy, with a copy of a translation of the letter under reference, forwarded with compliments to the undermentioned officers for information and guidance.

By order of the Governor of Bombay

O.C. intd. (illegible) 25/1

for Chief Secretary to the Government of Bombay,  
Political and Services Department.

To

The Inspector General of Police, Province of Bombay,  
The Deputy Inspector General of Police,  
Criminal Investigation Department,  
The District Magistrate, Surat.  
The District Superintendent of Police, Surat,  
The Superintendent of Police, B.B. & C.I. Railway,  
The Collector of Customs, Bombay.

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**Annex E. No. 41***Record Office, Bombay*

1926-36

**POLITICAL AND REFORMS DEPARTMENT**

A Branch. File No. 3994

Part I pp. 219, 221, 222

Government of the State of India.

Nova-Goa, 24th March 1939.

No. 435.

Issue No. 374.

To

The Governor of Bombay.

Your Excellency,

I have the honour to request Your Excellency that the necessary orders may be issued in order that free transit may be allowed to 8 muskets 8 mm. M/86-89 (complete) with 400 ball-cartridges m/99 and also to one revolver M/86 with the respective cartridges numbering 50. These arms and ammunition will be sent from the Police Command of Damaun to the Division of Silvassa (Nagar-Aveli).

I avail myself of the occasion to renew to Your Excellency the assurances of my highest regard.

(Signed) Jose CABRAL  
Governor General.

True Translation,

Home Department

29th March 1939.

(Signed) Louis G. PINTO,  
Portuguese Translator to Government.

**POLITICAL AND SERVICES DEPARTMENT**

No. 3994/5853-A

Bombay Castle, 4th April 1939.

From

Sir Gilbert Wiles, K.C.I.E., C.S.I.,  
Chief Secretary to the Government of Bombay,  
Political and Services Department.

To

The Chief of the Cabinet,  
Government of Portuguese India,  
Nova Goa.

Sir,

With reference to the letter from His Excellency the Governor General of Portuguese India to His Excellency the Governor of Bombay, No. 435,

dated the 24th March 1939, regarding the transit of 8 muskets 8mm. M/86-89 (complete) with 400 ball cartridges m/99 and one revolver M/86 with the respective cartridges numbering 50 which are to be sent from the Police Command of Damaun to the Division of Silvassa (Nagar-Aveli), I am directed to state that instructions have been issued to the officers concerned for the grant of necessary facilities.

I have the honour to be,

Sir,

Your most obedient servant,

O.C. intd. (illegible) 4/4

For Chief Secretary to the Government of Bombay,  
Political and Services Department.

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POLITICAL AND SERVICES DEPARTMENT

No. 3994/5853-A

Bombay Castle, 4th April 1939.

Copy, with a copy of the translation of the letter under reply, forwarded with compliments to the undermentioned officers for information and guidance.

By order of the Governor of Bombay.

O.C. intd. (illegible)

4/4

For Chief Secretary to the Government of Bombay,  
Political and Services Department.

To

The Inspector General of Police, Province of Bombay,  
The Deputy Inspector General of Police,  
Criminal Investigation Department,  
The District Magistrate, Surat,  
The District Superintendent of Police, Surat,  
The Superintendent of Police, B.B. & C.I. Railway,  
The Collector of Customs, Bombay.

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**Annex E. No. 42***Record Office, Bombay*

1926-36

**POLITICAL AND REFORMS DEPARTMENT**

A Branch, File No. 3994

Part I, pp. 263, 265, 266

Service of the Republic

General Government of the State of India  
Cabinet Department

No. 126/G

Case No. 8

Issue No. 501

Nova-Goa, 17th April 1940.

To

The Chief Secretary to the Government of Bombay,  
Political and Services Department,  
Bombay.

Most Excellent Sir,

I have the honour to request of you the necessary orders for the free transit of:

Cartridges with shot 8 mm. m/89 . . . . . 1,000

Cartridges with shot 8 mm. m/99 . . . . . 1,000

Cartridges with shot 14 mm. m/94 . . . . . 50,000

which have to be sent from the Command of the Police Force of India in Damaun to the Division of Silvassa (District of Nagar Aveli), necessitating thus their having to pass through British territory.

Please accept the assurance of my regard.

*(Signed)* A. Delduque DA COSTAMajor  
Chief of the Cabinet.

Home Department.

True Translation

23rd April 1940.

*(Signed)* Louis G. PINTO,  
Portuguese Translator to Government.

## POLITICAL AND SERVICES DEPARTMENT

No. 3994/874I-A

Bombay Castle, 27th April 1940.

From

Dr. H. T. Sorley, C.I.E.,  
Chief Secretary to the Government of Bombay,  
Political and Services Department.

To

The Chief of the Cabinet,  
Government of Portuguese India, Nova Goa.

Sir,

. With reference to your letter No. 126. G dated the 17th April 1940,  
regarding the transit of:

Cartridges with shot 8 mm. m/89 . . . . . 1,000

Cartridges with shot 8 mm. m/99 . . . . . 1,000

Cartridges with shot 14 mm. m/94 . . . . . 50,000

which have to be sent from the Command of the Police Force in Damaun to the Division of Silvassa (District of Nagar Aveli), I am directed to state that instructions have been issued to the officers concerned for the grant of necessary facilities.

I have the honour to be,

Sir,

Your most obedient servant,

O.C.

intd. (illegible) 27/4

For Chief Secretary to the Government of Bombay,  
Political and Services Department.

## POLITICAL AND SERVICES DEPARTMENT

No. 3994/874I-A

Bombay Castle, 27th April 1940.

Copy, with a copy of the translation of the letter under reply, forwarded with compliments to the undermentioned officers for information and guidance.

By order of the Governor of Bombay,

O.C. intd. (illegible) 27/4

For Chief Secretary to the Government of Bombay,  
Political and Services Department.

To

The Inspector General of Police, Province of Bombay,  
The Deputy Inspector General of Police, Criminal Investigation  
Department,

The District Magistrate, Surat,  
 The District Superintendent of Police, Surat,  
 The Superintendent of Police, B.B. & C.I., Railway,  
 The Collector of Customs, Bombay,  
 The Collector of Salt Revenue, Bombay.

Annex E. No. 43

*Record Office, Bombay*

1917

POLITICAL DEPARTMENT

No. 1840

CONSULADO GERAL DE PORTUGAL  
 NA  
 INDIA INGLEZA.

Bombay, 1st September 1917.

No. 133.

From

B. D'ALPOIM, Esquire,  
 Consul-General for Portugal  
 in British India—Bombay.

To

The Secretary to Government of Bombay,  
 Political Department,  
 Bombay.

Sir,

I have the honour to inform you that a Portuguese Government servant Mr. Carlos Augusto Belem Torres arrived at Bombay on the 15th May ultimo, from Goa en route to Nagar-Avely. He was carrying two sporting guns (S.B.M.L. and D.B.M.L.) which were detained by the Preventive Authorities. As these guns after paying the respective duty are to be forwarded to the owner at Nagar Avely I beg to request you to be so good as to arrange for a license to be granted to export the same guns.

I have the honour to be,

Sir,

Your most obedient Servant,

*(Signed)* B. d'Alpoim

Consul-General

POLITICAL DEPARTMENT

C. BRANCH

Reg. No. 7800

Letter from the Consul General for Portugal in British India—Bombay.  
 No. 133, dated the 1st September 1917.

Stating that when Mr. Carlos Augusto Belem Torres arrived in Bombay on the 15th May 1917 he brought with him from Goa en route to Nagar Avelo two sporting guns (S.B.M.L. and D.M.B.L.) which were detained by the Customs authorities in Bombay and requesting to grant an export license for these two guns after receiving the required fees.

Submitted

Consul's letter may in the first instance be acknowledged.  
(Draft put up)

intd. (illegible) 3/9

Submitted.

The transport of the two sporting guns mentioned in letter No. 133, dated the 1st September 1917, from the Consul General for Portugal at Bombay, amounts to an import into and export from British India. The importation of Arms and Ammunition into British India, from Portuguese India is prohibited under Rule 7 of the Indian Arms Rules of 1909. Owing to the present restrictions imposed on the export of Arms and Ammunition from British India the Govt. of Bombay can not also grant a license for the export of these two sporting guns. In both cases the Govt. of India's sanction is necessary.

Before taking any action the papers may be referred U.O.R. to R.D. and the Collector of Customs Bombay.

intd. ASC. 5/9

Dy. Secy.

U.O.R. No. 6776 dt. 5-9-17 to the Revenue Dept. & the Collector of Customs, Bombay.

Rev. Dep.

Submitted.

As export of arms of all descriptions is entirely prohibited the sanction of the G. of I. will be necessary as stated in the P.D. note above. The papers may be passed on to Collr. of Customs, Bombay.

intd. M.C. 16/9

N.R. No. 11207  
17-9-17

Recd. 25/9/17 S.R. 6562-W of 18-9-17.

Returned.

2. Under the list of export prohibitions at present in force, export of arms is not permissible to Portuguese Possessions in India, though they could go to those destinations under the general exceptions to the Notification of July 1916. The practice hitherto followed here has been to waive the restrictions on the export of arms and ammunition in cases where the articles are exported by exempted persons as accompanied or unaccompanied baggage, provided that the quantity in each case is reasonable (vide unofficial reference from the Revenue Department No. 2480, dated the 2nd March, 1915). The question of continuing this practice has been referred by me to the Government of India in view of demi-official orders received from that Government in connection with export of arms to China, Siam, the Dutch East Indies and Macao. I am also referring to that Government the question whether the general



exceptions to the prohibitory list of July 1916 should still be regarded as in force.

3. In the circumstances, it appears desirable to obtain the orders of the Government of India regarding the export of the sporting guns in question.

(Signed) N. WHITTY 25/9/17

for Collector of Customs

Unofficial reference to the Chief Secretary to  
Government, Revenue Department, R.S.R.  
No. 6562W dated 25th September 1917.

Submitted with reference to the office note dt. 15-9-17.

2 With ref. to the last sentence of para. 2 of Collr's u.o. note dt. 25th idem it may be noted that in para. 3 of their letter No. 7139-W-II dt. 12th Aug. 1916 to all Collrs. of Customs the G. and I. observed with ref. to the first item in the lists accompanying the letter that these "munition" items had been regrouped and that the 'local exceptions' i.e. in favour of French & Portuguese India, Ceylon & the Straits Settlement removed. This shows that the general exceptions indicated at the top of List B (i) accompanying the G. of I.'s letter No. 5775-W-II dated 12-7-16 were no longer applicable except where specifically stated. In their letter No. 5442-C-W dt. 15-5-17 to all Collrs. of Customs the G. of I. again observed in paras. 10-12 that the local exceptions in favour of exports for use or consumption in Portuguese & French possessions in India & Ceylon & Straits Settlements had been dropped in the case of the articles mentioned therein and that all other local exceptions were shown in the form of footnotes. It will be seen from the G. of I. Notfn. No. 5385 C.W. dt. 12-5-17 that wherever 'local' exceptions are considered necessary they are shown in the footnote in respect of the articles concerned. The doubt expressed in the last sentence of para. 2. of the Collr's u.o. note dt. 25-9-17 is not therefore understood. It is however not necessary to refer these papers again to the Collr. They may be returned u.o. to P.D. with the Collr's note. At the same time the Collr. may be asked to furnish this Dep. with the replies of the G. of I. to the references to that Govt. mentioned in para. 2 of his note. A draft u.o.r. to the Collr. is put up.  
intd. (illegible) 5/10

Un. Ref. No. 12172

9/10/17

C 9141 POLL.

Submitted with reference to u.o. dt. 5-9-17. The action proposed therein may now be taken.

Draft put up.

intd. (illegible) 10/10

Where are our own papers about this "local exceptions"? I have noted on the question several times.

intd. (illegible) 10/10/17

Secy.

Respectfully resubmitted.

2. The Secy. presumably refers to the notes recorded by him at pages 24 & 43 & 44 of Comp. No. 1716/1916.

3. The interpretation which was then put on the Govt. of India, Com. & Ind. Dept. Notfn. No. 7133-W-11 dt. 12-8-16 was possible in view of para 5 of the Comm. & Ind. Dept. letters No. 7139-W-11 dt. 12-8-16 addressed to all Collectors of Customs. The Notification from the G. of I. in the Com. & Ind. Dept. No. 5385-C.W. dt. 12-5-1917, which supersedes all the previous notfn. & orders on the subject does not contain any similar qualifying clause. The proviso No. (V) referred to in the Secy's note of 14-12-16 is still there, but by itself it does not apparently affect the question at issue, as the Customs authorities mentioned therein are not empowered to issue licenses for the export of Arms & Ammn which can only be granted under the Arms Act by the Officers specially empowered by the G. of I. for the purpose.

4. Attention is also invited to the first sentence of para 2 of the letter from the Govt. of I Dept. of Com. & Ind. No. 7608 dt. 3-7-17 embodied in R.D. Memo No. 8587 dt. 14-7-17.  
315 Compl.

Thro: J.D. 11/10

Seen in J.D.

Secy.

intd. F. S. 11/10

In his letter No. 11571-W-II dd. 23.10.16. Mr. Hardy told us specifically that, under para. 5 of the circular letter to Collrs. of Customs No. 7139-W-II, dd. 12.8.16, we cld. still give licenses to export cartridges to Ceylon; & that the sanction of the G. of I. to such licenses was not necessary until specific orders issued to the contrary. As I pointed out at the time, his meaning was quite clear. In withdrawing the exceptional permission to export without license to certain places, the G. of I., had not withdrawn the powers of the local Govt. to grant licenses to those places. Para. 5 of the circular letter, read with proviso (v), authorised the continued grant of licenses by C. of P.

2. I regret that the papers were not shown to R.D. at the time: it was my mistake.

3. Port. India is in exactly the same position as Ceylon, & unless "specific orders to the contrary" have issued, C. of P. is still authorised to issue licenses. Presumably the notificat. of May last constitutes such orders.

4. R.D. shd. see after issue of the letter.

intd. (illegible) 11.10.

U.O.R., No. 7775 dt. 12.10.17. to the

Rev. Dept. (after issue)

No. 7766

Pol. Dept.

B.C. 12th Oct. 1917.

To

The Pol. Secy. to the Govt. India  
For. & Pol. Dept.

Sir,

I am directed to state that the Consul General for Portugal at Bombay has applied for permission to import into, and export from, Bombay to

Nagar Avely, two sporting guns (one S.B.M.L. & the other D.B.M.L.), brought to Bombay from Goa by a Port. Govt. servant *en route* to Nagar Avely. The guns are at present under detention for want of an import license.

2. As the transmission of these arms from Goa to Nagar Avely *via* Bombay involves their importation into Br. India, & as such importation is prohibited under rule 7 of the Indian Arms Rules, 1909, I am to request that the G. of I. may be moved to accord sanction to the guns being imported into Bombay.

3. I am also to request that in view of the notfn. in the Comm. & Ind. Dept. No. 5385-C)W., dt. the 12th May 1917 sanction may be given to the export of the arms from Bombay to Nagar Avely. It is presumed that this notification constitutes the specific orders contemplated in Mr. Hardy's letter No. 11571, W-II DT. 23.10.16.

I have etc.,

intd. (illegible) 11.10.

O.C.

Ag. Secy. to Govt.

intd. (illegible) 10/10

Rev. Dep.

Submitted with ref. to the office note d. 3-10-17. The papers may be seen & returned u.o. to P.D.

intd. (illegible) 20/10.

Un. Ref. No.  $\frac{12875}{26/10/17}$

From

The Secretary to the Government of India  
in the Foreign and Political Department,

To

The Secretary to the Government of Bombay,  
Political Department.

Memorandum No. 185-G/S

Dated Simla, the 21st November, 1917.

Your letter No. 7766, dated 12th October 1917.

Sanction is accorded to transmission of two sporting guns in question from Goa to Nagar Avely, via Bombay.

(Signed) J. B. WOOD,

Secretary to the Government of India.

Attested.

(Signed) O. MARTIN,

Superintendent,  
Foreign and Political Department.

C 10875 Pol.

Submitted.

The papers underlying G.L. No. 7766 dt. 12-10-17 to which this is a reply have been put up with R.I. 10562 which has been referred u.o.

to R.D. under No. 8916 dt. 20-11-17. May the Rev. Dept, be asked to kindly expedite the return of those papers so as to enable P.D. to issue the necessary license for the transmission of the guns to Nagar Avely.

intd. A.N. 26/11

U.O.R. No. 9099 to R.D.

dated 26-11-17.

Rev. Deptt.

Submitted.

The papers referred to in the Poll. Deptt. office note dt. 26th Novr. 1917 have been returned to that Deptt. under u.o.r. No. 14439 dt. 29th Novr. 1917. These papers may be returned unofficially to that Deptt. in continuation of the former papers.

A.L.P.

intd. L.W.G.

29/11/17

29.11.17.

For. U.S.

Un. Ref. No. 14446

29/11/17

C 11105 Poll

Submitted.

The necessary license may now be granted.

The G. of I, have communicated no orders on the point referred to them in the concluding portion of para. 3 of our letter to them.

Drafts put up.

intd. (illegible) 1/12

No. 9277

POLITICAL DEPARTMENT

Bombay Castle, 1st Decr. 1917.

#### MEMORANDUM

The undersigned presents compliments to the Commissioner of Police, Bombay and is directed to forward herewith for delivery to The Consul General for Portugal at Bombay a license No. 40, dated the 1st Decr. 1917, granted under the Indian Arms Act.

2. Copies of the license are also forwarded herewith for delivery to the Railway Company & for the Commrs. records.

3. The Commissioner of Police is requested to ascertain the number of packages of which the consignment will consist and to enter this information in column 2 of the license to be delivered to the applicant, reporting the number of packages to Government.

4. The Commr. is requested to issue an import license in favour of the Consul Genl for Port. at Bombay in respect of the weapons.

intd. A.N.

O.C.

for Secretary to Government.

No. 9278

Pol. Dept.

B.C. 1-12-1917

To  
The Consul Genl. for Portugal at Bombay.

Sir,

With reference to the correspondence ending with G.L. No. 8746, dated the 12th Nov. 1917 I am directed to inform you that a license for the export from Bombay to Nagar Aveli of two sporting guns belonging to Mr. Carlos Augusto Belem Torres has been forwarded, for delivery to you, to the Commr. of P., Bombay, who has also been directed to grant you the necessary import license.

I have etc.,

intd. (illegible) 1/12

O.C.

Secy. to Govt.



LICENSE FOR THE EXPORT BY LAND OR RIVER OF ARMS, AMMUNITION OR MILITARY STORES UNDER RULE 18 OF THE  
INDIAN ARMS RULES, 1909.

Name, etc., of Licensee and Agent (if any)	Number of Packages	ARMS		AMMUNITION OR MILITARY STORES		Place of deposit and route	Purpose for which Consignments required	Destination	Name and rank of consignee	Period for which License is valid
		Description	Number	Description	Weight or Number					
The Consul General for Portugal at Bombay	one package	(1) S.B.M.L. sporting gun (2) D.M.B.L. sporting gun	(1) one (2) one	NIL	NIL	Bombay to Damaun by rail & thence to Nagar Avelly by road	Personal use	Nagar Avelly	Mr. Carlos Augusto Belem Torres, Nagar Avelly	From the 1st December to the 7th of March 1918

Bombay Castle,

Political Department:

O.C.

intd. (Illegible) 1/12.

Secretary to Government.

The 1st Decr., 1917.

## CONDITIONS

1. This License is granted subject to all the provisions of the Indian Arms Act, 1878 (XI of 1878), and of the Indian Arms Rules, 1909.

2. The articles shall not be conveyed by any route other than that specified in Column 7; and bulk shall not be broken, nor shall the consignment be stopped, before the articles reach the place of destination.

3. An account of the contents of each package shall be legibly written thereon; and where the articles are conveyed by rail, each package shall be marked with the word or expression "Arms", "Ammunition" or "Military Stores" as the case may be, so as to be readily recognizable by the Railway authorities.

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No. 9279 of 191

POLITICAL DEPARTMENT:  
Bombay Castle, 1st Decr. 1917.

Copy forwarded to *Commr. of Customs, Salt & Excise, Bombay,*  
Dist. Magistrate, Surat,

for information with reference to G.R. No. 682 dt. the 20-1-1896.

O.C.  
intd. A.N.  
30/11/17  
for Secretary to Government.

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## Annex E. No. 44

PORTUGUESE ORDER-IN-COUNCIL NO. 4590, DATED 26TH DECEMBER 1947 <sup>1</sup>*Governorate General**Ordinance No. 4,590*

26-12-1947.

As it is convenient to introduce regulations to govern the entry of Portuguese nationals and foreigners in the territory of this State;

After consulting the Permanent Session of the Government Council;

The Acting Governor General of Portuguese India, under the powers vested in him by Art. 31 of the Colonial Act, and by No. 12 of the Art. 37 of the Administrative Charter of the Portuguese Administrative Charter of the Colonial Empire, orders:

*Art. 9.* The system of free transit, to the natives of neighbouring India, in the territory of this State shall be maintained; however, the authorities, entrusted with the work of supervising the emigration in this State, and at places, indicated in this Ordinance for entry of emigrants, can demand any document or declaration of identity whenever they deem it necessary.

*Art. 10.* The entry of Portuguese nationals in the territory of this State is not subject to any condition or prior authorization, provided they are:

1. Natives of Portuguese India, their wives, and children;
2. Government employees, or working under contract for the Government, Administrative bodies or Corporation, and Autonomous Services, when carrying the competent transit permit (Guia), as well as members of their families, and servants who have been mentioned in the said permit; and
3. Settlers, carrying permits (Guias), issued by the Minister of Colonies.

*Art. 12.* The foreigners authorised to reside in the territory of this State are obliged to call personally on the administrative or Police authority of the area where they reside, within 5 days from the date of their entry into Portuguese India. They must do likewise every time they change their residence, and call on the same authorities in the area of their new place of residence.

*Art. 13.* The residence of foreigners in the territory of this State for a period exceeding three months can only be authorized against a certificate of temporary residence, as per form 1, attached to this Ordinance, of which it forms a part. Such certificates are issued by the competent administrative authority under the terms of the preceding Article.

*Only para.* The certificate of temporary residence will be issued to the interested parties on payment of Rs. 15/- in stamps. Such payment shall have to be paid after every year, also in stamps, from the date of the issue of the certificate.

*Art. 14.* The certificate of temporary residence referred to in the preceding Art. shall be valid for a period of 5 years from the date of the issue, and on termination of this period, in case the foreigner applies

<sup>1</sup> Translation from the Portuguese text.



for and is granted permanent residence in the territory of this State, a certificate of permanent residence will be issued to him, as per form 2, attached to this Ordinance, on which will be levied, every year, half the amount mentioned in the Art. 13. It will be levied in the same manner as indicated in that Article.

*Art. 15.* The residence in the territory of this State of nationals of neighbouring India is not subject to the provisions of the Articles 12, 13 and 14, but they should be required to call personally on the administrative and police authorities in the area where they reside, within 8 days from the date of their entry in Portuguese India, when their stay in this territory is for a period exceeding this period.

*Art. 16.* Persons entering or staying in the territory of this State in contravention of any of the provisions of this Ordinance shall be punished with imprisonment up to one month, and a fine from 50 to 500 rupees, followed by expulsion. False documents or declarations referred to in the concluding portion of Art. 9, will be punishable under the Penal Code.

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### Annex E. No. 45

PORTUGUESE ORDER-IN-COUNCIL No. 4632, DATED 25TH MARCH 1948<sup>1</sup>

ORDER-IN-COUNCIL No. 4,632

Whereas it is necessary to revise the Order-In-Council No. 4,590, of the 26th December 1947;

After consulting the permanent section of the Government Council,

The Governor General of Portuguese India, in the use of the powers conferred upon him by the Art. 31 of the Colonial Act, and by No. 12, of Art. 37, of the Organic Charter of the Portuguese Colonial Empire, determines:

Art. 1. — The entry into and exit from the territory of Portuguese India of Portuguese nationals and foreigners is only permitted through the frontier posts mentioned below, or through such posts which shall be subsequently determined by Govt. order:

District of Goa: Ports of Mormugao and Pangim—Quiranpanim—Neibaga—Doromarogo—Molem—Collem—Pollem and Morgugao Aerodrome.

District of Daman: Port of Daman, Dabel, Great Daman, Silvassa, Naroli, and Canoel.

District of Diu: Port of Diu, Brancavara, and Gogola.

Only Para: The entry and exit of Portuguese and Indian nationals is also permitted through Customs posts situated at points not mentioned in the present Art., whenever they carry goods or are bound for frontier regions in order to stay for not more than 24 hours.

Art. 9.—The regime of free transit in this territory to nationals of neighbouring India shall continue; however the authority supervising

<sup>1</sup> Translation from the Portuguese text given in the "Boletim Oficial", No. 11, Series I, dated the 25th March 1948.

emigration at places indicated in this enactment may, whenever required, demand any document or declaration of identification.

Art. 10.—The Portuguese nationals entering this territory are not subject to any conditions or prior authorization provided:

1.—They are born in Portuguese India, or are wives and children of such persons.

2.—They are Government employees or persons under contract to Government, Administrative Bodies and Autonomous Services, and members of their families and servants, when they hold valid travelling documents (Guias).

3.—They are colonists holding a card from the Ministry of Colonies.

. . . . .

Art. 12.—Foreigners authorized to stay in this territory are subject to the necessity of presenting themselves before the Police and Administrative authorities of the area in which they reside, within 24 hours from the date of their entry into this territory, and every time they change their residence they shall be required to present themselves in the like manner before the same authorities in the area of their new residence.

Para 1.—Foreigners entering this territory with any other aim than the one referred to in this Art., shall be bound to present themselves before the District Police authorities in the area for which they are bound within 24 hours of their arrival, and also whenever they have to go from one district to another, in the course of their stay, for more than 48 hours.

Para 2.—As a rule, the transit through or temporary stay will be authorized for 15 days, which period can be extended on application to and sanction from the Government.

Art. 13.—The residence of foreigners in this territory, for a period exceeding 3 months, can only be authorised on a certificate of temporary residence, as per form 1, annexed to this enactment, which forms integral part of the same, issued by the competent administrative authority in accordance with the terms of the previous Art. The Police Commissariat shall be consulted regarding the authorization and the yearly renewal of the Certificate.

Only Para.—For the certificate of temporary residence the applicant shall be charged Rs. 15/- stamp tax, upon issue of the same, and a similar amount for every yearly renewal.

Art. 14.—The certificate of temporary residence referred to in the preceding Art. shall be valid for a period of 5 years, from the date of issue, and at the end of that period in case a person's application for permanent residence in this State has been granted, a Certificate of Permanent Residence shall be issued to him, as per form 2, annexed to this enactment, for which he shall be charged the sum indicated in the Art. 13 which he shall pay also in the manner prescribed in the same Art.

Information shall be solicited from the Police Commissariat for the purpose of issue of the certificate of permanent residence.

Art. 15.—The residence in this territory of the nationals of neighbouring India is not subject to the provisions of the Arts. 12, 13 and 14,

but it is compulsory for them to present themselves before the police authorities in the area of their residence, within 24 hours of their entering Portuguese India, except in case they have been exempted by the supervising authority.

Art. 16.—Persons entering or staying in this territory in contravention of the provisions of this enactment shall be liable to imprisonment up to 1 month, and a fine from Rs. 50/- to 500/- followed by expulsion. False documents or declarations, referred to in Art. 9, shall be punishable under the terms of the Penal Code.

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## Annex E. No. 46

*Urgent.*

No. AG/47-49/(2)  
 Consulate for India,  
 Goa, 18th January 1949.

To

The Chief of Cabinet,  
 Goa.

Sir,

Please refer to your letter No. 750-G, dated 21.12.48. I shall deal with this question at greater length a little later but in the meantime kindly let me know as early as possible whether it is *compulsory* for all nationals of the Indian Union who come to the Portuguese Possessions, particularly to Goa, to report themselves to the Police of their destination. Please also let me know whether this regulation is applicable also to officials of the Government of India who are doing their normal duties in Goa but who have often to go in and out of Goa. It is my conviction that such a regulation is not applicable to officials of the Government of India. However, a confirmation from you will be helpful. An early reply will oblige.

With the assurance of my highest esteem,

Yours faithfully,  
 (Signed) P. N. DRIVER,  
 Consul for India

in the Portuguese Possessions in India.

*Translation.*

No. 82/G dated 20.1.1949.

With reference to your letter No. AG/47-49/2 dated 18.1.49, I have the honour to request kindly to let me know the rank and category of the Government of India officials who are coming here and what are the normal duties they have to comply with over here in order to inform you on the subject in question.

No. AG/47-49-(3)  
 Consulate for India,  
 Goa, 22nd January 1949.

To

The Chief of Cabinet,  
 Goa.

Sir,

With reference to your letter No. 82-G, dated 20th January 1949, I have the honour to state that the officers to whom I refer are those who are doing their normal duties in Goa on behalf of the Government of India. They include several officers such as the Chief Customs Officer

at Mormugao and other staff of the Central Excise Department. My query refers also to all other nationals of the Indian Union who may be coming to Goa and not staying in a hotel.

With the assurance of my highest esteem,

Yours faithfully,  
(Signed) P. N. DRIVER,  
Consul for India

in the Portuguese Possessions in India.

*Translation*

No. 118/G dated 1.2.1949.

With reference to your letters Nos. AG/47-49/2 and AG/47-49/3, dated 18th and 22nd January, respectively, I have the honour to inform you that the law in force does not exempt the exceptions to which you refer.

2. Nevertheless special attention and due facilities have been given when dealing with people of high category and when previous notice is given to this State of their arrival.

3. As you know that when officials of this State go to the Indian Union, even those of high category, they fulfil the police regulations in force, thus it is your duty to respect the law in force in the country, where they are.

Consulate General for India,

Goa.

No. S-ICG/24/50.

2nd April 1951.

To

The Chief of Cabinet,  
Goa.

Sir,

I have the honour to refer to para 15 of the Order-in-Council No. 4632, published in Boletim Oficial No. 11, Series I, dated the 25th March 1948, and to enquire a clarification of the term "except in case they have been exempted by the supervising authority".

I request also that I may be informed of the individuals or categories of persons so exempt.

Please accept, Sir, the assurances of my high consideration.

(Signed) V. H. COELHO  
Consul General for India,  
Goa.

Translation of the letter No. 412/G, dated the 1st May 1951, from the Chief of Cabinet, Goa

With reference to your letter No. S-ICG/24/50, dated the 2nd instant [*sic*] I have the honour to inform you that the regime of exception to be granted by the supervising authorities, as provided in the Art. 15 of the Ordinance (Portaria) No. 4,632, dated the 25th March 1948, amended by only Art. of the Ordinance No. 5,046, dated the 23rd March 1950, can only take place in respect of individuals, born in the Indian Union, who are known to the Police, for having already been in the country before, and if it is known where they are going to reside, and what is the purpose of their visit.

Thus, in order to grant such an exception there is no need to consider the social standing or the duties which the individuals may perchance discharge in the Indian Union.

Nevertheless the Police—the supervising authority—has included in this criterion of exception the Indian Union nationals holding high posts, exempting them from this and other formalities, provided it is known where they have lodged, and provided it (the police) has in some way established contact with them, exclusively with a view to extend them facilities, even though these are not asked for. The same procedure has been adopted in respect of your guests, when a mere communication from you, to this office, suffices.

Please accept, Sir, etc.

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Consulate General for India, Goa.

No. S-ICG/24/50.

5th May 1951.

The Consulate General presents its compliments to the Governorate General of Portuguese-India, Goa, and has the honour to acknowledge its letter No. 412/G, dated the 1st May 1951, on the subject of exemption to be granted by the Supervising authorities as provided for in Art. 15 of the Order-in-Council No. 4632, dated the 25th March 1948. The Consulate General seeks further elucidation on the following points:—

- (a) whether persons, who have once fulfilled the formality of registering themselves at Police Stations, are exempt from such formalities on the occasions of subsequent visits to Goa;
- (b) the names of persons or categories of persons included in the term "Indians holding high posts".

In this connection, the Consulate General would observe that no acknowledgement has been received to its letters No. XII/II-903, dated the 31st March 1951 and No. XII/II-1319, dated the 26th April 1951.

The Consulate General takes this opportunity to renew the assurances of its high consideration.

The Governorate General  
of Portuguese-India,  
Goa.

Translation of the letter No. 497/G, Proc. No. F/4, dated the 21st May, 1951, from the Chief of Cabinet, Goa

With reference to your letter No. S-ICG/24/50, dated the 5th Instant, I have the honour to inform you that the formality of calling on the Police is necessary every time the persons come to Goa.

The Police decides about the suitability of exempting persons of high standing from the formalities, in respect of each separate case.

As I informed you in my letter No. 412/G, as regards your guests, a simple communication is sufficient, like the ones made in your letters Nos. XII/II/923, dated the 2nd April, and XII/II-1319, dated the 26th April, which in due course were passed on to the competent authorities.

Please accept, Sir, etc.

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Consulate General for India,

Goa

No. S-ICG/24/49.

25th May, 1951.

The Consulate General for India presents its compliments to the Governorate General of Portuguese-India, Goa, and has the honour to acknowledge the Governorate General's note No. 497/G, dated the 21st May 1950, regarding the prescriptions under Art. 15 of the Order-in-Council No. 4632, dated the 25th March, 1948. The Consulate General wishes to observe that if every Indian visitor to Goa is required to inform the local police about his arrival into Goa in order that the Police may consider whether exemption should be granted from the formalities, then the provision of the articles has no special meaning, in other words, the exceptions provided for in the article in question are without significance.

The Consulate General takes this opportunity to renew the assurances of its high consideration.

The Governorate General  
of Portuguese-India,  
Goa.

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Translation of the letter No. 553/G, dated the 26th June 1952,  
from the Chief of Cabinet, Goa

With reference to the concluding portion of your letter No. S-ICG/115/154, dated the 2.6.1952, I am directed by H. E. the Governor General to inform that with a view to extend all possible facilities to the Indian Union nationals, the time limit for their registration in the Police was extended from 24 to 72 hours.

The present system has not put the visitors to any great difficulties, as actual practice has shown.

Many persons who come on visit or business do not stay for 72 hours, owing to which fact they have not to register themselves and for those who come for staying longer periods such a simple formality cannot

be considered as constituting great difficulty. There is no intention of changing the system in force.

It must be noted that the Portuguese who proceed from Goa to the Indian Union—when they are not Indians—are required to call at the Police within 24 hours, and no special treatment was even meted out.

As regards the other subjects referred to in your letter No. S-ICG/115/154, replies shall be forwarded in due course.

Please accept, Sir, etc.

No. S-ICG/24/211.

1st July 1952.

Your Excellency,

I am writing to acknowledge letter No. 553/G, dated the 26th June 1952, from the Chief of Cabinet, Goa, in regard to the registration by Indians entering Goa within a period of 72 hours. Despite the indication that there is no intention of changing the system in force, I trust Your Excellency will keep the matter in mind as a request specially conveyed by us.

Please accept, Your Excellency, the assurances of my highest consideration.

(Signed) V. H. COELHO  
Consul General of India,  
Goa.

His Excellency

Com. Fernando de Quintanilha  
e Mendonca Dias,  
Governor General,  
Goa.

Government of India

Ministry of External Affairs

No. D. 2872-Eur. I/52.

New Delhi, 16th August, 1952.

The Ministry of External Affairs present their compliments to the Legation of Portugal in India and have the honour to say that the Government of India are much concerned at the action of the Portuguese Government in making Decree No. 28: 228, promulgated by the Portuguese Ministry of Colonies, applicable to the Portuguese territories to India, by Ministerial Legislative Act No. 16 (as published in the Boletim official No. 19, serial I, dated the 8th May, 1952).

2. The Government of India fear that the application of this Decree will result in unfair discrimination against Indian nationals who have substantial business and property interests in the Portuguese Possessions in India. This is all the more regrettable when it is realised that the Government of India have spared no pains to be of the utmost assistance to the people and Government of this territory and that Indian enterprise has played no small part in building up its prosperity. Recently



Indian industrialists played an important role in developing its mineral wealth.

From time immemorial, Indians have enjoyed the privilege of free residence there. Even the Railway and Postal administrations have been common.

2. Similarly, for all these years the people of this territory have enjoyed the same rights and privileges in India as Indians themselves. In the Indian administration and Armed Services they have but the same status as Indian nationals. No restrictions against their holding property or engaging in business in India have been imposed in contrast with the restrictions now placed on Indians by this decree, though it is well known that there are fewer Indian nationals in Portuguese India than Portuguese Indian subjects in India.

4. In view of what is stated above the Government of India hope that the Government of Portugal will take early steps to cancel the application of this decree to the Portuguese Possessions in India.

5. This Ministry take the opportunity to renew the assurance of their highest consideration.

(Seal and date)

To

The Legation of Portugal in India,  
New Delhi.

No. D. 5895. Eur. I/52

Government of India,

Ministry of External Affairs.

New Delhi, the 29th December, 1952.

The Ministry of External Affairs present their compliments to the Legation of Portugal in India and have the honour to invite the Legation's attention to this Ministry's Notes No. D. 2872-Eur. I/52 and D. 4213A-Eur. I/52, dated the 16th August, 1952 and 16th October, 1952, respectively, on the subject of certain discriminatory decrees against Indian citizens promulgated in the Portuguese Possessions in India within the past few years.

2. The Government of India are now constrained to protest strongly against the provisions of yet another Law promulgated by the Portuguese Government, namely, Decree-Law, No. 38:662, published in the Boletim Official No. II, I Series of 13th March, 1952, which makes it obligatory on foreigners in the Portuguese Possessions in India to be in possession of Identity Certificates. The Government of India had hoped that the above Decree was not applicable to Indian nationals living in these territories. However, the Portuguese Ministry of Foreign Affairs in their Note No. 7, (Proc. 373,1) dated the 4th October, 1952, addressed to the Legation of India in Lisbon, have stated that the expression 'non-natives' used in Article 2 of the said Decree-Law is also applicable to Indian citizens resident in Goa in the same manner as it is applicable to Europeans or to individuals of any other race.

3. The Government of India are much concerned at this interpretation of the new legislation, as it cuts at the very root of the rights and privileges of Indian nationals resident in Goa, Daman and Diu, rightfully enjoyed by them and sanctioned by tradition. The injustice of the new Law is evident, in view of the fact that the inhabitants of the Portuguese Possessions in India, who reside in the Indian Union, are not subjected to any such discrimination. The recent Decree promulgated by the Portuguese Government is clearly contrary to their declared policy of "traditional friendship" to and their spirit of "trustful co-operation" with the people of India, who are, in no way different or distinguishable in race, language, culture or creed from the people of Goa, Daman and Diu.

4. In view of what is stated above, the Government of India hope that the Government of Portugal would find it possible to review their interpretation of the expression "non-native" used in Article 2 of the Decree-Law No. 38:662, of the 29th February, 1952, and declare that the Indian citizens resident in Goa, Daman and Diu are not affected by this Law.

5. The Ministry of External Affairs take this opportunity to renew to the Legation of Portugal the assurances of their highest consideration.

To

The Legation of Portugal  
in India,  
New Delhi.

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**Annex E. No. 47**

LETTER FROM THE CONSUL FOR INDIA, GOA, TO THE  
CHIEF OF CABINET, GOA, DATED 29TH MARCH, 1949

No. 8/48(2)-835.  
Consulate for India,  
Goa, 29th March, 1949.

To

The Chief of Cabinet,  
Goa.

*Subject:* Grant of travel facilities for India to Portuguese nationals (not domiciled in the Portuguese Possessions).

Sir,

I have the honour to refer to the correspondence resting with your letter No. 760/G dated the 23.12.1948 on the above subject. I am directed to inform you that persons who are domiciled in the Portuguese Possessions in India are already exempt from the requirements of Passports and visas under the Indian Passport Rules, 1921, and that there is no ground for believing that any difficulties or new restrictions are introduced in respect of Portuguese nationals travelling to or through India. It is only Portuguese nationals (and other foreigners) who are not

domiciled in the Portuguese Possessions in India who must hold a valid national passport and a visa for India. It might be of interest to you to know that the same holds true of persons domiciled in the French Establishments in India. My letter No. 8/48(2) dated the 14th December, 1948, only reiterated the instructions in accordance with the existing law and did not introduce any new principles.

2. The Government of India will be glad to examine the question whether the "Guias" may be accepted as a valid travel document, in lieu of passports. If you send me a specimen of a "Guia" together with a statement as to the conditions and circumstances governing the issue of such a document in lieu of passports I shall forward them for the consideration of the Government of India.

3. It will be clear from the above that those who are domiciled in the Portuguese Possessions in India can enter India without passports or visas and the possessions of valid national passports with the necessary visas for India thereon are insisted on only in the case of foreigners, whether Government servants or missionaries, who are not domiciled in the Portuguese Possessions in India. I might also add that this Consulate charges no fees for grant of entry or transit visas to officials of your Government proceeding on duty.

With the assurance of my highest esteem,

Yours faithfully,

(Signed) P. N. DRIVER,  
Consul for India, Goa.

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#### Annex E. No. 48

LETTER FROM THE CHIEF OF CABINET, GOA, TO THE CONSUL FOR  
INDIA, GOA, DATED THE 12TH APRIL, 1949

Translation of letter No. 356/G dated the 12th April 1949 from the  
Chief of Cabinet, Goa

"With reference to your letter No. 8/48(2)-835 dated the 29th March, 1949, I am requested by His Excellency to send you, in compliance with your request, a transit permit form (Guia) which the Head Office of the Civil Administration Services, Goa, issues to public servants, their wives and missionaries going abroad.

2. I must inform you that all public servants on active service in Portuguese India, as well as those who come to Portuguese India to take up public posts, are Portuguese who necessarily have legal residence in Portuguese India.

3. The transit permits issued to them, as I have had the honour to inform you in para 2 of my letter No. 760/G dated 23.12.1948—offer precisely the same guarantees as passports, in view of the fact that all public servants on their appointment, have a complete set of documents as are required for the issue of a Passport. The same is the case with their families and the missionaries who travel at the Government cost.

4. I must also elucidate you on the matter as referred to in para 3 of your above mentioned letter. The public servants on service in Portuguese India are all Portuguese with legal domicile in Portuguese India, and as you are aware, there is no distinction whatever between a native of this country and a Portuguese born in Portugal, as far as the nationality is concerned, because all are Portuguese having equal rights.

5. In view of the facilities that have always been given to the Portuguese residing in this country—whether from Portugal or natives of this country—to proceed to India, this Government also, as you are aware, has been extending the same facilities to proceed to Portuguese India to foreigners who are Indian Union nationals, seeing that the latter are given certain privileges and exemptions, or rather meted out a treatment different from that given to other foreigners.

6. In the circumstances this Government hopes that the Indian Government will give due consideration to what has been adopted above and will maintain the system that has been adopted up to this day, because it is the desire of this Government also not to alter the existing system which governs the entry of the Indian Union nationals in Portuguese India.

With the assurance of my highest esteem, . . .”

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#### Annex E. No. 49

LETTER FROM THE CONSUL GENERAL FOR INDIA, GOA, TO THE CHIEF  
OF CABINET, GOA, DATED 17TH JANUARY, 1950

No. VIII/6-88

17th January 1950.

To

The Chief of Cabinet,  
Goa.

Sir,

I have the honour to invite your attention to correspondence resting with your letter No. 356/G, dated 12th April 1949. I am directed by my Government to inform the Portuguese India authorities that:—

(1) The Government of India are prepared to accept the “Guia” as a valid travel document in lieu of a passport.

(2) The Government of India are unable to accept the contention of the Portuguese Government in Goa that all Portuguese officials, whether born in Portugal or elsewhere, acquire domicile in Portuguese India so long as they remain in service there. In accordance with general international practice in this respect the Government of India are prepared to regard only those persons as domiciled in Portuguese India who are resident in Portuguese-India and who intend to make that country their permanent home. The mere fact that an official is serving in Goa does not prove that it is or will be his permanent home

(3) Under rule 5(1) (g) of the Indian Passport Rules, 1921, persons domiciled in Portuguese-India do not require either passports or visas

for travel to India. The Government of India propose to continue this exemption in respect of all persons domiciled in Goa. Portuguese officials and others, who do not fulfil the conditions that the Government of India consider requisite for domicile in Goa, must have their "Guias" or passports duly visaed for India.

Please accept, Sir, the assurances of my high consideration.

(Signed) A. N. MEHTA.  
 Consul General for India,  
 Goa.

### Annex E. No. 50

NOTE FROM THE CONSULATE GENERAL OF INDIA, GOA, TO THE  
 GOVERNOR GENERAL, GOA, DATED 1ST OCTOBER, 1953

Consulate General of India,

Goa.

No. VIII/7-8115.

Dated, 1st October, 1953.

The Consul General of India presents his compliments to His Excellency the Governor General, Goa, and has the honour to state as follows:

It has come to the notice of the Government of India that on a number of occasions Portuguese European officials travelling between the Portuguese territories in India have transitted Indian territory without obtaining visas either from the Consulate General or other competent Indian authority in accordance with the requirements of the Indian Passport Act. Instances have not been lacking when Portuguese European officials, having gone to Daman from Goa on transit visas have again re-entered Indian territory, and subsequently returned to Daman, without obtaining entry visas. The Consul General is accordingly required by the Government of India to inform his Excellency that this is a serious contravention of the Indian Passport Act.

It has further come to the notice of the Government of India that in many cases certain Portuguese European officials, having entered India either on a transit visa, or on an entry visa obtained for purposes of spending their leave in the country, have indulged in various official activities not permitted to them by virtue of the terms under which these visas are granted. The Consul General is directed to inform His Excellency that a transit visa in particular is specifically intended to facilitate the travel of the individual concerned to his destination in direct transit. If official work has to be undertaken in India, an entry visa should be asked for specifically for this purpose.

In view of the above mentioned infringements of the Indian Passport Act, the Consul General is directed to request His Excellency to take necessary measures to avoid recurrence of such cases which, if continued, would compel the Government of India to take action against the defaulters according to law.

The Consul General takes this opportunity to renew the assurances of his highest consideration.

His Excellency  
the Governor General,  
Goa.

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**Annex E. No. 51**

NOTE FROM THE CONSULATE GENERAL OF INDIA, GOA, TO THE  
GOVERNOR GENERAL, GOA, DATED 5TH DECEMBER, 1933

Consulate General of India,

Goa.

No. VIII/7-10088.

5th December, 1953.

The Consul General of India presents his compliments to His Excellency the Governor General, Goa and has the honour to state that it has been brought to his notice during his recent tour to Daman and Nagar Aveli that the terms of note No. VIII/7-8115, dated the 1st October 1953, regarding the possession of valid visas by all Portuguese European officials stationed at Daman and Nagar Aveli transitting Indian territory are not being observed. Numerous instances of contravention of these regulations after the date of the above note have been reported. The Consul General has the honour accordingly to request that immediate instructions be issued to the effect that the requirements of our above note are strictly observed in future by Portuguese European officials as well as by the members of their families.

The Consul General takes this opportunity to renew the assurances of his highest consideration.

His Excellency,  
the Governor General,  
Goa.

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**Annex E. No. 52**

LETTER FROM THE CHIEF OF CABINET, GOA, TO CONSUL GENERAL  
FOR INDIA, GOA, DATED 21ST DECEMBER, 1953

Translation of the letter No. 307, Proc. B/3, 1, dated the 21st December 1953, from the Chief of Cabinet, Goa.

CONFIDENTIAL

*Reference: Letter No. VIII/7-10088, of 5-XII-53*

I am directed by H. E. the Governor General to inform you that the ban whereby the European officials cannot transit through the Indian Union territory between Daman and Nagar-Aveli, without visas from the Consulate General of India in Goa, constitutes a change to the

*status quo ante*, owing to which fact that matter has been submitted to my Government.

Meanwhile, and in accordance with the verbal communication made by you lately to the Acting Governor of Daman, duly clarified by a member of the staff of the Consulate, "guias" are being issued to the European officials on duty in the Daman district, as well as to their families, for the purpose of being visaed by you, with validity for a period of one year.

Please accept, Sir, etc.

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**Annex E. No. 53**

NOTE FROM THE GOVERNMENT OF INDIA TO THE LEGATION OF  
PORTUGAL IN INDIA, DATED 23RD DECEMBER, 1953

[See Annex 38 to Memorial, Vol. I, pp. 72-73.]

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**Annex E. No. 54**

NOTE FROM THE LEGATION OF PORTUGAL, NEW DELHI, TO THE MINISTRY  
OF EXTERNAL AFFAIRS, GOVERNMENT OF INDIA,  
DATED 11TH FEBRUARY 1954

[See Annex 40 to Memorial, Vol. I, pp. 77-79.]

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**Annex E. No. 55**

NOTIFICATION OF THE GOVERNMENT OF INDIA, DATED 10TH APRIL, 1954  
No. 6/67/52-F. I

GOVERNMENT OF INDIA,  
MINISTRY OF HOME AFFAIRS

New Delhi (2), the 10th April, 1954.

11.

NOTIFICATION

In exercise of the powers conferred by section 3 of the Indian passport Act, 1920 (XXXIV of 1920), the Central Government hereby directs that the following further amendments shall be made in the Indian Passport Rules 1950, namely:—

In sub rule (1) of rule 4 of the said Rules—

(1) for clause (c), the following clauses shall be substituted, namely:—

“(c) Persons domiciled in India proceeding from the Portuguese Establishments in India;

“(cc) Persons domiciled in India, proceeding from any of the French Establishments in India other than those proceeding from Pondicherry and Karaikal on or after the 19th April, 1954.”

(ii) for clause (d), the following clauses shall be substituted, namely:—

“(d) Persons domiciled in any French Establishment in India proceeding from any such establishment other than those proceeding from Pondicherry and Karaikal on or after the 19th April, 1954;

(dd) Persons domiciled in any Portuguese establishment in India other than persons in the Service of the Government of any such establishment or the member of the family of any such person proceeding from any such establishment on or after the 1st April 1954.”

(Signed) FATEH SINGH

Deputy Secretary to the Government of India.

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**Annex E. No. 56**

NOTE FROM THE MINISTRY OF EXTERNAL AFFAIRS, NEW DELHI, TO THE LEGATION OF PORTUGAL

[See Annex C. No. 86 to Preliminary Objection, Vol. I, pp. 559-560.]

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**Annex E. No. 57**

NOTE FROM THE LEGATION OF PORTUGAL, NEW DELHI, TO THE MINISTRY OF EXTERNAL AFFAIRS, DATED 31ST JULY, 1954

Note No. 109 dated 31st July, 1954 from the Legation of Portugal to the Ministry of External Affairs, Government of India, New Delhi.

The Legation of Portugal present their compliments to the Ministry of External Affairs and have the honour to communicate that all Indian nationals who wish to enter Portuguese territory at any place of the frontier have to produce passports or equivalent documents duly visaed by Portuguese Consular authorities. This procedure will be enforced from the 1st August, 1954.

The above is communicated to the Ministry owing to the fact that the Indian Consul General at Goa, when informed of this, in clear contradiction with his previous communications to His Excellency the Governor General regarding the need of Indian visas, pretended that the matter was beyond his jurisdiction.

The Legation of Portugal avail themselves of this opportunity to renew to the Ministry of External Affairs, the assurances of their highest consideration.

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**Annex E. No. 58**

COPY IN TRANSLATION OF THE CIRCULAR, DATED THE 7TH AUGUST 1954,  
FROM THE GOA POLICE COMMISSARIAT

On Republic's Service . . . .  
Information Service . . . .

PORTUGUESE INDIA POLICE-COMMAND--

No. SI. 659/TE-Circular . . . . .  
To Messrs. Minerio Limitada-City of Goa . . . . .

Notice is hereby given to all mine concessionaires and owners to the effect that within 24 hours they should arrange for the departure from our territory of all the personnel born in India which is not authorized to reside permanently or temporarily in our territory.

Whoever does not fulfil what is laid down in this Circular shall be detained for disobedience to authority.

To the Good of the Nation,  
The Command in Goa, dated the 7th Aug. 1954.  
The Commissioner,  
Fernando DA COSTA REVEZ ROMBA, Cavalry Capt.

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**Annex E. No. 59**

PRESS NOTE FROM THE MINISTRY OF EXTERNAL AFFAIRS, GOVERNMENT  
OF INDIA, DATED 4TH AUGUST, 1954

GOVERNMENT OF INDIA  
PRESS INFORMATION BUREAU

PRESS NOTE

The Government of India have noted the decision of the Portuguese Government that with effect from August 1, 1954, Indians entering Goa must be in possession of a passport or an equivalent document and have a visa from a Portuguese Consular authority. This was announced on the 30th of July and the Government of India informed in an official note on the 31st. The only so-called concession the Portuguese Government made was that people crossing the Portuguese frontier without passports on the 1st and 2nd of August would not be dealt with harshly. In brief, the Portuguese Government have, without any advance warning, brought the movement of Indians into Goa to a standstill thereby causing extreme hardship to thousands of Indians both inside Goa as well as in the rest of India. This lack of consideration on the part of the Portuguese authorities for the welfare of Indians and Goans is in accord with the traditional pattern of their policies.

The Government of India have decided to introduce a permit scheme in regard to entry of persons from the Portuguese settlements into India. This measure is dictated primarily by the need to stop the large-scale

smuggling that has been going on between the Portuguese settlements and India. The permit scheme will be put into operation shortly, the delay being due to the desire on the part of the Government of India not to stop completely the movement from these settlements into India thereby causing hardship to innocent people. The date of the introduction of the scheme will be announced in due course.

*Ministry of External Affairs.*

New Delhi, August 4, 1954.

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## Annex E. No. 60

## POLITICAL AND SERVICES DEPARTMENT

No. 2768/46-17504-A.

Bombay Castle, 13th April 1949.

From

Shri M. D. Bhat, Esquire, I.C.S.  
Chief Secretary to the Government of Bombay,  
Political and Services Department.

To

The Consul for Portugal at Bombay

Sir,

I am directed to acknowledge the receipt of your letter 379/Proc 13-D/a/49, dated the 8th April 1949, requesting permission for the free transit for two armed soldiers who will be accompanying the Shroff of Revenue Department of Nagar-Aveli when he will be taking funds from Nagar-Aveli to Daman crossing the Indian territory and to state that the necessary instructions have been issued to the officers concerned.

Yours faithfully,

*(Signed)*

For Chief Secretary to the Govt. of Bombay,  
Political and Services Department.

Bombay Castle, 13th April 1949.

Copy with a copy of the letter replied to forwarded for information and guidance to the under mentioned Officers in continuation of Govt. Endorsement, Political and Services Department, No. 2768/46-A, dated the 15th January 1949.

By order of the Governor of Bombay

*(Signed)*-

For Chief Secretary to the Govt. of Bombay,  
Political and Services Department.

To

The Inspector General of Police, Province of Bombay, Poona,  
The Deputy Inspector General of Police, C.I.D., Poona,  
The Commissioner of Police, Bombay,  
The Collector of Central Excise, Bombay,  
The Collector of Customs, Bombay,  
The District Magistrate, Surat,  
The District Superintendent of Police, Surat,  
The Supdt. of Police, B.B. & C.I. Railway.

"As desired by the Govt. of Daman, I have the honour to request you to be so good as to issue the necessary instructions to competent authorities to allow free transit to two armed soldiers who will be escorting the Shroff of Revenue Department of Nagar Avely when he will be shortly taking funds from Nagar Avely to Daman crossing the India territory.

I shall feel obliged if you will kindly expedite the matter as early as possible.

Thanking you in anticipation.

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POLITICAL AND SERVICES DEPARTMENT

No. 2768/46-A.

Letter No. 1014/13/D/a/49, dated the 27th September 1949, from the Consul for Portugal at Bombay, addressed to the Chief Secretary to the Government of Bombay, Political and Services Department, Bombay.

As desired by the Government of Daman, I have the honour to request you to be so good as to issue the necessary instructions to the competent authorities to allow free transit to two Daman Armed Soldiers who will accompany the Shroff of the Revenue Department of Nagar Avely when he will shortly go from Nagar Avely to Daman with funds to deposit with the Revenue Department, of Daman.

Thanking you in anticipation.

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Bombay Castle, 6th October, 1949.

From

Shri M. D. Bhatt, Esquire, I.C.S.,  
Chief Secretary to the Government of Bombay,  
Political and Services Department.

To

The Consul for Portugal at Bombay.

Sir,

I am directed to acknowledge the receipt of your letter No. 1014/13/D/a/49, dated the 27th September 1949 requesting the permission for free transit to two armed soldiers who will escort the shroff of the Revenue Department of Nagar Avely who will go to Daman to deposit funds with the revenue department of Daman and to state that the necessary instructions have been issued to the Officers concerned.

Yours faithfully,

(Signed)

For Chief Secretary to the Government of  
Bombay, Political and Services Department.

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*Very Urgent.*

Bombay Castle, 6th October 1949.

Copy, with a copy of a letter under reply forwarded with compliments for information and guidance to under mentioned Officers in continuation of the Government endorsement No. 2768/46/35177-A, dated the 21st July 1949.

By order of the Governor of Bombay,

*(Signed)*

For Chief Secretary to the Government of  
Bombay, Political and Services Department.

To

The Inspector General of Police, Bombay Province, Poona,  
The Deputy Inspector General of Police, C.I.D., Poona,  
The Commissioner of Police, Bombay,  
The Collector of Central Excise, Bombay,  
The Collector of Customs, Bombay,  
The District Magistrate, Surat,  
The District Superintendent of Police, Surat,  
The Supdt. of Police, B.B. & C.I. Railway.

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POLITICAL AND SERVICES DEPARTMENT

No. 2768/46/62617-A

Letter from the Consul for Portugal No. 1287/13-D/a/49, dated the  
13th December 1949.

As desired by the Government of Daman, I have the honour to request to be so good as to issue the necessary instructions to the competent authorities to allow free transit to two armed soldiers who will accompany the Shroff of the Revenue Department of Nagar Avely when he will shortly proceed from Nagar Avely to Daman with funds to deposit with the Revenue Department, of Daman.

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Bombay Castle, 17th December 1949.

From

Shri M. D. Bhatt, I.C.S.,  
Chief Secretary to the Government of Bombay,  
Political and Services Department.

To

The Consul for Portugal at Bombay.

Sir,

I am directed to acknowledge the receipt of your letter No. 1287/13-D/a/49, dated the 13th December 1949, requesting the permission for free transit to two armed soldiers who will escort the Shroff of the Revenue Department of Nagar Aveli who will go to Daman to deposit funds with the Revenue Department of Daman and to state that the necessary instructions have been issued to the Officers concerned.

Yours faithfully,

*(Signed)*

For Chief Secretary to the Government of  
Bombay, Political and Services Department.

POLITICAL AND SERVICES DEPARTMENT

No. 2768/46/11899/A

Letter from the Consul for Portugal, No. 260-13-D/a/50, dated  
the 13th March, 1950

A desired by the Government of Daman, I have the honour to request you to be so good as to issue instructions to the competent authorities to allow free transit to two armed soldiers who will be escorting the Shroff of the Revenue office of Nagar Aveli, from Nagar Aveli to Daman to deposit funds with the Revenue office at Daman.

Thanking you in anticipation.

Bombay Castle, 16th March 1950.

From

Shri M. D. Bhat, I.C.S.,  
Chief Secretary to the Govt. of Bombay  
Political and Services Department.

To

The Consul for Portugal at Bombay,  
Bombay.

Sir,

I am directed to acknowledge the receipt of your letter No. 260-13-D-a-50, dated the 13th March, 1950, requesting the permission for free transit to two armed soldiers who will escort the Shroff of the Revenue Department of Nagar Aveli, who will go to Daman to deposit funds with the Revenue Department of Daman and to state that the necessary instructions have been issued to the officers concerned.

Yours faithfully,

*(Signed)*

For Chief Secretary to the Govt. of Bombay,  
Political and Services Department,

*Very Urgent*

Bombay Castle, 16th March 1950.

Copy, with a copy of the letter under reply forwarded w.cs. for information and guidance to the undermentioned officers in continuation of this department endorsement No. 2768/46/64088-A dated the 30th December 1950.

By order of the Governor of Bombay,

*(Signed)*

For Chief Secretary to the Govt. of Bombay,  
Political and Services Department.

To

The I.G. of Police, State of Bombay, Poona,  
The D.I.G. of Police, C.I.D., Bombay,  
The Commissioner of Police, Bombay,  
The Collector of Central Excise, Bombay,  
The Collector of Customs Bombay,  
The Dist. Magt., Surat,  
The Dist. Supdt. of Police, Surat,  
The Supdt. of Police, B.B. & C.I. Rly.

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POLITICAL AND SERVICES DEPARTMENT

No. 2768/46/83763-A

Letter No. 537/13-D/50, dated the 26th May 1950, from the  
Consul for Portugal at Bombay

As desired by the Government of Daman, I have the honour to request you to be so good as to issue your instructions to the competent authorities to allow free transit to two armed soldiers who will escort the Shroff of the Revenue Department of Nagar Aveli, from Nagar Avely to Daman, as he will carry funds to transfer to Daman, and further I request you the favour of issuing similar instructions to the respective authorities to allow free transit to three armed soldiers who will be escorting the Shroff of the Revenue Department of Daman, from Daman to Bombay, as the latter Shroff will be bringing funds to Bombay to be deposited with the Banco Nacional Ultramarino.

As the funds in question are to be transferred soon I shall feel obliged if you will kindly issue your instructions as urgent as possible.

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Bombay Castle, 1st June 1950.

From

The Chief Secretary to the Govt. of Bombay,  
Political and Services Department.

To

The Consul for Portugal, Bombay.

Sir,

I am directed to acknowledge the receipt of your letters No. 573-13-D/a/50, dated the 26th May 1950 requesting the permission for free transit to armed soldiers on their way to and from Nagar Aveli and Daman, and to state that the necessary instructions have been issued to the Officers concerned.

Yours faithfully,

*(Signed)*For Chief Secretary to the Govt. of Bombay,  
Political and Services Department.*Very Urgent.*

Bombay Castle, 1st June 1950.

Copy with copy of the letter under reply forwarded with compliments to the undermentioned officers in continuation of this Department endorsement No. 2768/46/14612-A dated the 3rd April 1950.

By order of the Governor of Bombay,

*(Signed)*For Chief Secretary to the Govt. of Bombay,  
Political and Services Department.

To

The Inspector General of Police, Bombay State, Poona,  
The Deputy Inspector General of Police, C.I.D., Bombay,  
The Commissioner of Police, Bombay,  
The Collector of Central Excise, Bombay,  
The Collector of Customs, Bombay,  
The Dist. Magistrate, Surat.  
The Dist. Supdt. of Police, Surat,  
The Supdt. of Police, B.B. & C.I. Rly.



ANNEXES TO COUNTER-MEMORIAL (E No. 60)  
POLITICAL AND SERVICES DEPARTMENT  
No. 2768/46/40603-A

381

Bombay Castle, 20th September 1950.

From

Shri M. D. Bhat, I.C.S.,  
Chief Secy. to the Govt. of Bombay,  
Political and Services Departt.

To

The Consul for Portugal,  
In charge of the Consulate General of Bombay.

Sir,

I am directed to acknowledge the receipt of your letter No. 944 (a) 13/D/s/50, dated the 12th Sept. 1950, regarding permission for free transit to two armed soldiers escorting the Shroff of the Revenue Department of Nagar Aveli from Nagar Aveli to Daman and to state that the necessary instructions have been issued to the officers concerned.

Yours faithfully,

*(Signed)*

For Chief Secy. to the Govt. of Bombay,  
Political and Services Department.

Bombay Castle, 20th September 1950.

Copy with copy of the letter under reply forwarded with compliments to the under mentioned officers in continuation of this Department endorsement No. 2768/46-39012-A dated the 11th Sept. 1950.

By order of the Governor of Bombay,

By order of the Governor of Bombay,

*(Signed)*

for Chief Secy. to the Govt. of Bombay,  
Political and Services Deptt.

To

I.G. of Police, B.S., Poona,  
The D.I.G. of Police, C.I.D., Bombay,  
The Collector of Central Excise, Bombay,  
The Dist. Supdt. of Police, Surat,  
The Dist. Magt., Surat,  
The Supdt. of Police, B.B. & C.I. Rly.

## POLITICAL AND SERVICES DEPARTMENT

No. 2768/46-11927-A

Letter from the Consul for Portugal in charge of the Consulate General, Bombay, No. 263/13-D/a/51 dated the 2nd March 1951

As desired by the Government of Daman I have the honour to request you to be so good as to issue your instructions to the competent authorities to allow free transit to two armed soldiers who will be escorting the Shroff of Revenue office at Nagar Aveli when he will shortly be taking with him funds to transfer from Nagar Aveli to Daman treasury.

Thanking you in anticipation.

---

Bombay Castle, 9th March 1951.

From

Shri M. D. Bhat, I.C.S.,  
Chief Secretary to the Govt. of Bombay,  
Political and Services Department.

To

The Consul in charge of the Consulate General  
for Portugal at Bombay.

Sir,

I am directed to acknowledge the receipt of your letter No. 263/13-D/a/51 dated the 2nd March 1951, regarding the permission for free transit to two armed soldiers escorting the Shroff of the Revenue Department of Nagar Aveli from Nagar Aveli to Daman and to state that the necessary instructions have been issued to the Officers concerned.

Yours faithfully,

*(Signed)*

For Chief Secretary to the Govt. of Bombay,  
Political and Services Department.

---

Bombay Castle, 9th March 1951.

Copy with a copy of the letter under reply forwarded w.cs. to the undermentioned officers in continuation of this Deptt. endorsement No. 2768/46/-10449-A dated the 5th March 1951.

By order of the Governor of Bombay,

*(Signed)*

Chief Secretary to the Govt. of Bombay,  
Political and Services Department.

To

The I.G. of Police, Bombay State, Poona,  
 The D.I.G. of Police, C.I.D., Bombay,  
 The Commissioner of Police, Bombay,  
 The Collector of Central Excise, Bombay,  
 The Collector of Customs, Bombay,  
 The Dist. Magistrate, Surat,  
 The Dist. Supdt. of Police, Surat,  
 The Dist. Supdt. of Police, Thana,  
 The Dist. Magst. Thana,  
 The Supdt. of Police, B.B. & C.I. Rly.

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**Annex E. No. 61**

FROM THE "BOMBAY CHRONICLE", DATED 18 JULY 1946

*"Goa Defies Portuguese Terror"*

STRUGGLE FOR CIVIL LIBERTY SPREADS

*Popular Leaders Subjected To Brutal Treatment*

The President of the Goa Youth League writes:

After the arrest and deportation of Dr. Ram Manohar Lohia, the Goan public which accepted the challenge, kept up the torch of revolt burning by defying the ban on public meetings by calling meetings both in the towns and cities and in the villages. The only reaction of the Government till the 12th of July was that of brutal assaults on the public and of temporary arrests of speakers.

The very first meeting after Dr. Lohia's arrest was held at Margao on the 23rd of July. Mr. Tristao Braganca Cunha addressed the meeting. The success of this meeting created an impression that the Government had relaxed the stringency of its laws. Later events belied this impression.

At Margao on the 30th June, a Public meeting was called and Miss Berta Menezes Braganca was scheduled to speak. About an hour before the announced time the entire place was cordoned off by the military. At the appointed time Miss Braganca came to the spot accompanied by Mr. Tristao Braganca Cunha. A crowd of over a thousand was also present. The Captain of the troops approached Miss Braganca and ordered her to clear away from the place before the Military took any drastic action.

Miss Braganca, however, refused to comply with the order and began to address the meeting. The Captain summoned his troops and ordered her to be removed from the place. His plea was that if she were allowed to speak the gathered public would get out of control and indulge in acts of violence. Mr. Tristao Braganca Cunha told the military authorities that he could guarantee good behaviour from the public if they were allowed to hold the meeting peacefully and if the troops were withdrawn.

The Captain took this as an affront to his authority and began beating Mr. Cunha with his baton and ordered the troops to assault him. About six soldiers began assaulting him with the butt ends of their guns till he fell down on the ground. By this time the crowd interfered and Mr. Cunha was rescued. Miss Berta Braganza was also assaulted.

On seeing that the assault had had no effect on the determination of Mr. Cunha, he and Miss Braganza were forced into a military lorry and after taking them through devious routes, they were released at Chandor, some ten miles away from Margao. The troops set upon Mr. Vicente Cunha and forcibly snatched away from his head his Gandhi Cap, tore it to pieces and used the rags to wipe their shoes.

Besides these meetings in Margao several meetings have been held in different villages on various days, where the troops have taken recourse to merciless assault on the public.

Inhuman incidents took place at Cunolim on Sunday the 7th instant when a public meeting was called by the villagers to defy the ban on meetings. Half an hour before the scheduled time about eighty armed troops motored to Cunolim. In a restaurant, in the village bazar Vicente Cunha was having a cup of tea. He was wearing a Gandhi Cap.

The Captain of the troops—the Administrator—entered the restaurant, dragged Mr. Cunha out and personally assaulted him with his baton and searched his pockets for literature. After this, the Administrator caught hold of a young boy of about sixteen years, by name Ananda Corado, who has been an active worker in the movement. Curado was taken to the local police chowki, locked up in a room and was beaten up with butt ends of the guns. The Administrator, demanded him to shout 'Viva Portugal' which the boy refused. When beating was of no avail the Administrator ordered a soldier to pierce a bayonet in the boy's mouth. But even this was of no avail. Curado was pushed out of the Police station with a torn lip and a broken tooth.

In spite of these brutalities, another meeting was called at Chandor on the 10th instant to commemorate the death anniversary of Mr. Louis de Menezes Braganza, a noted patriot and the greatest journalist of Goa. The troops drove in, as usual half an hour before the meeting time and cordoned the maidan. Yet the public gathered and the meeting commenced right at the scheduled time. The troops did not interfere with the first speaker who spoke in Portuguese. But when the second speaker, Joachim Dias, has spoken for about 15 minutes, the Administrator came forward and ordered him to stop. Unmindful of the order the speaker continued with his talk. The administrator repeated his order thrice and then dragged the speaker away and detained him in the military car.

No sooner was he taken away, Chandrakant Kadodkar began addressing the meeting. This time the Administrator instead of arresting the speaker ordered his soldiers to attack him. The speaker was mercilessly beaten by three soldiers at one time till he was rescued by the ladies present. Others from the audience too were charged with butt-ends of the guns. Among the victims were Miss Berta Braganca, Vicente Cunha and others.

But the police brutalities have failed to cow down the spirit of the people. On the contrary the movement is gathering momentum and more and more people are coming forward.

It now appears that the Government has started fresh methods of terrorising the people. On the 12th instant Mr. Tristao Braganca Cunha the founder of the Goa Congress was called to the Police Station at Margao and was arrested there. He has been now detained at the Military Prison at Aguada in Goa and is awaiting Court Martial.

The Government has decided to try Mr. Cunha by Court Martial in spite of the fact that no acts of violence have taken place anywhere in Goa and no Martial Law has been imposed."

#### ARRESTED GOA CONGRESS LEADER TAKEN TO AGUADA FORT

Tristao Braganca Cunha, founder of the Goa Congress Committee who was arrested at Margao, on July 12 by the Colonial Administration of the Portuguese Government, has been, it is reported, taken to the Military Fort at Aguada, where he is kept in detention. It is also reported that he will be tried by Court Martial.

The Goans are agitating for the public trial of Mr. Cunha with opportunities for defence.

#### SECRETARY OF LOCAL CONGRESS COMMITTEE TO BE TRIED UNDER MARTIAL LAW

Mr. Joachim Dias, President, Goan Youth League, has sent the following telegram to Mahatma Gandhi and Pandit Jawaharlal Nehru.

Tristao Braganca Cunha, Secretary, Goa Congress Committee, arrested in Goa, detained in Military Prison at Aguada Fort, awaiting Court Martial, Martial Law not proclaimed. Court Martial unconstitutional. Goa Fascist Government allows no defence. Request mediation National Congress for regular, public trial with opportunities for defence. Goa movement completely non-violent.

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#### Annex E. No. 62

FROM THE "INDIAN EXPRESS", MADRAS, DATED 14.12.51

#### GOAN GOVERNMENT CLOSE DOWN COLLEGE

Students Quoted Nehru's Speech in Essay

Bombay, Dec. 13.

The Portuguese Government in Goa have suspended 'sine die' the leading educational institution, Almeida College, which has been sympathetic to the national movement for liberation of Goa from foreign domination, according to information received by the United Front of Goans in Bombay today.

The immediate ground for closing down the institution appears to be, according to the United Front, that a teacher in the college gave an essay to the students of the matriculation class on the "role of students in Free India" and some students, while answering quoted Pandit Nehru's recent speech to the National Student's Conference in Bombay.

The matter was reported to the Governor who issued orders for the closing down of the college.

The same sources further revealed that the Goa Government have also issued orders to their officials, particularly the Hindus, to come to the office in trousers and not in dhothies.

In a statement to the Press in this connection, Mr. Waman Desai, General Secretary of the United Front of Goans, said that this ruthless suppression of elementary civil liberties would not cow down the hearts of Goans who would only redouble their determination to put an end to Portuguese colonialism in Goa.

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### Annex E. No. 63

FROM THE "FREE GOA", BOMBAY, DATED 25.7.1955

#### 1954 VICTORY OF GOANS AND WARLIS

##### LIBERATION OF DADRA AND NAGAR HAVELI

What was done by Father Jeremias Mascarenhas a century ago and Menezes Braganza in 1933 in the Government Council was nothing more than giving shape to the ideas and feelings that were brewing in the oppressed minds and hearts of Goan Patriots.

The Independence of India broadened those ideas and gave them more decision. Thus on 18th June 1946 broke out the first nationalist and popular movement taking up the thread of the long series of struggles for the Liberation of Goa. And on the 22nd July 1954 came the Liberation of Dadra. An act shameful for the name of the Portuguese, directed the attention of the nationalists towards that Territory. In fact, Capt. Romba and his agents tried to entice various nationalists with false promises of political autonomy for Goa. Perhaps, drawn by good faith, the United Front of Goans accepted to go to negotiate it in Damaun. Once there, Romba and his Police Commissioner then substituting the Governor, arrested the guests, repeating the treacherous feats of Albuquerque and Gamas.

We are told that on that occasion the Portuguese Forest Officer, Passos, who was in Nagar-Haveli said: "Damaun is a lost case for us".

As soon as it was released, the working committee of the U.F.G. resolved to avenge the disloyal act. And all attention was concentrated on Dadra.

Several peaceful attempts were tried by the U.G.F. to liberate Dadra but fear and distrust on both sides brought in impediments. Informed of what was happening, the Portuguese Government re-enforced the Police and armaments.

Tired of the failure of peaceful means, the U.F.G. tried a mixed process: about seventeen people were sent to inspect the Territory of Dadra; but on its first contact the Police Post opened fire with guns and a machine-gun. The nationalists, with no such arms to put up a resistance with no hopes, left everything to fate. All of a sudden the machine-gun was silent. It was clear that it was out of order. Then, the most daring of the nationalists, in spite of a bullet wound in his arm, advanced from

the back of the Police Post and with first weapon he could get hold of dealt a mortal blow on Aniceto Rozario who was trying to put the machine-gun in working order. The silencing of the machine-gun was followed by a terrific panic among the Police. They surrendered and the population taken by surprise acclaimed the Liberators!

There is another version that says that Aniceto Rozario was willing to give in to the demands of another group of nationalists and that the peaceful occupation of Dadra was to come into effect on the day on which Aniceto would leave Dadra for Damaun; but events precipitated and the permit for Aniceto's departure arrived after his death!

The fall of Dadra created panic in Nagar Haveli. Should the U.F.G. have gone there the following day it would have found the doors open—say the local nationalists of Nagar-Haveli. Such was the confusion and fear that reigned that this state of mind was seen to reflect even in the most ordinary routine work of the Administration. A propos of everything was a warning about the grave situation.

This demoralisation was taken advantage of by a section of the National Congress Goa which called itself Azad Gomantak Dal.

The Azad Gomantak Dal entered Nagar-Haveli on 28th July through the village of Naroli. Prepared for all eventually—a fight should a fight be provoked or peaceful means if the Portuguese desired them—the Azad Dal went armed with crackers used in fire works. The first arms they got were from the Naroli Police Post and Patelate. Nobody was injured or ill-treated. And it was not long before the people's co-operation came: Big groups of people acclaimed the Liberators. Such was the shouting that it seemed as if various battalions were on the march.

In order to be informed about events the Nagar-Haveli Administration sent out spies to calculate the strength of the Azad Dal, accordingly to prepare the defence. A great part of the petrol was spent in transporting sand for erecting barricades of sand bags at the Police Post. About two hundred armed men excitedly waited to repel the nationalist Goans.

In the meanwhile events were precipitating. The volunteers of the Goan People's Party were entering through Khandwell. News came like lightning. "The red flag is coming" was a cry that struck terror in some and filled with enthusiasm others. The Goan People's Party was helped by local Warlis.

The march in two directions killed the last spark of hope in the colonialists. And the informers, full of fear, multiplied the number of the Liberators a hundred fold.

They informed Capt. Fidalgo that the Liberators were coming in thousands. What could just 200 men with the few machine-guns and handgrenades, which Lt. Falcao had, do against thousands of people?

When the Portuguese forces were fleeing to Khandwell they met the Goan People's Party on the Racoli bridge. There the Capt. ordered his men to open fire with guns and machine-guns. The result: one machine-gun was put out of order and two Police were seriously wounded.

Finally, the Capt., the Police Inspector and the Police Sub-inspector went to surrender themselves to the Indian Police in Udwarda. But the Sub-Inspector Pegado, hated by the people, ordered the men who remained behind to open fire on the Liberators.

It is interesting to know that during this period of the liberation, the Portuguese Press transformed the Police Inspector, Falcao, into a hero who flew from one end of the Territory to the other, triumphantly

keeping up a guerilla fight. The truth is that in face of the unexpected happenings poor Falcao sobbed like a child, hoping that the genius of Capt. Fidalgo might operate miracles, like those he boasted of having operated in his fanciful African campaigns.

The fact is that seventy volunteers disarmed the strategy of a Captain, a Police Inspector, two Sub-Inspectors and two hundred Portuguese Police, and without killing a single person Liberated Nagar Haveli.

And the struggle goes on in Goa, Damaun and Diu in spite of the fierce resistance put up by the Portuguese colonialism.

Big sentences were introduced to intimidate the Satyagrahis. In practice, however, it is seen that instead of receding the movement advances and that the Portuguese Government is the first to disrespect its own laws, for after practising all manner of tyranny and violence on the Satyagrahis, it puts them out of its artificial border.

The struggle cannot stop till the last vestige of colonialism disappears from the sacred soil of India !

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### Annex E. No. 64

#### REPORT

of the New Administration  
on the conditions in  
Nagar Aveli and Dadra  
before and after the liberation from  
PORTUGUESE COLONIALISM

#### THE GOA LEAGUE

374 GRAY'S INN ROAD,  
LONDON, W.C.1.

[Not reproduced.]

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### Annex E. No. 65

#### (Part 1)

FROM THE "INDIAN EXPRESS", DATED 29TH NOVEMBER 1954

THANKSGIVING DAY IN LIBERATED ENCLAVES

NEW ADMINISTRATIVE SET-UP IN DADRA, NAGAR HAVELI

From Our Correspondent

Silvassa, November 28.

The recently liberated enclaves of Dadra and Nagar Haveli with a population of more than 42,000, celebrated Thanksgiving Day on November 25 to commemorate their liberation from the Portuguese yoke.



Thousands of people, singing and dancing to the accompaniment of conch music, flocked to Silvassa, administrative seat of Nagar Haveli, to renew their pledge of loyalty to the Indian flag, which was unfurled by Mr. Appa Karmalkar, Administrator.

Thanksgiving prayers were offered throughout the area in churches, temples and other places of worship.

November 25 was selected by the people of these two enclaves for the celebrations because it was on that day, more than 400 years ago, that the Portuguese obtained a foothold in India (Goa).

A 25-man Advisory Council of a truly representative character was inaugurated by the Administrator. The Council includes seven prominent Adivasi patels of the area, who were present in their traditional tribal dress.

#### RESOLUTIONS

Immediately after the inaugural ceremony, the 25 members of the Council, preceded by a procession of school children of Silvassa singing Indian national songs, paraded the main thoroughfares of Silvassa.

In the afternoon the Council went into session and unanimously passed three resolutions. One expressed to the "National Government of India our patriotic will and fervent desire to integrate these liberated territories with the Indian Union and to realise and solidify the inalienable territorial and political unity".

By another resolution, the Council congratulated the people of Mahe, Karaikal, Yenam and Pondicherry for their "resistance in the struggle for liberation of the French settlements in India".

The Council also expressed its "great joy at the 'de facto' transfer of the French settlements to the Indian Union through peaceful negotiations.

By the third resolution, the Council appealed to the staff of the administration of Dadra and Nagar Haveli to serve the new regime of these liberated enclaves with "equal loyalty and enthusiasm, since liberty was a great gift that God had given to humanity".

The resolution ardently hoped that the people of Goa, Daman and Diu would, in the near future, hoist the Indian flag in their respective territories.

After the resolutions were passed, several members rose to speak and in turn pledged their unflinching loyalty to the present administration and the Indian Union. The speech by Brother George of the Roman Catholic monastery in Dadra was, in particular, very inspiring and was repeatedly applauded by the Council members.

#### ANOTHER EXECUTIVE

For efficient and smooth administration, an additional administrator in the person of Dr. Antonio Furturdo has been appointed. Dr. Furturdo, who was formerly Administrator of Village Communities in Goa and a Judge of the Administrative Tribunal, has been allotted the portfolios of Justice, Agriculture, Public Works and Health, while Mr. Appa Karmalkar holds the portfolios of Revenue, Education, Forest and Post and Telegraphs.

Mr. Karmalkar said that he had selected capable men on the Advisory Council of Nagar Haveli after he had taken expert advice from various

sections of the population of the two enclaves. All new proposals would be first placed before the Council for deliberation and then the Administrators would finally decide on the line of action to be taken. The Council was purely of an advisory nature, Mr. Karmalkar added.

Mr. Furturdo, Additional Administrator, said that the administration had chalked out a blueprint for agricultural reforms in Nagar Haveli. He disclosed that more than 1,000 families of tillers would soon be benefited by a scheme by which each cultivator would be given five acres of land on nominal rent for food crops.

In addition, cultivators would also receive, free of charge, materials for construction of huts on their respective farms.

Dr. Furturdo also said that the administration proposed to start a fund for the welfare of Adivasis in the area. Two farmers' shibirs would soon be organised on the Government Agricultural Farm at Silvassa, he said.

Shibir programmes would include demonstration of better farming and poultry-keeping methods, construction of approach roads, compost pits, latrines and school buildings through shramdan and discussions of various problems involved in the work, he added.

### (Part 2)

#### PANCHAYAT

Dadra	1. Jaiantybhai Narangui Dessai
"	2. Brother George, C. M. F.
Silvassa	3. Gregorio Coutinho
"	4. Vanmali Guela
"	5. Narayan Ganpatram Choubal
"	6. Madu Davalia
Sambarvanim	7. Claudio Nunes
Ameli	8. Daia Goan
Atola	9. Chambar Limgi
Massate	10. Bica Vansa
Naroli	11. Gulabsing Chotusing Parmar
"	12. Ramsingh Mohansing Parmar
Patti	13. Mangal Khalpa Marga
"	14. Raugi Sravan Chowdhari
Surangui	15. Laxi Cursan Gorat
Canoel	16. Suleman Pardhan
Rudona	17. Bablo Sorvan Varto
Carchonde	18. Eracsha Cawasgi
Vagehaurum	19. Dangi Dorma Burcul
Dudonim	20. Darma Cursan Kharparia
Kerdi	21. Mangi Dhacal Ghotai
Mandonim	22. Darma Nanum Maelcar
Chinsda	23. Deugi Ratna Narga
Randa	24. Deulia Mala.
Gulonda	25. Bebe Gavinte.

RESOLUTION ADOPTED BY THE PANCHAYAT IN ITS  
INAUGURAL SESSION OF 25th NOVEMBER 1954

The Panchayat of the Liberated Areas of DADRA and NAGAR HAVELI with its Headquarters in Silvassa resolves unanimously:—

1. To take oath of allegiance and give full support to the new Administration of these territories which has shaken the Portuguese colonial regime;

To appeal to the staff to serve with equal loyalty and enthusiasm the new regime since LIBERTY is a great gift that GOD has given to humanity next to rational living;

To express ardent votes that people of Goa, Daman and Diu see in the near future hoisting in their territories the FLAG of our Indian Sovereignty.

2. To express to the National Government of India their patriotic will and fervent desire to integrate these liberated territories into Indian Union to realise and solidify its inalienable and imprescriptible territorial and political UNITY.

3. To manifest great joy towards the *de facto* transfer to the Indian Union of the antique French settlements by peaceful negotiations by our great Prime Minister of India and by the broad visions of Statesman Shri Mendes France and to congratulate the people of Mahe, Kareikal, Yenam and Pondicherry expressing our profound admiration for their untamable resistance in the struggle of liberation.

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Annex E. No. 66

FROM THE "INDIAN EXPRESS", BOMBAY, DATED 29.12.1955

FREE DAMAN ENCLAVE WILL BAR RE-ENTRY OF PORTUGUESE

Selvassa. Nagar Haveli, December 28.

Dr. Antonio FURTADO, Administrator of the liberated Daman enclave of Dadra and Nagar Haveli, referring to Portugal's approach to the International Court at The Hague against the Indian Government, says it is "just a continuation of the vile propaganda she has carried on in the past year and a half in an attempt to confuse and mislead world opinion."

He adds: "The liberation of these territories was carried out by Goans and the people of these areas acting in whole-hearted co-operation with each other. The established Government is now that of the people of Dadra and Nagar Haveli rid once and for all of the inefficiency and the corruption that marked the colonial administration for the past 170 years.

“THE PEOPLE ARE PROUD OF THE SOCIAL AND ECONOMIC PROGRESS THEY HAVE ACHIEVED SINCE JULY 1954 AND WHATEVER THE INDIAN GOVERNMENT SAYS ON THIS ISSUE BEFORE THE HAGUE COURT, DADRA AND NAGAR HAVELI WILL NOT ACCEPT A SINGLE PORTUGUESE ON THEIR SOIL AT ANY TIME.

“It is indeed sarcastic that a colonial regime which denies the fundamental freedom of expression and which continues to keep in abject slavery six lakhs of inhabitants on Indian soil should seek to justify its continuance before an organ of the United Nations whose Charter contains so clear a declaration against such regime. On the other hand, high officials of the Goa Government have boastfully claimed that they will retake Dadra and Nagar Haveli by force of arms. There is reference also to a treaty of 1779 between the Portuguese and the Marathas as implying Portugal's continuing right to these territories.

“Does she wish to remind the world that she acquired these territories through the force of arms, tyranny, bloodshed and stratagem? Does she wish to base her claim on duplicity that led to an annual payment to her since 1780 of Rs. 12,000 by the Court of Poona that was changed three years later to the rental from the 72 villages of Nagar Haveli?

#### ‘NO DECORUM’

“Salazar's dictatorial regime in Portugal apparently knows no decorum and has abandoned every sense of right to the Indian people of which we Goans are a part. He does not hesitate to bring ridiculous claims before the International Court whose functions are governed by the principles set out in the United Nations Charter. Can the International Court interfere with the inalienable right of a people to self-government and freedom? And don't the wishes of the people of these territories matter?”

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#### Annex E. No. 67

FROM THE “FREE GOA”, DATED 25TH JANUARY, 1956

#### PROTEST IN NAGAR HAVELI

A mass meeting was held on January 15 in Silvassa the Administrative Headquarters of the Liberated territories of Nagar Haveli and Dadra to protest against Portugal's announcement that it has taken to the International Court of Hague its demand for the right of passage through Indian territory to go to recapture those territories.

About 12 speakers, of all classes, spoke on the occasion besides the Sarpanch and the President of the Nagar Haveli Congress. Among these were two Varli speakers, Sonio Volvi of Saili and Jetia of Sambarvani. The former trembling with old age and with consternation said that he has known three generations and that in the last 50 years he had known the Portuguese from very close. He said that he had had the occasion of going to Goa, taken there by the Portuguese to figure in a Colonial Exhibition. He had then been given a new suit of clothes; but at that

time the wages were 6 annas per day. Liberation, besides many new things, had brought them the daily wage of one rupee. Nobody to-day, said Sonio Volvi, wanted the Portuguese back but it is necessary, he went on, that the new Administration should not remain satisfied with what it has done. It must do much more. He would be satisfied, he said, only when the daily wage of the workers is Rs. 10 and when all will have enough to dress as he had when he went to the Colonial Exhibition in Goa.

Jetia India said that so strong was the wish of the people to live in the present condition of freedom that he would resist with stones and sticks the return of the Portuguese.

The meeting was also addressed by Umetsing Mori, Chotusing and Gomansing Mori.

Umetsing Mori affirmed that the Portuguese era had definitely come to an end and that it was unimaginable that the regime of freedom could give place again to the colonial regime.

Chotubai who had taken direct part in the liberation of Naroli declared that he challenged the Portuguese to enter Dadra and Nagar Haveli. He said he knew they were cowards from the way they fled from there.

Gomansing said that he fought to throw the Portuguese out and that he would find it easier to believe that the sun would rise in the West than that the return of the Portuguese to their old colony would ever be possible.

Most of the speakers had taken direct part in the Liberation Campaign and vehemently repudiated the stagnant Portuguese rule.

The following resolution was unanimously approved:

The people of Dadra and Nagar Haveli gathered in this vast meeting without distinction of class and creed, proclaim their complete liberation from the Portuguese colonization and declare before the UNO that the right of liberty is inalienable and imprescriptible.

They declare moreover that it is the duty of Hague Tribunal not merely to observe the spirit and letter of the UNO charter but also take into consideration the wishes of the People of Dadra and Nagar-Haveli represented by their Panchayat, against which the fascist Portuguese regime seeks to exercise military action.

They emphatically lodge their protest against any act or contract which may contribute towards the colonial subjugation of the people of Dadra and Nagar-Haveli as abject and invalid because the material and moral slavery of the people can never be object of any transaction and the history of the Portuguese in Asia, in the words of her own historian has been the history of piracy.

They further declare that even if the Government of Indian Union consents to discuss at the Hague the questions of her sovereignty such as of granting of passage to the Portuguese to recolonize Dadra and Nagar-Haveli, the people of these territories solemnly swear that they will resist by all means within their power and with every sacrifice any attempt of the Portuguese to reoccupy these territories to strangle the precious fruits which the colonizers denied and which the Liberation has restored—the sacred Liberation which was obtained by the people repelling the unjust and inhuman domination of the Portuguese."

At the end the whole gathering shouted: "Never more frangiraj! Jai Hind!" And the sound of voices was drowned in the tumultuous clapping welcoming the freedom reconquered by the people of Dadra and Nagar Haveli with the aid of a handful of Goan heroes!

## Annex E. No. 68

LETTER FROM THE PRESIDENT OF VARISHTHA PANCHAYAT, SILVASSA,  
TO SHRI M. C. SETALVAD, AT THE HAGUE

## ENVELOPE

BY AIR MAIL PAR AVION			
	Registered		
	VAPI 145 SURAT	120 of 100	
	To		

From  
The President,  
Varishtha Panchayat,  
Free Nagar-Haveli & Dadra  
c/o Post Master,  
Vapi (W. Rly.)  
INDIA.

ADVOCATE SHRI SETALWAD,  
c/o Secretariat of International  
Court of Hague  
NETHERLANDS

31814

Hotel des Indes  
The Hague

145  
13-4-57

## BACK OF ENVELOPE

109  
Nagar Haveli, Silvassa.  
SEAL

LIBERATED AREAS OF DADRA AND  
NAGAR HAVELI

From:

To:  
Shri Setalwad,  
Advocate of India in the  
Hague Court,  
NETHERLANDS.

Narain G. Chowbal,  
Silvassa (Nagar-Haveli)  
c/o Post Master,  
Vapi (W. Rly.)  
INDIA.

Excellency,

With due respect I take the liberty of forwarding to your Excellency a copy of the resolution unanimously approved at a mass meeting of the people of Nagar-Haveli and Dadra on April 14 last in Silvassa, the seat of the Administration, together with a copy of the pledge taken on the same day before the statue of Mahatma Gandhi.

It is the fervent desire of the people of these Territories to see their liberation, which is their birthright, defended by the U.N. Charter, recognized and confirmed.

As the President of the Varishtha Panchayat I appeal to Your Excellency to interpret before the world the just sentiments of our People.

Yours Respectfully,  
 (Signed) Narain G. CHOWBAL,  
 President, Varishtha Panchayat.  
 Silvassa.

#### LIBERATED AREAS OF DADRA AND NAGAR HAVELI

#### RESOLUTION

"The people of Dadra and Nagar-Haveli gathered in a mass meeting protest against Portugal's pretensions and draw the attention of the Hague Court and International public opinion to the following:—

1. After Portugal had taken its complaint to the Hague Court demanding free passage through Indian Territory to occupy Dadra and Nagar-Haveli, the people of these territories protested that any decision of that Court regarding the matter, would be irrelevant and null, for neither the people of these Liberated Territories, neither its representative body—the Panchayat—nor its *de facto* Government were heard in the case which is going on between third parties: Portugal on one side and India on the other.

2. The present *de facto* Government of Dadra and Nagar-Haveli is as respectable as the Government of the Portuguese Dictatorship. Both the Governments were the result of a Revolution. And so, just as the present Portuguese Government overthrew the Democratic Government of the Portuguese Constitutional Republic, the people of Dadra and Nagar-Haveli overthrew the Portuguese foreign domination and established their own local Administration, which in a short period of a little over 2 years has done for the regions what Portugal failed to do during almost two centuries of its domination. Besides, the Portuguese Government established itself in India by conquest and such a government can never be a legitimate government but a *de facto* government, for otherwise the basis of legitimacy would be conquest or violence and the inalienable and imprescriptible birthright of peoples would not exist.

3. The people of Dadra and Nagar-Haveli, its Varishtha Panchayat and the Azad Dadra and Nagar-Haveli Sanghathana Samiti several times manifested to the Indian Government their desire to integrate with the Indian Union. This request, which has not yet been considered

by the Indian Government, leaves them politically isolated from the rest of India. They, therefore, demand that either this integration be accomplished or the juridical and political status of the present Administration of these Liberated Territories be recognized.

4. Should the Hague Court reject Portugal's demand, that Court will merely have consecrated the spirit and the letter of U.N.O. Charter which orders respect for the fundamental rights and liberties of Man and recognition of the political aspirations of the Colonial or non-self-governing peoples and to assist them in the progressive development of their free political institutions. Art. 1 (3) and Art. 73 (b).

5. Should the Hague Court, without taking into consideration the new political situation in these Territories, permit the Portuguese Government (who curbs the civil rights of its own people and opposes the progressive liberation of its colonial peoples) to take its troops to reoccupy these liberated territories then in that case, the only recourse left the *people* of Dadra and Nagar-Haveli is to assert their right of defence against the new oppression, by either organizing their defence, or by requesting India's military help to prevent that the old aggressor of Indian Territory come to reinstall itself on India's soil, making light of human liberty and of the imprescriptible and inalienable right of self-determination."

(Signed) Narain G. CHOWBAL.

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#### PLEDGE

The Liberated people of Dadra and Nagar-Haveli gathered to-day in a mass meeting in Silvassa to protest against the Portuguese colonialist pretension to re-dominate these Territories, solemnly pledge before the statue of the Father of the Indian Nation their fidelity to the Indian Flag and their firm decision to prevent at any cost the re-establishment of the Portuguese colonial oppression over these Territories.

Silvassa,  
14-4-1957.

(Signed) Narain G. CHOWBAL.

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I certify that these Annexes are either an exact copy or a faithful translation of the relevant originals.

(Signed) JOHN ALOYSIUS THIVY,  
Agent of the Government of India.

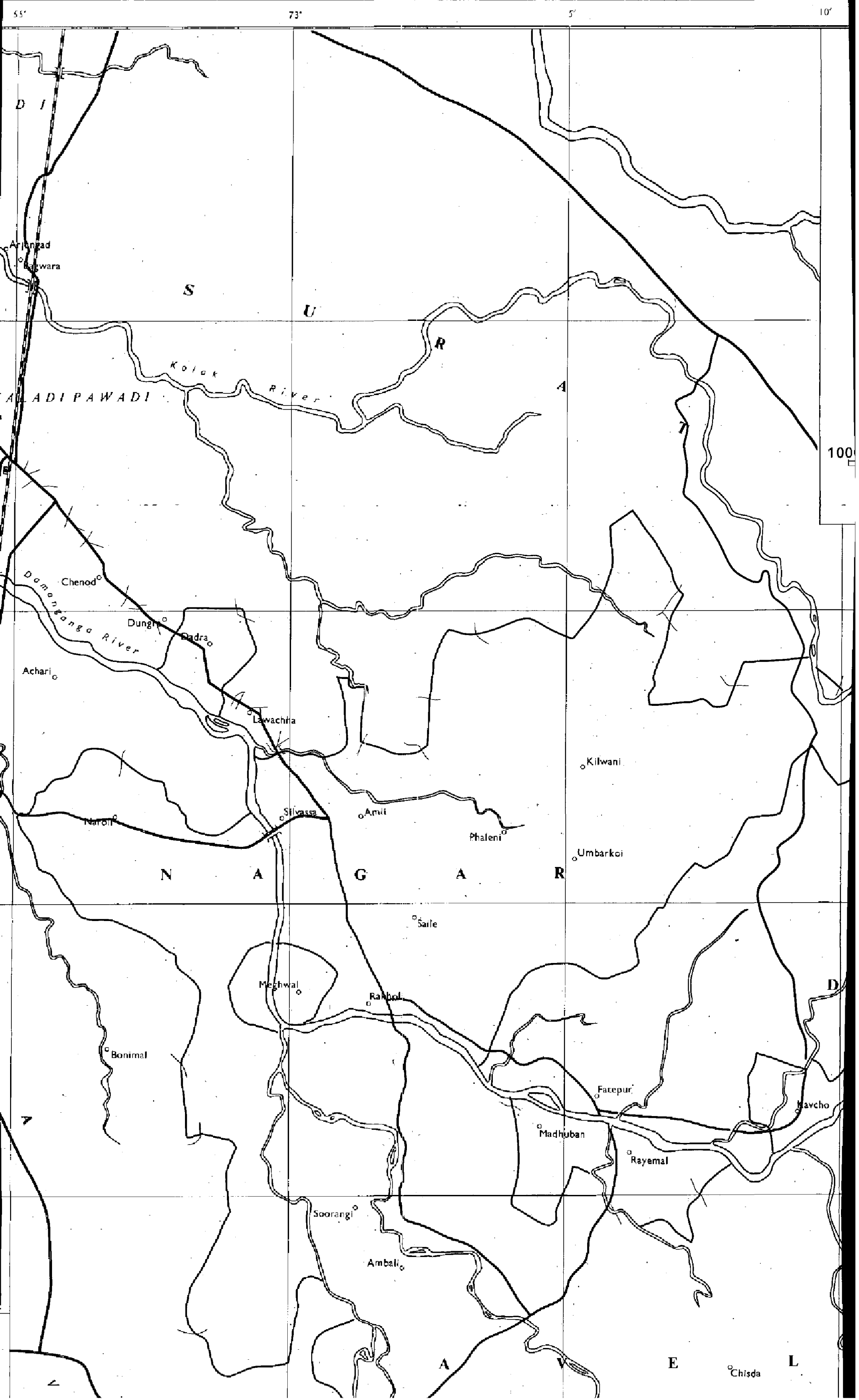
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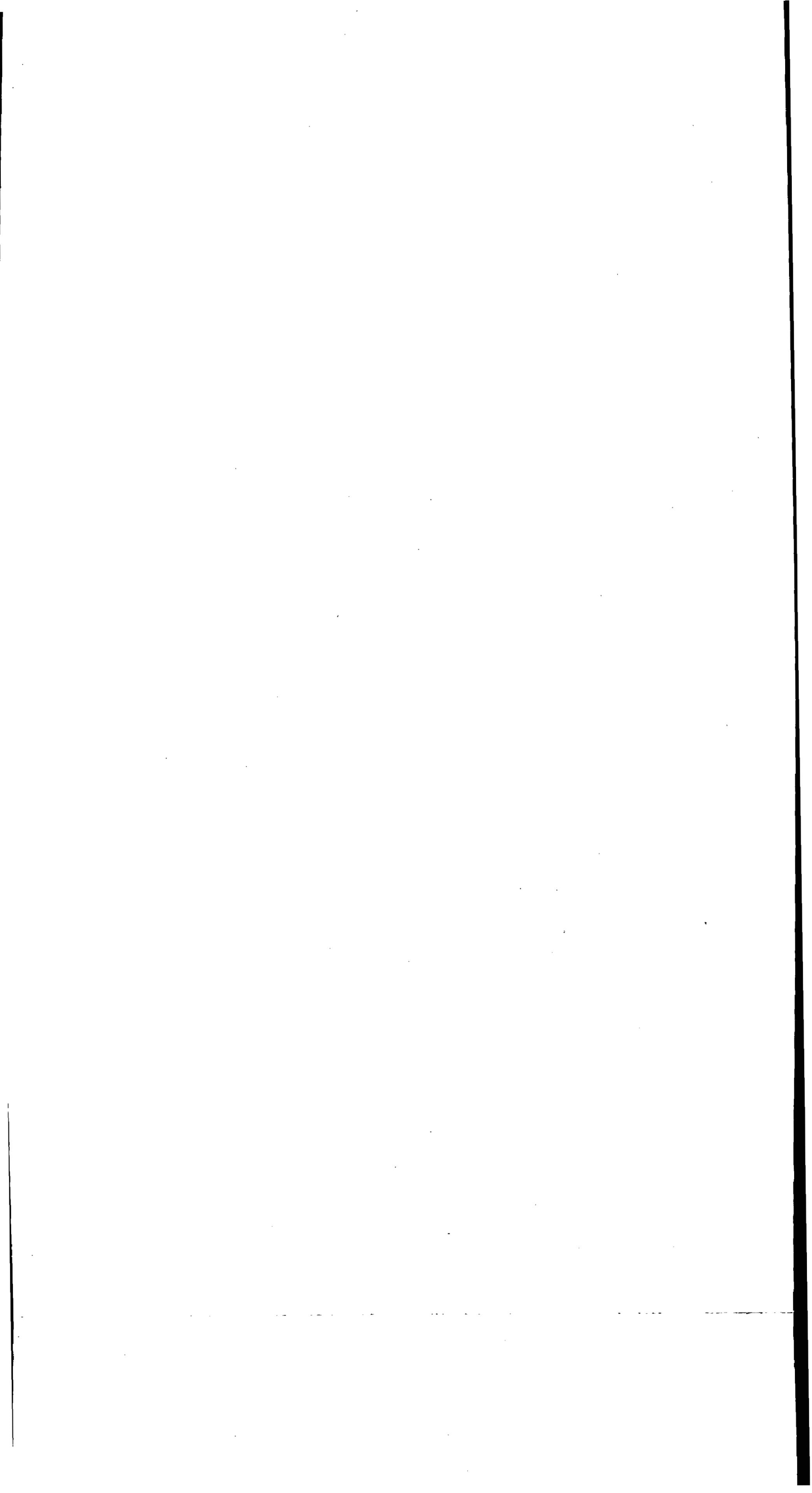


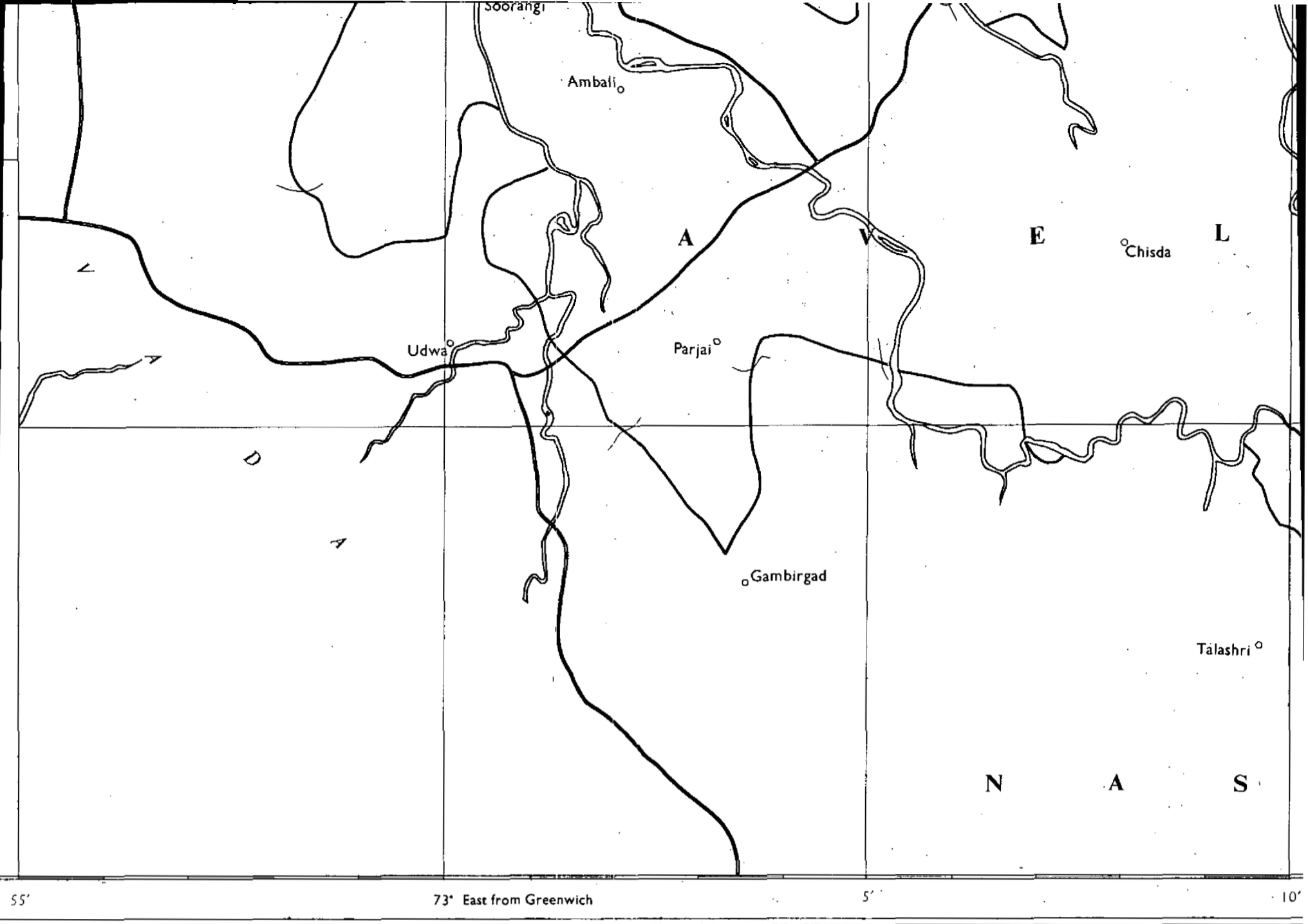
RIGHT OF PASSAGE OVER INDIAN TERRITORY

(PORTUGAL V INDIA)

COUNTER MEMORIAL OF THE GOVERNMENT OF INDIA



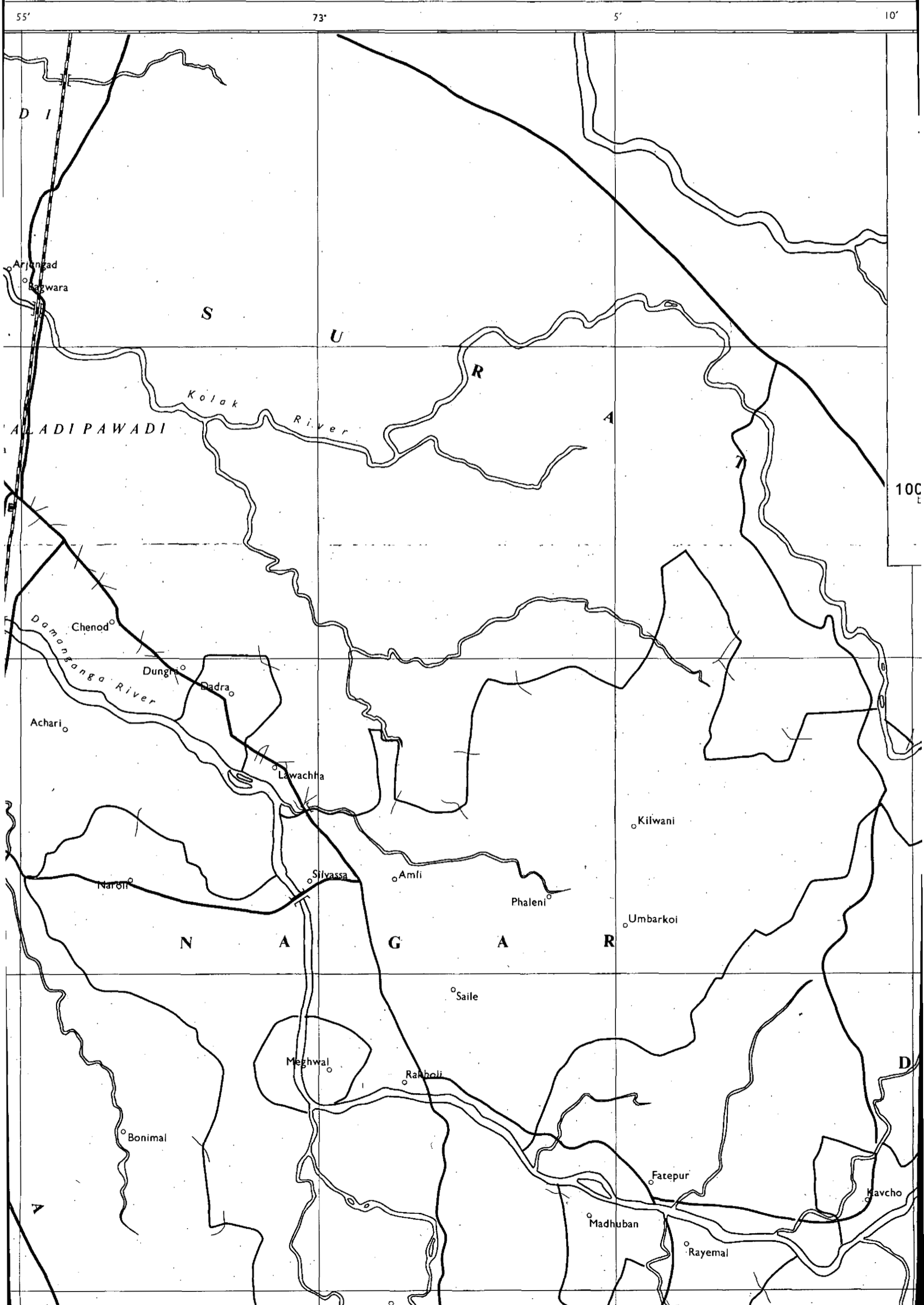


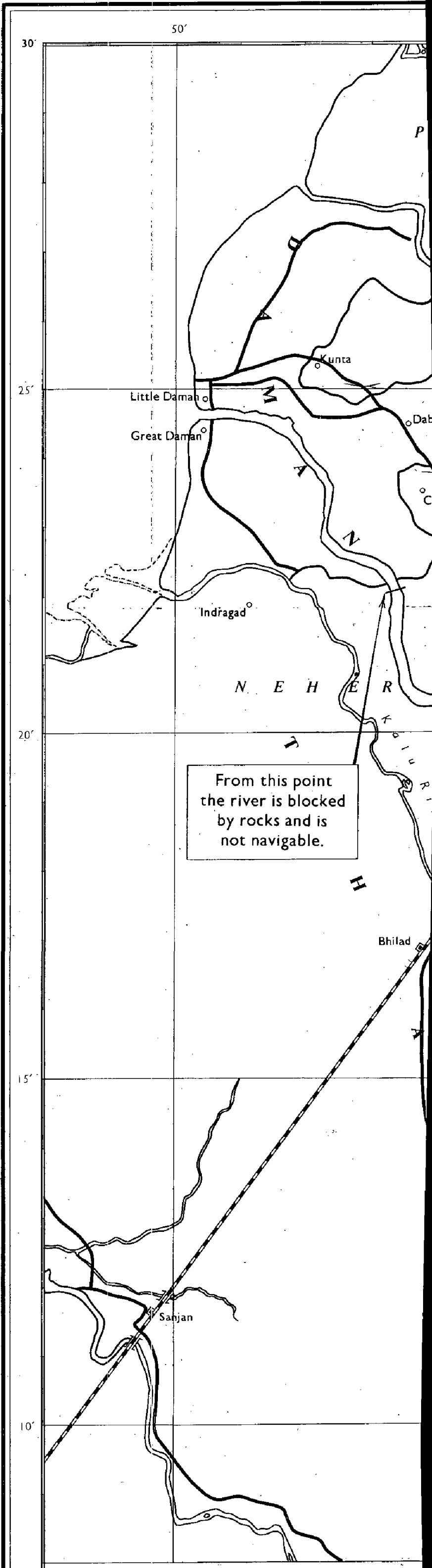


RIGHT OF PASSAGE OVER INDIAN TERRITORY

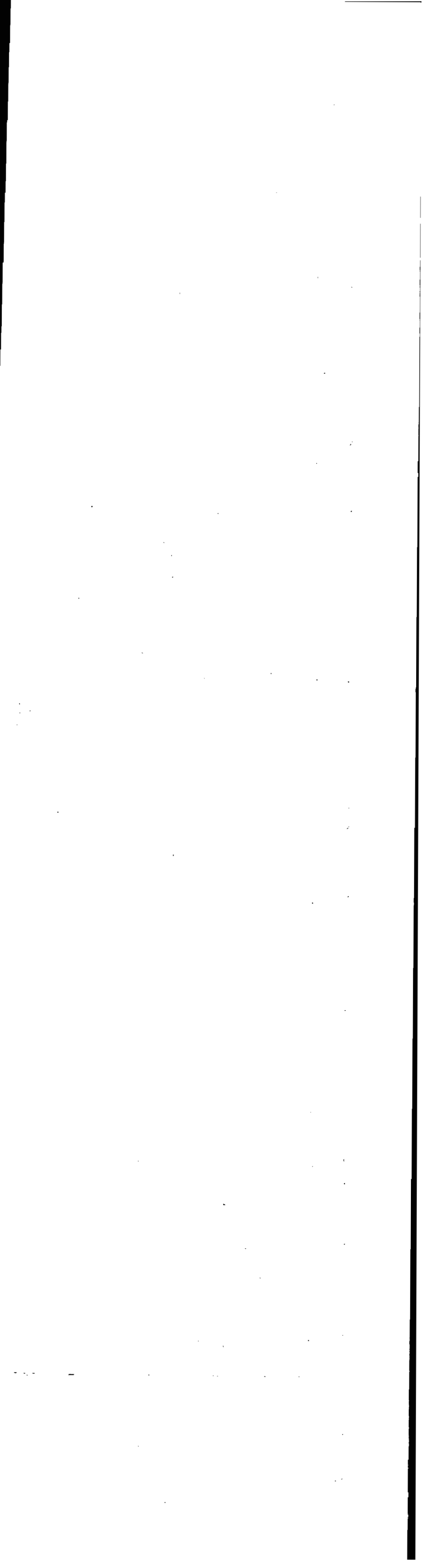
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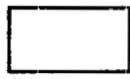


From this point  
the river is blocked  
by rocks and is  
not navigable.



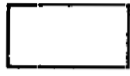


# R E F E R E N C E



Daman

5'



De Facto Local Administration  
of Dadra and Nagar Aveli.



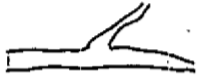
Railways



Roads



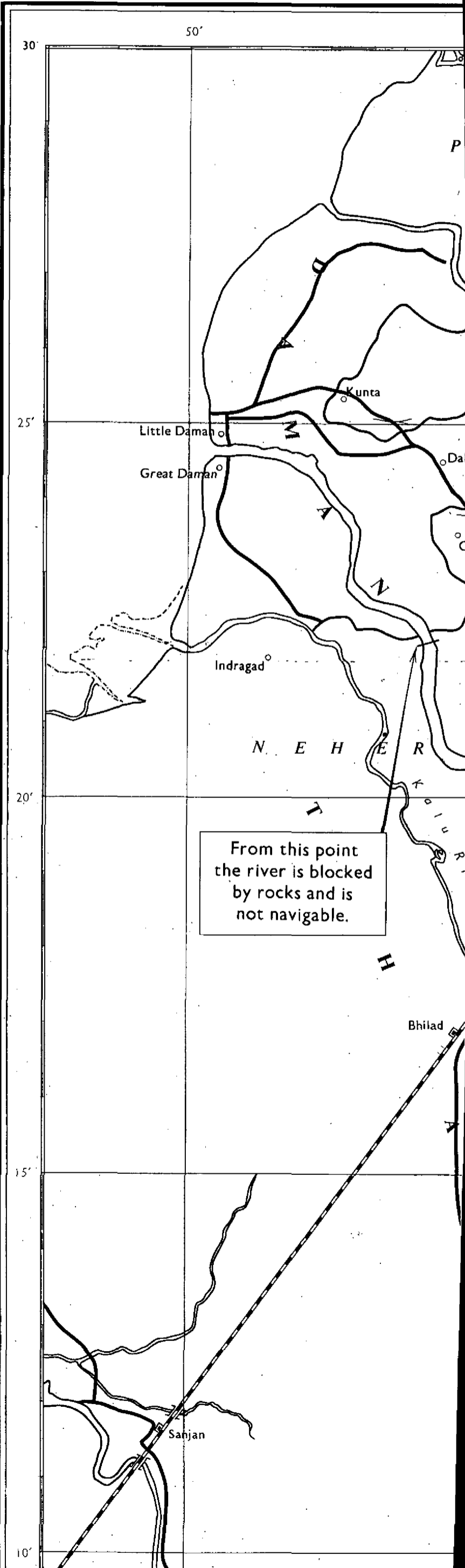
Minor Roads



Rivers

20'

50'





15'

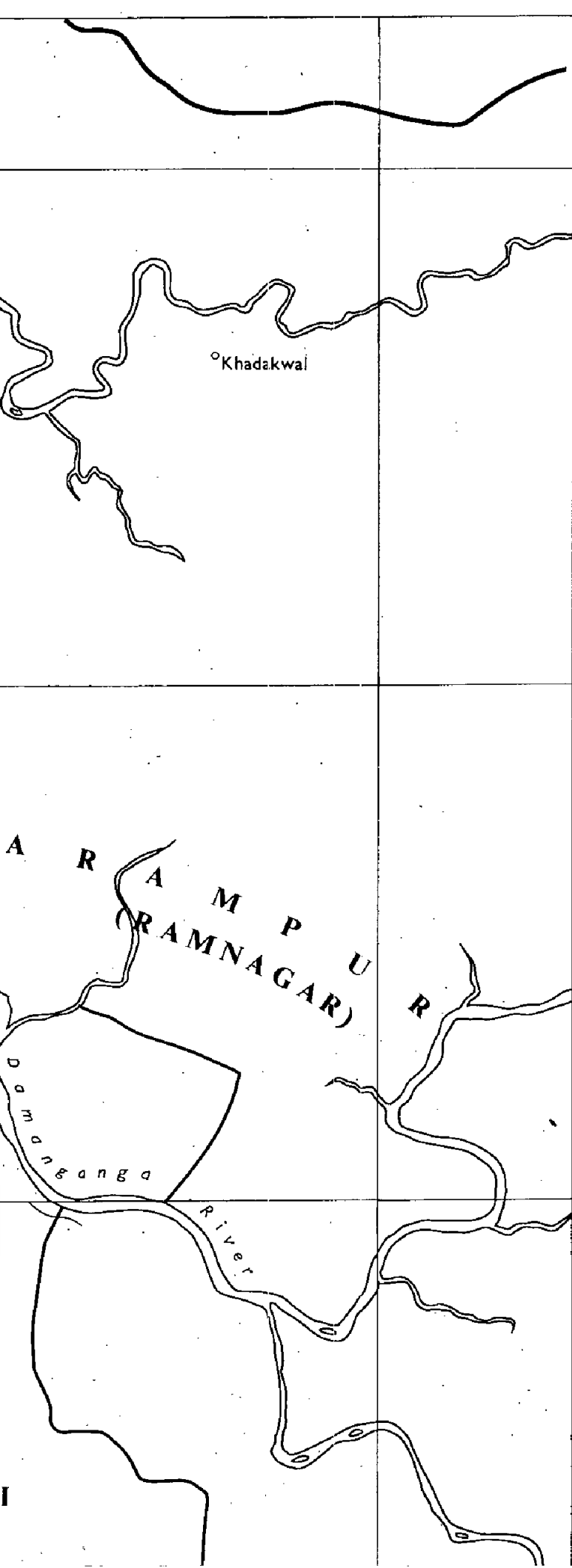
30'

MAP OF  
AMAN, DADRA,  
NAGAR AVELI  
AND  
SURROUNDING INDIAN  
DISTRICTS.

25'

Scale 1:100,000

2000 4000 10,000 m.

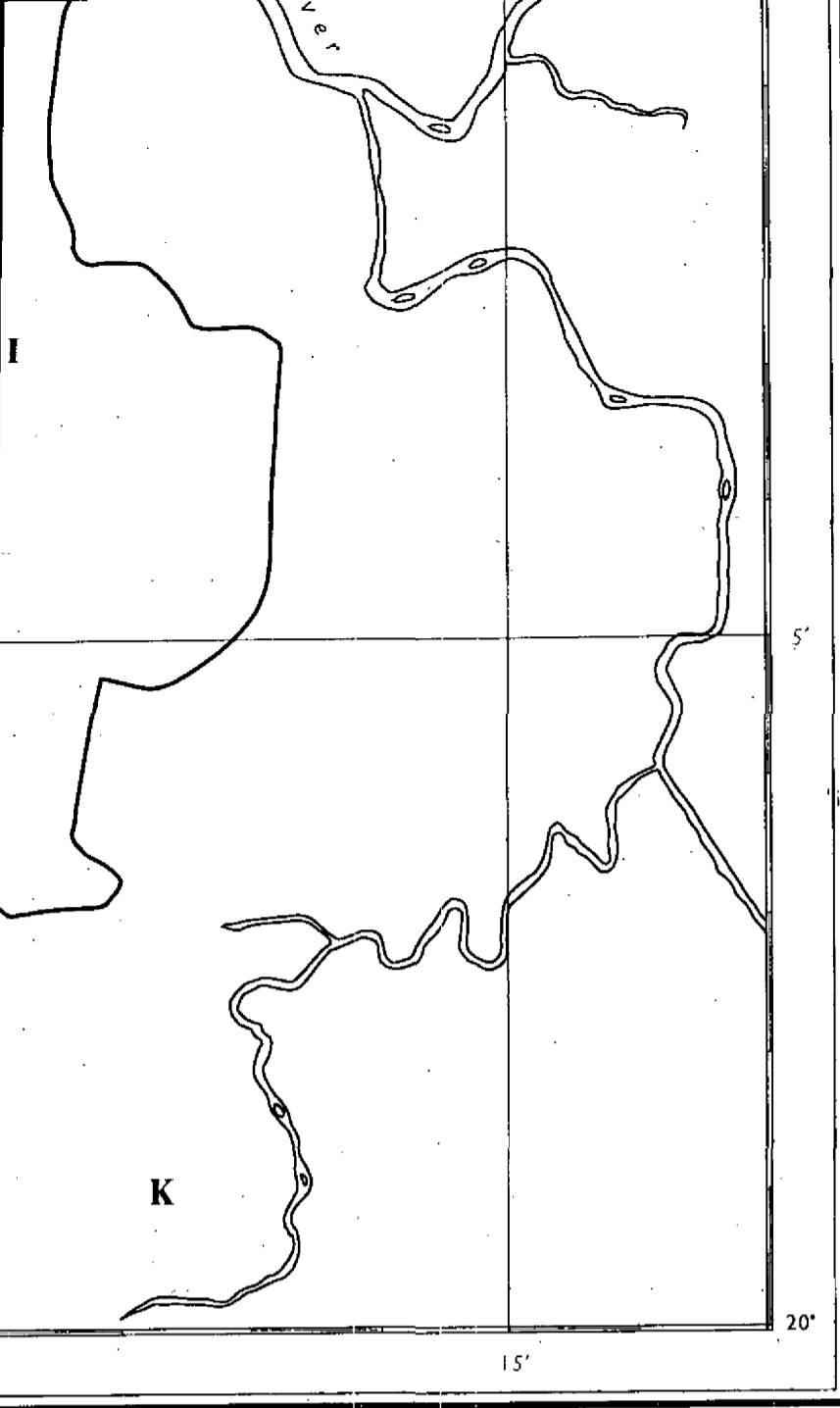


20'

15'

10'





PRINTED IN GREAT BRITAIN BY GEORGE PHILIP & SON, LTD., LONDON

15°

30'

MAP OF  
AMAN, DADRA,  
NAGAR AVELI  
AND  
SURROUNDING INDIAN  
DISTRICTS

Scale 1:100,000

2000 4000 10,000 m.

