« copy each of the following Notifications of the Ministry of Finance (Department of Revenue and Insurance) :—

(i) Notification G.S.R. No. 365, dated the 24th February, 1968.

(ii) Notification G.S.R. No. 368, dated the 24/th February, 1968.

[Placed in Library. See No. LT-390/68 for (i) and (ii).]

SEVENTH REPORT OF THE COMMITTEE ON PUBLIC UNDERTAKINGS (1967-68).

MISS M. L. MARY NAIDU: Madam, I lay on the Table a copy of the Seventh Report of the Committee on Public Undertakings (1967-68) on action taken by Government on the recommendations contained in the Fifty-first Report of the Estimates Committee on the Heavy Engineering Corporation Limited.

THE WEST BENGAL STATE LEGISLATURE DELEGATION OF POWERS BILL, 1968

गृह-कार्य मंत्रालय में राज्य मंत्री (श्री विद्याचरण शुक्ल) : मैं श्री वाई० बी० चव्हाण की तरफ से प्रस्ताव करता हूं कि पश्चिमी बंगाल राज्य विधान मंडल की विधियां बनाने की शक्ति राष्ट्रपति को प्रदान करने वाले विधेयक को पुरःस्थापित करने की अनुमति दी जाये ।

The question was Put and the motion was adopted

श्री विद्याचरण शुक्ल : मैं विधेयक को पुरःस्थापित करता हूं ।

THE PUBLIC PREMISES (EVICTION OF UNAUTHORISED OCCUPANTS) BILL, 1968

THE MINISTER OF WORKS, HOUSING AND SUPPLY (SHRI JAGANNATH RAO): Madam, I move for leave to introduce a Bill further to amend the Public Premises (Eviction of Unauthorised Occupants) Act, 1958.

The question was put and the motion was adopted.

SHRI JAGANNATH RAO: Madam, I introduce the Bill.

ALLOTMENT OF TIME FOR DISCUSSION OF THE AWARD OF THE INDO-PAKISTAN WESTERN BOUNDARY CASE TRIBUNAL ON THE RANN OF KUTCH

THE DEPUTY CHAIRMAN: I have to inform Members that under rule 172 of the Rules of Procedure and Conduct of Business in the Rajya Sabha the Chairman has allotted one day for the consideration of Motion* regarding the Award of the Indo-Pakistan Western Boundary Case Tribunal on the Rann of Kutch.

Now we go on to the Motions. Shri Rajnarain.

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कच्छ के रन के संबंध में भारत-पाकिस्तान पश्चिमी सीमा विवाद विषयक न्यायाधिकरण के (19 फरवरी, 1968 के) पंचाट संबंधी प्रस्ताव

f [MOTION *RE* THE AWARD (FEBRUARY 19, 1968) OF THE INDO-PAKISTAN WESTERN BOUNDARY CASE TRIBUNAL ON THE RANN OF KUTCH]

श्री राजनारायण (उत्तर प्रदेश) : मैं प्रस्ताव करता हूं कि :

"यह सभा कच्छ के रन के सम्बन्ध में भारत पाकिस्तान पश्चिमी सीमा विवाद विषयक न्यायाधिकरण के (19 फरवरी, 1968 के) पंचाट का निरनुमोदन करती है ।"

t [ ] English translation.

[श्री राजनारायण]

†["That this House disapproves of the Award (February 19, 1968) of the Indo-Pakistan Western Boundary case Tribunal on the Rann of Kutch"]

माननीया, आज बहुत ही दुःख के साथ हमें यह कहने के लिये बाध्य होना पड़ रहा है कि हम यदि इस पंचाट के फैसले को मानते हैं तो हम स्वयं अपने से अपनी मातृभूमि को खंडित करने जा रहे हैं । हमको दुनिया में ऐसी कोई सरकार नहीं मिलो जो खुद अपनी इच्छा से अपने मुल्क के टुकड़े करने पर राजी हो गई हो । मैं आपके जरिये सदन के सभी सम्मानित सदस्यों से अपील करूंगा कि यह विषय केवल विरोधी पार्टी का विषय न बनाया जाय । यह विषय मुल्क का विषय है, देश का विषय है और इसलिये लोग अपनी पार्टी की सीमागत बाध्यताओं को छोड़कर इस सम्बन्ध में हमारा साथ दें ।

मैं चाहूंगा माननीया कि लोग पहले कच्छ के सम्बन्ध में जो समझौता हुआ था उस समझौते की खूबियों को और उस समझौते की खामियों को पढ़ें, और उस समझौते से जो ट्राइब्यूनल बना उस ट्राइब्यूनल के अवार्ड को भी अच्छी तरह से देखें । अगर जो गलती हुई है समझौते के समय वह गलती हटा दी जाय तो भी यदि भारत सरकार की इच्छा है कि न्याय रास्ते पर चलते हुए अपनी मातृभूमि की रक्षा करें, तो एक नहीं अनेक तरीके हैं कच्छ अवार्ड को ठुकराने के सम्बन्ध में । मैं बिना हिचक के यह कहने के लिये तैयार हूं कि प्रधान मंत्री ने पार्लियामेन्ट में कहा था कि सम्पूर्ण कच्छ के रन में पाकिस्तान की फौज गश्त लगा नहीं सकेगी, केवल एक पट्टी में लगायेगी । मगर उसी समय, जब भारत की पार्लियामेन्ट में श्री लालबहादुर शास्त्री बोल रहे थे, उसके एक दो दिन पहले ब्रिटिश पार्लियामेन्ट में वहां के प्रधान मंत्री ने भी एक बात का इजहार किया था और उस समय ब्रिटेन के प्रधान मंत्री ने कह दिया था कि नहीं, इस समझौते के अनुसार सम्पूर्ण रन आफ कच्छ में पाकिस्तान को गश्त लगाने की अनुमति मिल जायेगी । उस समय हम लोगों का माथा ठनका था कि श्री लालबहादुर शास्त्री जी ब्रिटिश प्रधान मंत्री के चंगुल में फंस कर अपने मुल्क को काटने के लिए तैयार हुए हैं । महोदया, उस समय हम लोगों ने साफ साफ कह दिया था कि जो कच्छ के सम्बन्ध में समझौता हुआ है वह राष्ट्र के विघटन की बुनियाद है और भारत का अपनी प्रभुसत्ता को छोड़ना है ।

महोदया, यह कच्छ एग्रीमेन्ट देखा जाय । उसके आर्टिकल तीन में यह लिखा हुआ है :—

In view of the fact that:

(a) India claims that there is no territorial dispute as there is a well-established boundary running roughly along the northern edge of the Rann of Kutch as shown in the pre-partition maps which needs to be demarcated on the ground.

(b) Pakistan claims that the border between India and Pakistan in the Rann of Kutch runs roughly along the 24th parallel as is clear from several pre-partition and post-partition documents and therefore the dispute involves some 3,500 square miles of territory.

भारत ने शुरू में कहा था कि यह एक भूखंड का झगड़ा नहीं है क्योंकि भारत की सीमा सुनिश्चित है और केवल रेखा को जमीन पर खोद देना है । प्री पार्टिशन के मैप की बुनियाद पर ही भारत अपना क्लेम रन आफ कच्छ में करता है और पाकिस्तान अपना क्लेम बंटवारे के पूर्व व बाद के दस्तावेजों पर करता है और इस तरह से वह 35 सौ वर्ग मील पर दावा करता है । अब यहां पर सवाल यह आ जाता है कि उसका जो क्लेम है वह बंटवारे

†[ ] English translation.

the Rann oj Kutch
the Rann of Kutch

के पहले का है या बंटवारे के बाद का । अब यहां कानून के पंडित हैं, वे ही इसका फैसला कर सकते हैं । पाकिस्तान डाक्यूमेंट्स तथा दस्तावेज के आधार पर कहता है कि इस क्षेत्र में उसका अधिकार है क्योंकि बंटवारे के पूर्व वहां का जो नक्शा था और जिसको अंग्रेज जाते समय दे गया था, वह इस बात की पुष्टि नहीं करता है । तो मैं यह कहना चाहता हूं कि भारत सरकार के प्रतिनिधियों ने उस शर्त पर हस्ताक्षर क्यों किये और उससे उस समय इस बात पर क्यों नहीं जोर दिया कि डाक्यूमेंट बनाये जा सकते हैं और ये डाक्यूमेंट्स भी बनाये गये हैं । हमको सिन्ध अदालत के दस्तावेज दिखलाये जाते हैं कि कुछ जजमेंट हुए और कुछ लोगों को सजा हुई । तो मैं यह कहना चाहता हूं कि सजा या जजमेंट के जो डाक्यूमेंट्स हैं वे बनाये जा सकते हैं और वे फर्जी और जाली भी तैयार किये जा सकते हैं । तो जब सरकार ने इस शर्त पर हस्ताक्षर किये, उसी समय ही उसने सब से बड़ी गलती की । हम को इस बात पर जोर देना चाहिये था कि जो नकशा था उसी नक्शे की बुनियाद पर पाकिस्तान के साथ अपने विवाद को निबटा लेते । लेकिन भारत सरकार ने उस शर्त और समझौते को मना नहीं किया । अगर वह उस समय मना करती तो हमारा केस इस समय इतना नहीं बिगड़ता जितना कि सरकार ने स्वयं बिगाड़ा है ।

श्रीमन्, आर्टिकल दो के सब-क्लाज तीन में यह बात लिखी हुई है :

Indian police may then reoccupy the Post at Chad Bet in strength nc greater than that employed at the post on 31 December 1964;

(भारतीय पुलिस फिर छाड़बेट की चौकी पर कब्जा कर सकेगी मगर वहां पुलिस शक्ति 31 दिसम्बर, 1964 से ज्यादा न होगी ।)

महोदया, हमको एग्रीमेंट के मुताबिक छाड़बेट में पुनः कब्जा करने का अधिकार दिया गया था । क्यों दिया गया यह अधिकार कि हम फिर छाड़बेट पर जायं ? वह इसलिये दिया गया था कि उस समय दोनों सरकारों की ओर से जो समझौता हुआ था, उस समय दोनों सरकारों के प्रतिनिधियों ने इस बात को मान लिया था कि छाड़बेट हमारा है । मगर छाड़बेट को पंच निर्णय के मुताबिक हम से लिया जा रहा है । मुझे आश्चर्य है, मैं हैरत में हूं कि क्या कोई सरकार अपनी मातृभूमि के प्रति इतनी उदासीन हो सकती है, इतनी नीचे जा सकती है कि खुद अपने ही नक्शे को इन्कार कर जिस तरह से आज भारत सरकार कर रही है ? आज भारत सरकार अपने ही नक्शे को स्वतः ही इन्कार कर रही है ।

अब देखा जाय कि आर्टिकल तीन के "बी" में क्या लिखा है :

Pakistan claims that the border between India and Pakistan in tha Rann of Kutch runs roughly along the 24th parallel as is clear from several pre-partition and post-partition documents and therefore the dispute involves some 3,500 square miles of territory.

पाकिस्तान कहता है कि 3500 वर्गमील भूखंड का झगड़ा है और भारत कहता है कि इसमें रेखा का झगड़ा है । इस तरह से भारत सरकार ने खुद ही पाकिस्तान को यह हक दे दिया है कि 3500 वर्ग मील भूखंड का झगड़ा है और इसी वजह से एवार्ड इस 3500 वर्ग मील के भूखंड में से 317 वर्ग मील को हमसे हटाकर पाकिस्तान को दे रहा है । पाकिस्तान की ओर से केस बहुत मजबूती के साथ रखा गया क्योंकि वह कहता है कि टैरिटरी का झगड़ा है और भारत सरकार कहती है कि यह टैरिटरी का झगड़ा नहीं है । भारत सरकार कहती है कि हम एडमिनिस्ट्रेटिव आर्डर से इस चीज

[श्री राजनारायण]

को डिसाइड कर लेंगे और इसमें कांस्टीट्यूशनल अमेन्डमेंट लाने की आवश्यकता नहीं है । इसलिये मैं आज डंके की चोट पर कहना चाहता हूं कि अगर भारत सरकार में देशभक्ति है तो अब भी वह इस एवार्ड को ठुकरा सकती है । उसे कांस्टीट्यूशनल अमेन्डमेंट के लिये दो-तिहाई बहुमत प्राप्त नहीं हो सकते हैं, यह बात सब लोग अच्छी तरह से जानते हैं । जिस समय बेरूबाड़ी का सवाल आया था, उस समय भी इसी तरह का प्रश्न उठा था । उस समय पंडित जवाहर लाल नेहरू को कांग्रेस में अपनी मेजारिटी पर घमन्ड था और इसीलिये उसे पार्लियामेंट के सामने लाया गया था । मगर चूंकि आज कांग्रेस सरकार दो तिहाई बहुमत प्राप्त नहीं कर सकती है और वह डरती है कि कहीं पार्लियामेंट इसको इन्कार न कर दे । इसी वजह से आज कांग्रेस सरकार की ओर से गलत दलीलें दी जाती हैं कि इस चीज के लिये कांस्टीट्यूशनल अमेन्डमेंट की आवश्यकता नहीं है, संविधान में संशोधन करने की आवश्यकता नहीं है । यह तो प्रशासकीय आदेशों और नियमों के जरिये तय किया जा सकता है । मैं इस सरकार से जानना चाहता हूं कि वह किस अधिकार के जरिये इस तरह की बात करना चाहती है ? वह किस अधिकार के जरिये कांस्टीट्यूशन में अमेन्डमेंट नहीं लाना चाहती है ? जो सरकार अपनी प्रभुसत्ता को खंड करने के लिये तैयार है तो मैं अपने कांग्रेस के सदस्यों से पूछना चाहता हूं कि क्या वे इस सरकार की वफादारी, समझते हैं ? मैं अपने मित्रों से कहना चाहता हूं, विशेषकर उन लोगों से जो हमको देशभक्ति का पाठ पढ़ाया करते हैं कि पहले नेशन है और उसके बाद इन्टरनेशनल है । पहले राष्ट्र आता है उसके बाद अन्तर्राष्ट्र आता है । जब राष्ट्र ही नहीं रहेगा तो अन्तर्राष्ट्र कैसे रहेगा ? लेनिन और केमिनाव्ह तथा जिनोउव्ह में आपस में लड़ाई इसीलिये चली थी । एक कहता था कि पहले देश में क्रान्ति होनी चाहिये और उसके बाद बाहर क्रान्ति होनी चाहिये । मगर इसके विपरीत केमिनाव्ह तथा जिनोउव्ह यह कहते थे कि पहले अन्तर्राष्ट्रीय क्रान्ति होनी चाहिये फिर राष्ट्र के अन्दर क्रान्ति होनी चाहिये । 4 अप्रैल, 1917 को यह थीसिस चली कि पहले देश में समाजवादी क्रान्ति होनी चाहिये । लेनिन ने कहा, पहले राष्ट्र को बचाओ फिर अन्तर्राष्ट्रीय क्रान्ति हो सकती है । आज हमें अनावश्यक ढंग से दलीलें दी जाती हैं और शान्ति शान्ति के नाम पर मुल्क को टुकड़े करने की सलाह दी जाती है ।

मैं अदब के साथ अपने माननीय सदस्यों से कहना चाहता हूं कि जो हमको शान्ति का पाठ पढ़ाते हैं वे यह सबक दूसरों को क्यों नहीं पढ़ाते हैं ? वे पाकिस्तान और चीन को इस तरह का सबक क्यों नहीं पढ़ाते हैं ? मैं यह कहने पर तुला हुआ हूं कि श्रीमती इन्दिरा नेहरू गांधी हिम्मत रखें और हिम्मत से इस एवार्ड को ठुकरा दें । अगर वे इस एवार्ड को ठुकरा देती हैं तो सारा देश उस मामले में उनका साथ देगा । वही देश कायम रह सकता है जो मिटने की हिम्मत रखता है, क्षमता रखता है । क्या दूसरे विश्व-युद्ध में जर्मनी नहीं मिट गया था, जापान नहीं मिट गया था ? अपने को इन मुल्कों ने मिटा लिया और आज वे कहां के कहां चले गये हैं । तो मैं कहना चाहता हूं कि जो राष्ट्र नष्ट होने की क्षमता रखता है वही राष्ट्र उठता भी है । जो राष्ट्र कायर हो जाता है, नपुंसक हो जाता है वह हमेशा के लिये दुर्बल हो जाता है और उसमें फिर उठने की क्षमता नहीं रहती है ।

अब मैं ट्रिब्यूनल के एग्रीमेंट में जाता हूं ।

Whereas both the Governments of India and Pakistan have agreed to a cease-fire and to restoration of the *status quo* as at 1st January, 1965 in the area of the Gujrat-

West Pakistan border, in the confidence that this will also contribute to a reduction of the present tension along the entire Indo-Pakistan border,".

"दोनों सरकारें (भारत-पाकिस्तान) युद्धबन्दी पर सहमत हो गयी हैं और पहली जनवरी सन् '65 की सीमा पर जाने की बात मान गयी हैं इस विश्वास के साथ कि सम्पूर्ण भारत और पाक सीमा का तनाव कम हो जायेगा।"

यह एग्रीमेंट नहीं हुआ। यह ऐग्रीमेंट हुआ है इस कांफिडेंस में कि सम्पूर्ण भारत और पाकिस्तान की सीमा का तनाव खत्म होगा, कम होगा। मगर इस एग्रीमेंट के बाद तुरंत ही पहली सितम्बर को पाकिस्तान की पलटन छम्ब और जोरियां में आ गई। फिर यह ऐग्रीमेंट कहां रह गया ? अगर हम इस ऐग्रीमेंट के प्रति ईमानदार हैं, वफादार हैं और ऐग्रीमेंट जो कि राष्ट्रहित विरोधी उसके प्रति भी हमारी ईमानदारी है तो वह कांफिडेंस टूट गया और उसको तोड़ा पाकिस्तान ने।

माननीया, मैं यहां पर आपके जरिये श्रीमती इंदिरा नेहरू गांधी से निवेदन करूंगा कि लाल बहादुर शास्त्री जी हैं नहीं वरना उनको मैं साक्षी में खड़ा कर देता। मैंने उनसे कहा था कि शास्त्री जी, आप कच्छ ऐग्रीमेंट खत्म कीजिये और घोषणा कीजिये क्योंकि जब पाकिस्तान ने छम्ब और जोरियां पर हमला शुरू कर दिया तो कच्छ ऐग्रीमेंट नहीं रह गया। लाल बहादुर जी के मुखारबिन्द से ये शब्द निकले कि राजनारायण जी, जब बड़का कच्छ अवार्ड आ गया तो कच्छ ऐग्रीमेंट कहां रह गया। जब पाकिस्तान का हमला हो गया तो कच्छ ऐग्रीमेंट नहीं रह गया, यह लाल बहादुर जी के मुख से निकले हुए शब्द थे। मगर आज वे हैं नहीं और हम को फंसाया जा रहा है जगलरी में, शब्दों के जाल में। मैं पूछना चाहता हूं अपने मित्रों से कि आज क्या शब्दों के जाल से राष्ट्र की सीमा निर्धारित होगी, लीगल जगलरी से राष्ट्र की सीमा निर्धारित होगी। सीमा का निर्धारण होता है राष्ट्र के बलिदान से, राष्ट्र के त्याग से। अगर हम बलिदानी हैं, मातृभूमि के लिये मरना जानते हैं तो हम अपने राष्ट्र की सीमा निर्धारित करेंगे और हम उसको ले कर के रहेंगे। इसलिये आज हम इस सदन में इस आवाज को उठाना चाहते हैं और राष्ट्र की जनता से निवेदन करना चाहते हैं कि अगर तुम्हारी सरकार आज इतनी बुजदिल और कायर हो गई है कि वह स्वतः मातृभूमि को खंडित करके दूसरे मुल्क को देने जा रही है तो तुम ताकत और हिम्मत के साथ सारे देश में, राष्ट्र में वह वातावरण पैदा करो जिससे यह सरकार भी जाय और हमारी मातृभूमि की सीमा भी सुरक्षित रहे और एक एक इंच जमीन, चप्पा चप्पा जमीन को लेने के लिये जनता तैयार हो जाये। सरकारें आती हैं, जाती हैं, मगर देश अपना है, जनता अपनी है।

माननीया, मुझे मालूम नहीं कि प्रधान मंत्री जी ने नक्शे का अध्ययन किया है या नहीं। अगर नक्शे को देखा जाय तो मैं नक्शे की बुनियाद पर कह सकता हूं कि वहां पर प्राकृतिक सीमा है। जो बालू का ढेर है, जो बालू का ढूहा है, बालू का ढूहा खुद प्राकृतिक सीमा बनाता है।

DR. B. N. ANTANI (Gujarat): Sand dunes.

श्री राजनारायण : "सैंड ड्यून्स" यह दीजिये। मैं जब वहां गया और वहां के तमाम जानकार लोगों से मिला तो इसी नक्शे को उन्होंने दिखाया। इस प्राकृतिक नक्शे में बालू का ढूहा दिखाई दे रहा है और वह बालू का ढूहा खुद सीमा बना रहा है, तो उस सीमा को हम क्यों न मानें। इस नक्शे को अगर देखा जाय तो जो नगर पारकर है, नगर पारकर में हमारे दो हिस्से उसमें घुस कर गये हैं। ट्रिब्यूनल के चेयरमैन साहब कहते

[श्री राजनारायण]

हैं कि चूंकि यह पाकिस्तान की सीमा से घिरा हुआ है, इसलिये पर्मानेंट पीस के लिये हम इसको पाकिस्तान को देते हैं। उनको शर्म नहीं आती है ऐसा अवार्ड देते समय। मैं कहता हूं कि इसके नीचे देखा जाय तो जिस पाकिस्तान के हिस्से में हमारे दो हिस्से घुसते हैं, वहीं वह बड़ा पाकिस्तान का हिस्सा सम्पूर्ण भारत भूमि से घिरा हुआ है तो वह सम्पूर्ण भारत भूमि को क्यों नहीं दिया गया। उसके लिये औरतें लड़ी हैं, शहीद हुई हैं, मर्दों के साथ कन्धे से कन्धा मिला कर के शहीद हुई हैं। तो क्या हम अपने उन शहीदों के खून को भूल जायेंगे। क्या हमारे देश की जनता उस भूमि को सरलता के साथ किसी दूसरे मुल्क को जाने देगी ? हर्गिज नहीं।

माननीया, इसी तरीके से देखा जाय जो अवार्ड का नक्शा है सी—नक्शा सी जरा इन्दिरा जी देखें और नक्शा सी देख कर के बतायें कि जो यह धाराबन्नी है, इस क्षेत्र में सिर्फ धाराबन्नी ही वह जगह है जो ऊंची है, जहां घास जमती है, जहां तेल की खानें निकलेंगी। आज अगर पाकिस्तान इस जमीन पर आबादी बसाना चाहे तो वह बहुत आसानी से आबादी बसा सकता है। यहां पर वह नहर ला सकता है, यहां पर वह तेल की खान पैदा कर के हमारे भारत की सम्पूर्ण सीमा के लिये खतरा पैदा कर सकता है और उसी खतरे को पैदा कर के सम्पूर्ण राष्ट्र को हमेशा हमेशा के लिये, चाहे वह अमरीका कहिये, चाहे वह रूस कहिये, चाहे वह ब्रिटेन कहिये, सब के चगुल में फंसाने के लिये एक स्थिति पैदा करेगा। इसलिये मैं गुजरात की जनता की भावना को समझने के लिये 28 फरवरी को सम्पूर्ण गुजरात बन्द के अवसर पर वहां गया था। मैं उस दिन अहमदाबाद में विद्यमान था। वहां की जनता के मुंह से जो नारे निकल रहे थे इन्दिरा जी जरा उनको सुनने की कृपा करें :

कच्छ चुकादो तोड़ो, वरना गद्दी छोड़ो।

कच्छ करार मंजूर नहीं, नेहरू की जागीर नहीं।

फाटे धरती आवे आंधी, गद्दी छोड़ इंदिरा गांधी।

भारत ने ललकारा है, सारा राष्ट्र हमारा है।

अमरीकी, रूसी, पाकिस्तानी, सबने की है बेईमानी।

ये नारे अहमदाबाद की सड़कों पर लगे, यह नारे गुजरात के बड़े बड़े शहरों में लगे, राजकोट की सड़कों पर लगे, भुज की सड़कों पर लगे।

श्री भूपेश गुप्त (पश्चिमी बंगाल) : जो आदमी रूस और अमरीका को कम्पेयर करता है वह पगला आदमी है।

श्री राजनारायण : तो तुम भी पगले हो और दूसरे भी पगले हैं। इसलिये मैं कहना चाहता हूं कि वहां की जनता के साथ, देश की किस्मत के साथ आज खिलवाड़ नहीं किया जाना चाहिये।

इन बातों को कहने के बाद अब मैं उस अवार्ड की एक एक धारा को लेकर के आपके सामने आने की कोशिश करूंगा। मैं सबसे पहले जो भारत के प्रतिनिधि हैं एलेक बेवलर साहब उनकी सम्मति को आप के जरिये सदन के सम्मानित सदस्यों के सामने पेश करूंगा। वे कहते हैं कि यह न्यायाधिकरण भारत पाकिस्तान सीमा जो पश्चिम पाकिस्तान गुजरात के निर्धारण पर स्वतंत्रता अधिनियम, 1947 के अनुसार है उस पर करने के लिये बना। एलेक बेवलर साहब का मत है कि यह न्यायाधिकरण भारतीय स्वतंत्रता अधिनियम, 1947 के अनुसार भारत पाकिस्तान के बीच पश्चिमी पाकिस्तान गुजरात सीमा को निर्धारित करने के लिये गठित किया गया था।

मित्र 15 अगस्त, 1947 को इस अधिनियम के मुताबिक पाकिस्तान का एक

हिस्सा बन गया । यह अधिनियम यह भी व्यवस्था करता है कि सिन्ध जिस रूप में 18 जुलाई, 1947 को था, पाकिस्तान का अंग होगा । 18 जुलाई, 1947 को सिन्ध किस रूप में था ? क्या हमें इंदिरा जी बता सकती हैं कि जो रूप आज बनाया जा रहा है इस अवार्ड को मान करके, उस रूप में था सिन्ध । उस रूप में सिन्ध कदापि नहीं था । इसलिये शुद्धतः अगर इस अवार्ड को माना जायेगा तो देश के साथ गद्दारी होगी, मुल्क के साथ धोखा होगा ।

कच्छ का भारत में विलय 16 अगस्त, 1947 को हुआ । यदि न्यायाधिकरण यह पाता है कि अगर इस क्रिटिकल डेट तक कोई सीमा नहीं थी या सीमा अधूरी थी, तो यह अपनी ओर से सीमांकन नहीं कर सकता, या सीमा निर्धारित नहीं कर सकता ।

पेज 3 : जो हमारा रेप्रिजेंटेटिव है वह कहता है कि आप को निश्चित करना है कि कहां सीमा थी, आप को नई सीमा नहीं बनानी है । अगर सीमा नहीं थी तो यह पंचाट सीमा का नया निर्धारण नहीं कर सकता । यह शुद्धतः हमारा जो रेप्रिजेंटेटिव है युगोस्लाविया का, उसका यही मत है । जितने जुरिसप्रूडेंस के विद्यार्थी होंगे, जो पढ़े होंगे, वे जानते होंगे और मैं समझता हूं कि चागला साहब हमारे मत का समर्थन करेंगे कि न्यायाधिकरण को यह अधिकार नहीं है कि वह नई सीमा पैदा करे । यदि न्यायाधिकरण यह पाता है कि सीमा का रेखांकन पिछले कुछ दिनों पर क्रिटिकल डेट से भिन्न रहा है तो वह इसे इसकी अवज्ञा कर देगा जो असामयिक है । किसी भी सीमा का रेखांकन यदि क्रिटिकल डेट तक मान्य नहीं है तो वह असामयिक होगा, अमान्य होगा । तो ऐसे ट्रिब्यूनल को यह हक नहीं है कि जो उसका टर्म्स आफ रिफ्रेंस है, जो उसका जुरिस्डिक्शन है, उसके बाहर जा कर के फैसला करे । अगर ट्रिब्यूनल यह फैसला कर दे कि सारी दिल्ली दे दो तो हम दिल्ली दे देते और कह देते कि चूंकि इसमें यह लिख दिया "व्हाटएवर रिमेंड" इसलिये हम नहीं जायेंगे अपील में और दिल्ली भी दे दो । जो टर्म्स आफ रिफ्रेंस है यदि उसके मुताबिक ट्रिब्यूनल चले तब उस ट्रिब्यूनल के फैसले को मानने की बाध्यता हम पर है, उसके विपरीत नहीं है ।

उपसभापति : अब आपको समाप्त करना चाहिये ।

श्री राजनारायण : आप जरा . . .

उपसभापति : 30 नाम हमारे पास हैं, हम क्या करें ।

श्री राजनारायण : एक दिन और बढ़ा दीजिये । हम लोग भी चेयरमैन साहब से रिक्वेस्ट करेंगे ।

उपसभापति : आप पांच मिनट में समाप्त कर दीजिये ।

श्री राजनारायण : आप बीच में न बोलें, हमारा समय इसी में चला जाता है । अगर हमारे न बोलने से देश बच जाये तो हम इसमें भी सन्तोष कर के बाहर चले जायेंगे । पिछली सभी सीमा सम्बन्धी घटनाएं सिर्फ क्रिटिकल डेट की रेखांकन सम्बन्धी साक्ष्य हैं । माननीया, आपके जरिए मैं कुछ उन्हीं की सम्मति को पढ़ देना चाहूंगा जिसको लेकर आप भी इस नतीजे पर पहुंच सकती हैं कि इस ट्रिब्यूनल के फैसले को हमारे लिए स्वीकार करना जरूरी नहीं है—

"Reviewing and appraising the combined strength of the evidence relied upon by each side as proof or Indication of the extent of its respective sovereignty in the region and comparing the relative weight of such evidence, I conclude as follows. In jespect of those sectors of the Rann in relation to which no specific evidence in the way of display of Sind authority, or merely trivial or isolated evidence of

[श्री राजनारायण]

such a character, supports Pakistan's claim, I pronounce in favour of India"

"These sectors comprise about ninety per cent of the disputed territory. However, in respect of sectors where a continuous and for the region intensive Bind activity, meeting with no effective opposition from the Kutch side, 1 am of the opinion that Pakistan has made out a better and superior title."

ये कहते हैं कि जहां के बारे में पाकिस्तान ने कोई अपने बहुत ही सुदृढ़, निश्चित एकाधिपत्य को नहीं बताया उसके बारे में मैं अपना जजमेंट घोषित करता हूं भारत के पक्ष में। "I pronounce" H "pronounce" शब्द के सिगनीफिकेंस को प्रधान मंत्री जी देखें :

भारत के पक्ष में तो उसने यह कहा कि मैं यह जजमेंट प्रोनाउन्स करता हूं और पाकिस्तान के पक्ष में अगर कोई बेहया चेयरमैन रहा हो ट्रिब्यूनल का उसको महसूस हुआ, वह लिखता है कि मैं इस राय का हूं—इतनी हिम्मत नहीं पड़ी कि वह अपने फैसले में लिखता स्वीकार करता कि यह जमीन सिन्ध की थी—कहता है— 'Intensive Sind activity" कहता है कि जो दस फीसदी जमीन है उस पर सिन्ध की इन्टेंसिव एक्टिविटी रही है। क्या उसका कब्जा रहा है ? क्या उसका क्लेम रहा है? चागला साहब ने कहा कि इन्टेंसिव एक्टिविटी किसी ट्रेसपासर की हो, वह हमारी जमीन पर आए-जाए, अगर उसके लिए कोई पंच बने और कहे कि उस ट्रेसपासर को जमीन दे दो तो क्या हम वह जमीन ट्रेसपासर को दे देंगे ? आज भारत की सरकार ट्रेसपासर के सामने घुटने टेकने जा रही है।

अब चूंकि मेजारिटी जजमेंट था, इसलिए जो पाकिस्तान का रिप्रेजेंटेटिव था ईरान का वह क्या कहता है—

"I have now had the advantage of reading the Opinion of the learned Chairman, and in the light of it I concur in and endorse the judgment of the learned Chairman."

यानी मैं चेयरमैन की सभी बातों से सहमत नहीं हूं, मगर मेजारिटी न हुई तो मामला बिगड़ जायगा, इसलिए वह कहता है कि मुझे चेयरमैन की ओपीनियन पढ़ने को मिल गई है, इसलिए चेयरमैन की राय से मैं इत्तिफाक रखता हूं। इस प्रकार धोखे से, फ्राड के जरिए यह मेजारिटी की गई है और अच्छे तरीके से देखा जाय तो कोई भी औचित्य नहीं है कि हम आज इस ट्रिब्यूनल की बात को मानें। पहले ट्रिब्यूनल जिस यकीन, जिस उम्मीद के साथ बना, एग्रीमेन्ट जिस यकीन और उम्मीद के साथ हुआ वह उम्मीद पूरी नहीं हुई और ट्रिब्यूनल ने अपनी अधिकार सीमा से बाहर जाकर फैसला किया है।

हमसे कहा जा रहा है कि हमने मान्यता दी और उस सदन में मान्यता दी गई, एग्रीमेंट को इसलिए हमको मानना है। मैं पूछना चाहता हूं इन्दिरा जी से कि क्या इस सदन को कोई वचन नहीं दिया गया था। 5 मई, 1965 को डा० लोहिया ने एक सवाल में पूछा था कि सरकार एलान करे कि कंजरकोट हमारा है और इस कंजरकोट को हम हर हालत में लेंगे और बिना पाकिस्तान के कब्जे को हटाए हम कोई सीज फायर नहीं करेंगे। लाल बहादुर शास्त्री ने कहा कि मैं यह साफ कर चुका हूं और कह चुका हूं कि अपने देश की एक इंच भूमि भी हम किसी भी हालत में छोड़ने के लिए तैयार नहीं हैं, उसे अलग करने के लिए तैयार नहीं हैं और उसके लिए जो भी जरूरी होगा करने से पीछे नहीं रहेंगे। मैं इन्दिरा जी से जानना चाहता हूं कि क्या यह लाल बहादुर शास्त्री का देश की जनता को आश्वासन नहीं था, क्या यह राष्ट्र की जनता को आश्वा-

मन नहीं था कि हम अपनी मातृभूमि की एक इंच जमीन छोड़ने के लिए तैयार नहीं हैं। मैं उन लोगों में से नहीं हूं जो अपने देश की चिन्ता से मुक्त हैं, जिन्होंने अंग्रेजी साम्राज्यवाद को ढहाने में, 1942 के आन्दोलन के सिलसिले में आंखमिचौनी की। मैं उन लोगों में से हूं जिन्होंने अपने जवानी-भरे अरमानों को हथेली पर रख कर अंग्रेजों की चुनौती का सामना किया और उनके साम्राज्य को ध्वस्त किया। इस त्याग, बलिदान और कष्ट के बाद हमारा मुल्क आजाद हुआ और जो सीमा 15 अगस्त, 1947 को अंग्रेज देकर गए उसे अगर हम खंडित करते हैं तो हम देशद्रोही हैं, मुल्क के प्रति गद्दार हैं और बापू की आत्मा और मुल्क में जो कुर्बानियां हुई उनके साथ धोखा कर रहे हैं। इसलिए मैं अदब के साथ कहना चाहूंगा कि हर हालत में इस फैसले को मानने का हमारे ऊपर उत्तरदायित्व नहीं है, चाहे जूडीशियली देखें, चाहे पोलिटिकली देखें, चाहे परम्परागत मान्यताओं को लेकर देखें। अमरीका में कई नजीरें मिलेंगी, जहां एक सीनेट के फैसले को दूसरी सीनेट के जरिए रद्द कर दिया गया। जो एग्रीमेन्ट हुआ उस एग्रीमेन्ट में कहा गया डिमारकेशन, केवल डिमारकेशन की बात की गई। हम अपनी भूमि खंडित होने की बात नहीं करेंगे। जो सरकार साढे तीन सौ वर्ग मील इस एवार्ड को मान कर देने जा रही है, वह राष्ट्रीय शर्म की सरकार होनी चाहिए और राष्ट्रीय शर्म की सरकार यह है।

इन शब्दों के साथ, केवल एक बात कह कर बैठना चाहता हूं। क्या औचित्य है, माननीय प्रधान मंत्री जी का इस विषय पर हमारे प्रस्ताव को आज लेने का। आपने पढ़ा होगा कि कल दोनों मुल्कों के प्रतिनिधि बैठे। दोनों मुल्कों के प्रतिनिधि बैठकर कच्छ एवार्ड को मान्यता देने की बात कर रहे हैं। एवार्ड को मानने की कार्यवाही शुरू हो गई है, तब हमारे प्रस्ताव पर विचार किया जा रहा है। कांग्रेस के लोगों को कहा जायेगा कि अब मामला शुरू हो गया है, सरकार की इज्जत की खातिर प्रस्ताव का विरोध करो। सरकार की इज्जत से देश की इज्जत बड़ी है, राष्ट्र की इज्जत बड़ी है। हमारे नुक्तेनजर से नहीं मानते तो भी आपको अपनी मातृभूमि की रक्षा के लिए, देश की रक्षा के लिए आज जूझने के लिए तैयार होना चाहिए। मैं अपने दोस्तों से कहना चाहता हूं कि आज मजदूरों की हड़ताल करवाते हो, अध्यापकों की हड़ताल क्यों करवाते हो, महंगाई भत्ते की मांग करवाते हो, मगर मातृभूमि की रक्षा के लिये सत्याग्रह क्यों नहीं करते। आज भारत माता पुकार पुकार कर कह रही है कि मातृभूमि की रक्षा के लिए हमें सपूतों की आवश्यकता है। आज देश को आवश्यकता है उन सपूतों की, उन बलिदानियों की जो मातृभूमि की रक्षा के लिए आगे रहें और स्वयंसेवक के रूप में भर्ती हों। अगर यह सरकार नालायक है, निकम्मी है, देशद्रोही है और मुल्क के हिस्से को देने पर मजबूर होती है तो देश की जनता उस हिस्से को लेने के लिए आगे बढ़े, हिम्मत के साथ बढ़े। मैं इन्हीं शब्दों के साथ इस प्रस्ताव को प्रस्तावित करता हूं और सदन के सम्मानित सदस्यों से अपील करता हूं कि सदन के सम्मानित सदस्य हमारे प्रस्ताव के साथ आएं। इसमें हिन्दू मुसलमान का सवाल नहीं है।

श्री सुन्दर सिंह भंडारी (राजस्थान) : महोदया आपकी अनुमति से मैं प्रस्ताव करता हूं कि 23 फरवरी, 1968 को राज्य सभा के पटल पर रखे गए कच्छ के रन के सम्बन्ध में भारत-पाकिस्तान पश्चिमी सीमा विषयक न्यायाधिकरण के (19 फरवरी, 1968 के) पंचाट पर विचार किया जाए।

इस पंचाट पर चर्चा प्रारम्भ करने के पूर्व जो कुछ सरकार की तरफ से पिछले दिनों में कहा गया है मैं उसका संक्षेप में उल्लेख करना चाहता हूं। दूसरे सदन में

[श्री सुन्दर सिंह भंडारी]

उप-प्रधान मंत्री ने अपने भाषण में आग्रह किया कि इस देश की परम्परा रही है "प्राण जाय पर वचन न जाई" और इस कारण से हम वचनबद्ध हैं और अपने देश की इस परम्परा को कायम रखने के लिए हम लोगों को इसे मानना चाहिए। उन्होंने यह भी कहा कि हां, यह तो सोचा जा सकता है कि हम दुबारा कभी ऐसे झमेले में न फंसेंगे, कभी कोई आर्बिट्रेशन न माने। मैं केवल उन्हें एक बात की याद दिलाना चाहता हूं कि जिस परम्परा की उन्होंने चर्चा की कि 'प्राण जाय पर बचन न जाई' उस परम्परा में जो लोग विश्वास करते थे उनको वचन देते समय डर नहीं लगता था कि एक बार वचन दे दिया, बुरे फंसे, अब दुबारा के लिये तोबा कभी वचन नहीं देंगे, इस भावना से कभी उन्होंने इस परम्परा का पालन नहीं किया। उन्होंने जीवन में यही आकांक्षा रखी कि एक बार वचन का पालन किया है और फिर कभी वचन देने का मौका आयेगा तो उतनी ही हिम्मत के साथ, ईमानदारी के साथ हम अपने वचन को निभाने की कोशिश करेंगे। हम समझते हैं कि माननीय सदस्य इस दूसरे उद्धरण को भी याद रखते होंगे कि "भोले ब्राह्मण ने भांग खाई, अब खावे तो राम दुहाई।" भांग खाने के बाद जब नशा चढ़ता है और रबड़ी खाने की इच्छा होती है, रबड़ी के पैसे नहीं होते, उनको मांगता है तो कहता है कि इस बार तो दे दो अगली बार भांग नहीं खाऊंगा। तो मुझे लगता है कि यही कुछ इस देश के साथ हो रहा है।

मैं सरकार से निवेदन करना चाहता हूं कि यह वचन निभाने वाली परम्परा में नहीं चली, वह भांग खाई वाली परम्परा में चल रही है। इसके आधार पर ही वह इस सारी समस्या का विचार करें। इससे ज्यादा इस सारे प्रश्न को म त्व नहीं देना चाहिये।

प्रधान मंत्री महोदया ने भी यह स्वीकार किया कि वह बड़ी नाखुश हो कर 'डिसपाइट अनहैपीनेस' इस सारी चीज को स्वीकार करती है। दूसरे उन्होंने यह भी कहा कि ट्रीब्युनल ने 'एक्सट्रेनियस सरकमस्टांसेज' को ध्यान में रख कर विचार किया है। अब हम जरा इसका विचार करें। मैं उस दलील में नहीं जाना चाहता कि हमने ट्रीब्युनल के सामने अपनी बात क्यों कही, उस पर मैं बाद में आऊंगा। प्रश्न यह है कि ट्रीब्युनल ने एक एवार्ड दिया और हमने कहा कि 'एक्सट्रेनियस मोटिव, एक्सट्रेनियस सरकमस्टांसेज' और ऐसी बातों का विचार किया जो साधारणतया उस ट्रीब्युनल के दायरे के बाहर हैं और उस पर भी अपने जजमेंट को आधारित किया है। अगर ऐसा है तो सवाल खड़ा होता है कि इंटरनेशनल कमिटमेंट और इंटरनेशनल लॉ के आधार पर जिस मतलब के लिये ट्रीब्युनल या पंचाट का गठन किया गया अगर पंचाट उस दायरे का अतिक्रमण करे एक्सट्रेनियस फैक्टर्स को सामने ला कर कोई निर्णय दे और हम पाबंद हो जाएं कि 'अंडर नो सरकमस्टांसेज' हम उसका विरोध करेंगे तो भी क्या साधारण रास्ते बंद हो जाते हैं जैसे कि आज साधारण नियम है कि कुछ अपीलेबिल मामले हैं और कुछ मामले ऐसे जिसमें अपील नहीं होती लेकिन सर्वोच्च न्यायालय का जो ओरिजनल ज्युरिस्डिक्शन है, साधारणतया लोगों को न्याय देने का अधिकार, वह उसमें से समाप्त नहीं होता। तो यहां भी इंटरनेशनल लॉ कमिशन है और कोई भी वचन दिया गया हो, किसी भी प्रकार की बात हो, सरकार ने क्या इस संबंध में राय ले ली। इस ट्रीब्युनल का गठन करते समय हम यह वचन दे चुके थे कि यह पाबंदी हम पर लागू होगी और हम इस डिसीजन को किसी

भी आधार पर खंडन नहीं करेंगे, तो क्या इसमें से हमारा इंटरनेशनल लॉ कमिशन के पास जाने का अधिकार भी समाप्त हो गया । मैं समझता हूं कि वह हमारा एक स्वयंभू अधिकार है । इस ट्रीब्युनल का जिन बातों के लिये गठन किया गया था उन बातों के दायरे के बाहर जाने की बात को जब हम स्वीकार करते हैं, जब हमने माना है कि उसने एक्सट्रेनियस सरकमस्टांसेज को सामने रख करके अपना फैसला दिया है तो क्या हम इंटरनेशनल कमिशन के पास जा कर इस बात का फैसला नहीं करा सकते कि ट्रीब्युनल को जिस मतलब के लिये गठित किया गया था उसको जो अधिकार दिया गया था उससे बाहर गया । हमारे प्रधान मंत्री ने कहा कि जो कुछ कागजों में है उसको जमीन पर लाना है, इस मतलब के लिये उस ट्रीब्युनल का गठन किया गया था और इस ट्रीब्युनल ने इस एवार्ड में जो कुछ लिखा है, इस एवार्ड में जिस जिस आधार पर अपने निर्णय दिये हैं तो अंतर्राष्ट्रीय न्यायाधिकरण के मत में भी क्या वह अपनी सीमा में रहा है या उस सीमा का उल्लंघन किया है और अगर सीमा का उल्लंघन किया है तो अंतर्राष्ट्रीय कमिशन हमें क्या सलाह देता है । इस प्रकार के ट्रीब्युनल के लिये जनरली क्या प्रैक्टिस एडाप्ट की है । इस प्रकार के दिये गये एवार्ड्स की कानूनी दृष्टि से कोई मान्यता नहीं जिनकी केवल मारल बाइंडिंग्स हैं, जिनका केवल इंटरनेशनल रिलेशंस पर असर पड़ता है, जिसका कानूनी असर दूसरा आज भी नहीं है । यह केवल एवार्ड है, एवार्ड के संबंध में भी अंतर्राष्ट्रीय कमिशन के साधारण नियम है, मारल बाइंडिंग्स हैं, तो इस दृष्टि से हम क्यों नहीं यह तय करते कि हम इंटरनेशनल कमिशन के पास जा कर इस सवाल को रेफर करेंगे और जब तक इंटरनेशनल कमिशन इस मामले में फैसला नहीं देता तब तक इसके कार्यान्वित करने को जैसे कि सब मामलों में सुप्रीम कोर्ट का ज्यूरिसडिक्शन या हाईकोर्ट का ज्यूरिसडिक्शन स्टे करवाता है वैसे ही स्टे करवायें इस पंचाट के फैसले को भी लागू करने में, इसके ऊपर चर्चा चलाने में, इसके आधार पर आगे का काम करने में हम वहां से रोक लगवाने की कोशिश क्यों न करें । एक रास्ता हमारे पास खुला है और हम बजाय इसके कि उस रास्ते को टटोलें हम पहले से ही महज इस वजह से कि हमने चार अक्षर उसमें लिख दिये आज सब उसमें सिर छिपाने की कोशिश करते हैं क्योंकि अगर हमने वह चार अक्षर न लिखे होते तब तो गुंजाइश थी । मेरा यह कहना है कि क्या चार अक्षर लिख देने मात्र से ही वह जो हमारा इंटरनेशनल कमिशन का अधिकार है उसे जो दुनिया भर के न्याय अन्याय के बारे में निर्णय करने का एक ज्यूरिसडिक्शन है क्या उसके उस ज्यूरिसडिक्शन से, उन अधिकारों से, ये चार अक्षर लिखने मात्र से ही डिबार कर दिया ।

श्री प्रकाश नारायन सप्रू (उत्तर प्रदेश): वह कौनसा इंटरनेशनल लॉ कमिशन है जो आप कह रहे हैं ?

श्री सुन्दर सिंह भंडारी : इंटरनेशनल कोर्ट है और हम उसके पास जा कर के इस बात का फैसला ले सकते हैं कि वह न्याय, अन्याय के प्रश्न पर इसका निर्णय कर के हमको दे कि जिस मतलब के लिये हमने अपने भाग्य को ट्रीब्युनल के हाथ में सौंपा उतने तक ही वह सीमित रहा या उसने अपनी सीमा से बाहर जा कर काम करने की कोशिश की ।

SHRI AKBAR ALI KHAN (Andhra Pradesh): We can go to the International Court when both parties agree. That is the provision of the international law.

श्री राजनारायण : इस संबंध में मैं कहना चाहता हूं कि हमारा अधिकार है कि . .

श्री सुन्दर सिंह भंडारी : मेरा यह निवेदन है कि इंटरनेशनल कोर्ट इसका ज्यूरिसडिक्शन लेता है या नहीं इंटरनेशनल कोर्ट हमारे इस एवार्ड के मामले में सुनने के लिये तैयार है या नहीं, इस बारे में आप उन जजेज को रिप्लेश करने की कोशिश मत करिये।

SHRI P. N. SAPRU (Uttar Pradesh) : May I point out that the International Court of Justice can act only on the initiative of both parties to a dispute or in its advisory capacity when a matter is referred to it by one of the authorities competent to do so at the United Nations?

श्री सुन्दर सिंह भंडारी : मेरा निवेदन है पाकिस्तान के सामने हमने यह प्रस्ताव रखा क्या, और क्या पाकिस्तान ने इंकार किया है ? आप कहें कि इस एवार्ड के जस्टी-फिकेशन के बारे में ट्रीब्युनल जिस मतलब के लिये बनाया गया था उसके बारे में हम इंटरनेशनल कोर्ट के पास जा कर यह तय कराना चाहते हैं कि जिस मतलब के लिये ट्रीब्युनल बनाया गया था उस दायरे के बाहर जा कर ट्रीब्युनल ने फैसला दिया है और पाकिस्तान को कहने दीजिये कि नहीं, मुझे तो मौके का फायदा मिलता है, मुझे इस प्रकार के पचड़े में पड़ने की जरूरत नहीं। तो पाकिस्तान को उसमें से नंगा होने की बात होगी जो पाकिस्तान आज न्याय के आधार पर ट्रीब्युनल के आधार पर एक एवार्ड के आधार पर अपनी सारी आवाज बुलन्द कर के इंटरनेशनल ओपीनियन को अपने पक्ष में करने की कोशिश कर रहा है, तो हम आज भी उसी प्रकार से इंटरनेशनल कोर्ट के पास जा कर कोशिश क्यों नहीं करते इस प्ली पर कि जिस मद के लिये हमने ट्रीब्युनल का गठन किया था और जो हम यहां पर जमीन पर बाउंडरी का डिमारकेशन करना चाहते थे

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उतने मामले के लिए, जिस मतलब के लिए हमने ट्रीब्युनल का गठन किया है "आओ, एक जगह और है बची, इस बात का इन्साफ लेने के लिए कि इस ट्रीब्युनल ने अपने दायरे के अंदर अवार्ड दिया है कि नहीं दिया है। हम क्यों नहीं पाकिस्तान के सामने यह प्रपोजिशन रखें, क्यों नहीं हम इन्टरनेशनल कोर्ट के सामने यह चीज ले जाकर के पाकिस्तान को कहने के लिये मजबूर करें कि नहीं नहीं, मुझे तो एक ट्रीब्युनल ने अवार्ड में दिया है, ट्रीब्युनल चूंकि मेरे पक्ष में गया है मैं इसका लाभ उठा सकता हूं . . .

HE DEPUTY CHAIRMAN: Mr. Bhandarl, you can have ten minutes more after lunch.

The House stands adjourned till 2.00 P.M.

The House then adjourned for lunch at one of the clock.

The House reassembled after lunch at two of the clock, THE VICE-CHAIR-MAN (SHRI M. P. BHARGAVA) in the Chair.

THE VICE-CHAIRMAN (SHRI M. P. BHARGAVA): Mr. Bhandari.

श्री सुन्दर सिंह भंडारी : उपसभाध्यक्ष महोदय, मैं यह निवेदन करने का प्रयत्न कर रहा था कि जो सरकार एक वचनबद्धता के आधार पर इस अवार्ड को मानने के संबंध में अपनी मजबूरियां प्रकट कर रही है वह भी अगर चाहें तो रास्ता निकाल सकती है। और भी ऐसे रास्ते हैं कि जिनका अनुसरण करके, जिसके बारे में स्वयं सरकार कहती है कि वह अवार्ड के बारे में अन्हैप्पी फील कर रही है, एक्स्ट्रेनियस सर्कमस्टेन्सेज में जाकर विचार किया गया है, तो उसमें से रास्ता निकाला जा सकता है।

मैं दूसरी बात यह कहना चाहता हूं कि एक तरीका है कि निगोसियेशन्स से अगर बात तय न हो तो आर्बिट्रेशन पर जाना चाहिये। पाकिस्तान ने एक विवाद खड़ा किया और विवाद के संबंध में कुछ निगोसियेशन्स हुए। प्रश्न यह है कि निगोशियेशंस को फ्लाउट करने के बाद, निगोसियेशन्स तोड़ कर एक प्रकार से पाकिस्तान ने आक्रमण किया, 10 फरवरी को कंजरकोट पर किया, 19 अप्रैल को सरदार चौकी पर किया, 24 अप्रैल को छादबेट पर किया और इस आक्रमण के द्वारा एक परिस्थिति पैदा की गई, एक मजबरी पैदा की गई हमें आर्बिट्रेशन को स्वीकार करवाने के लिये। तो यह निगोसियेशन्स में से आर्बिट्रेशन नहीं है। निगोसियेशन्स के बाद युद्ध छेड़ा गया है, युद्ध हुआ है, युद्ध के सीज फायर में से आर्बिट्रेशन निकला है। तो मैं यह निवेदन करना चाहता हूं कि जो आर्बिट्रेशन की पृष्ठभूमि में दबाव लाना चाहते थे अपनी बातों को मनवाने के लिये उन्हें यह नहीं भूलना चाहिये कि कच्छ के सवाल पर हम आर्बिट्रेशन करने के लिये किस परिस्थिति में तैयार हुए थे ? मेरा यह निवेदन है, लड़ाई की पाकिस्तान ने, हमने उसका जवाब दिया। हम चाहते तो पाकिस्तान के द्वारा आक्रमण कर दिये जाने के कारण पाकिस्तान को इस सारे इलाके से खदेड़ सकते थे। किन्तु लड़ाई हमने नहीं की। वह आर्बिट्रेशन की बात लड़ाई को रोकने के लिये नहीं आई, लड़ाई के बाद पैदा हुई। शायद लड़ाई लड़ी गई आर्बिट्रेशन को लागू करने के लिये। हमें इस बात को समझने से इन्कार नहीं करना चाहिये कि किस परिस्थिति में यह सारे आर्बिट्रेशन की बात आई है। जब प्रधान मंत्री ने इस संबंध में यहां वक्तव्य दिया तो कैटेगैरिकली उन्होंने कहा था कि ठीक है, हम आर्बिट्रेशन के लिये जा रहे हैं, इसमें कोई नयी सीमा निर्धारित करनी नहीं है। यह भी उन्होंने कहा : "It cannot invent a boundary यह जो डिसेन्टिंग नोट का जो यहां पर पर्पर्ट है उसमें यह लिखा हुआ है कि ट्राइब्यूनल को इसका कोई अधिकार नहीं था कि एक बाउन्डरी का इन्वेन्ट करे। इसने एक बाउन्डरी इन्वेन्ट की है। यहां पर तर्क दिये जाते हैं कि 90 फीसदी भूमि हमारी रह गई, अर्थात् जितनी टैरीटरी का क्लेम पाकिस्तान ने किया था 90 प्रतिशत भूमि पर तो उसका कोई क्लेम ही नहीं रहा। क्यों ? क्योंकि उसका सारे का सारा क्लेम इन्लैन्ड सी की थ्योरी पर बेस्ड था। मैरीन फीचर, इन्लैन्ड सी 23 पैरलल से 25 मील तक यह सारा रन का इलाका है, समुद्र है, और आधा आधा बंटना चाहिये; 24 पैरेलल उस के बीच में पड़ता है और 3400 वर्गमील की जमीन का उसका क्लेम है, यह उसका आधार था। इस मामले में कहीं विवाद नहीं है। इन्टर्नल सी नहीं है यह स्वीकार कर लिया गया है, यूनेनिमसली बाई द ट्राइब्यूनल। और रिकार्ड में सिद्ध हुआ है कि रन भी कोरा रन नहीं है, रन आफ सिंध नहीं है, बल्कि रन आफ कच्छ है। अब जब इतना स्पष्ट है कि यह इन्लैण्ड सी नहीं, यह केवल रन नहीं, रन आफ सिंध नहीं, तो अगर यह रन आफ कच्छ है तो पाकिस्तान ने जिसके आधार पर अपने सारे क्लेम बनाये थे, वे लगभग सब समाप्त हो गए। 10 परसेन्ट उसको क्यों दिया है ? दिया है दो बातों पर। एक तो यह कि कांटिग्यूइटी आफ बाउन्डरी वह कायम करना चाहता था, यानी इसके पीछे और कोई क्लेम्स नहीं हैं। कांटिग्युइटी की एक थ्योरी है, रिमूविंग पाइन्ट्स आफ टेन्शन यह दूसरी बात है और एक कम्प्रोमाइज लेन की बात है कि चलो आपस में पड़ोसी हो। तो कोई राइट नहीं है। यह जो 10 परसेन्ट भी जो पाकिस्तान को दिया गया है उसका 100 परसेन्ट क्लेम खत्म हो गया था जिस दिन वह रन आफ कच्छ हो गया, इंटर्नल सी खत्म हो गया, इसके बारे में कोई विवाद नहीं रहा। आगे वा जो 10 परसेन्ट उसको मिला है वह मिला है कांटिग्युइटी के आधार पर। मैं समझता हूं कोई भी व्यक्ति इस बात को स्वीकार करेगा।

[श्री सुन्दर सिंह भंडारी]

कि किसी भी ट्राइब्यूनल के विचार करने का यह बिल्कुल आधार नहीं हो सकता ।

कई लोग तर्क देते हैं कि इसलिये तुम इसका विरोध करते हो कि just because the Award does not ,,pnt Tndia's case in its entirety.

तो मैं यह कहना चाहता हूं । क्या ट्राइब्यूनल ने इसलिये 10 परसेन्ट क्लेम पाकिस्तान का माना because the Tribunal was not prepared to reject in its' en-+w,, the claim of Pakistan?

क्या इसी कंसिडरेशन के आधार पर कि पाकिस्तान का कहीं क्लेम नहीं था, कहीं आधार नहीं था परन्त कांटिग्यइटी की बात लेकर "रेमूविंग पाइन्ट्ड आफ टेन्शन" का आधार लेकर उसने 10 परसेन्ट इलाका पाकिस्तान को देने का फैसला किया तो फिर मैं कहना चाहूंगा कि यह आधार का कारण नहीं बन सकता ।

आज लोग हमको समझाने की कोशिश करते हैं कि कितना दूर इलाका है, उसकी रक्षा करना, वहां पर फौज मेन्टेन करना, वहां पर आर्मरी मेन्टेन करना, हिन्दुस्तान के लिये कितने खर्च का कारण होगा । मैं समझता हूं अगर इस तर्क पर समझाने की कोशिश की गई तो आज हिन्दुस्तान के कई फारफेच्ड इलाके हैं, कल अकसाई चिन के क्षेत्र में, परसों नेफा के क्षेत्र में, पता नहीं कितने कितने क्षेत्रों में जहां घास का तिनका नहीं उगता, जहां पर बर्फ पड़ी रहती है, जहां वीरान है तो इस प्रकार के तर्क देना कि देश की रक्षा करना मुशकिल है इस तरह की बातें हम कई जगहों में पैदा करेंगे ।

मेरा यह निवेदन है कि ट्राइब्यूनल ने पाकिस्तान को दस परसेंट जो जमीन दी है, वह इस तर्क को मान कर दी है कि भविष्य में संघर्ष हो जायेगा, इस लिए 10 प्रतिशत जगह पाकिस्तान को दी जा रही है । इसका मतलब यह हुआ कि उसने पाकिस्तान के संघर्ष करने की धमकी के सामने सरन्डर किया है कि पाकिस्तान भविष्य में लड़ाई कर लेगा अगर हम इस समय उसको समर्थन नहीं देते हैं । अगर हम उसको इस समय जमीन नहीं देते हैं तो वह भविष्य में इस सम्बन्ध में बखेड़ा पैदा कर लेगा । मैं समझता हूं कि ट्राइब्यनल ने, जिसको न्याय के आधार पर सारा फैसला करना चाहिये था, उसने भविष्य के डर से पाकिस्तान की धमकी के आधार पर कि अगर उसको भूमि नहीं दी गई तो इससे संघर्ष पैदा हो जायेगा, इस तरह का फैसला दिया है । ट्राइब्यनल ने पाकिस्तान को बकरी चराने के लिए और आने-जाने के लिए रास्ता देने के सम्बन्ध में उसका क्लेम माना है । उसने इस सम्बन्ध में एक फिल्म भी दिखलाई जिसमें वहां पर जो एक्टीविटीज पाकेस्तान की ओर से की जाती थीं दिखलाई गईं । शायद भारत सरकार के पास कोई फिल्म नहीं थी । क्या वह इस तरह की एक्टीविटीज का शो नहीं कर सकता था । अगर पाकिस्तान वहां पर अपनी एक्टीविटीज के बारे में फिल्म दिखला सकता है तो आप भी वहां पर इस तरह का फिल्म दिखला सकते थे । क्या अगर आप इस तरह की फिल्म दिखलाते तो शायद ट्राइब्यूनल को अपने फैसला करने का आधार भी बदलना पड़ता और इस तरह की बातें सामने न आतीं ।

कच्छ के सम्बन्ध में जिन सज्जन ने हमारी वकालत की, आज उन्हीं का बयान, बैरिस्टर चटर्जी का बयान अखबारों में निकला है कि पाकिस्तान ने जो दस्तावेज पेश किये थे वे सब जाली थे और उन्होंने उस समय भी उसके क्लेम को ठुकरा दिया था । मैं समझता हूं कि हम लोगों को इस बात पर आपत्ति करनी चाहिये कि जाली दस्तावेजों के आधार पर ट्राइब्यूनल ने अपना फैसला दिया है और इस आधार पर हमें कहीं भी न्याय प्राप्त करने का हक है ।

इस सम्बन्ध में प्रधान मंत्री महोदया ने भी एक तर्क देने की कोशिश की है । वे कहती

हैं कि It is not international opinion it is **but** national interests."

उनका कहना है कि इस चीज ने उनको इस नतीजे पर पहुंचने में मदद दी है । लेकिन मैं उनसे पूछना चाहता हूं कि उन्होंने जो तर्क दिया है उसको सामने रखकर हम दुनिया के सामने अपना किस तरह से मुंह खड़ा करेंगे ? क्या दुनिया हमारी बात पर विश्वास कर लेगी कि वह नेशनल इन्टरेस्ट क्या है ? नेशनल इन्टरेस्ट तो यह कहता है कि जो भूमि दी गई है उसकी हमें रक्षा करनी चाहिये क्योंकि कच्छ का जो नार्दर्न रीजन है, वही आबाद के योग्य है जहां पर पापुलेशन रह सकती है । उसी इलाके को हमारी सरकार पाकिस्तान को देने जा रही है । मैं समझता हूं कि पाकिस्तान ने इस भूमि के बारे में जो क्लेम किया है और जिसको हम मानने जा रहे हैं वह इनलैन्ड सी के लिए आगे की भूमिका बांध रहा है । इस तरह से वह भूमिका तैयार कर रहा है इनलैंड सी का आधार बनाने की जिसको हम कभी भी स्वीकार नहीं कर सकते हैं । इसलिये मेरा निवेदन है कि यह जमीन 100 प्रतिशत हमारी है । ट्राइब्युनल ने जो 10 प्रतिशत भूमि पाकिस्तान को दी है वह टैन्शन की कांटीन्युइटी को रिमूव करने के लिए दी गई है और इस तरह से भारत की भूमि पाकिस्तान को दी जा रही है । इस भूमि को गैर कांस्टीट्यूशन को अमेन्ड किये नहीं दिया जा सकता है। अगर यह भूमि दूसरे कारणों से दी जाती तो वह बात समझ में आ सकती थी, लेकिन वहां पर कान्टीन्युइटी आफ टैन्शन को रिमूव करने के लिए दी गई है। यह एक प्राइमाफेसी केस है, हिंदुस्तान की भूमि है और हिंदुस्तान को डिलोंग करती है। आज सरकार कहती है कि इसमें टैरिटरी देने का सवाल नहीं उठता है और इसीलिये कांस्टीट्यूशन में अमेन्डमेंट लाने की आवश्यकता नहीं है । मैं इस सरकार पर चार्ज लगाना चाहता हूं कि वह भारत की भूमि को देने के लिए जो तर्क दे रही है कि केवल बाउन्ड्री में पिलर लगाने का सवाल है, केवल डिमारकेशन करने का सवाल है और इसमें भूमि देने का सवाल पैदा नहीं होता है, यह गलत बात है । इन्हीं कारणों से सरकार समझती है कि इसमें भूमि देने का सवाल खड़ा नहीं होता है और इसीलिए कांस्टीट्यूशन में अमेन्डमेंट लाने की आवश्यकता नहीं है ।

उपसभाध्यक्ष महोदय, मैं आपके द्वारा यह निवेदन करना चाहता हूं कि एवार्ड की शब्दावली में ही यह निहित है कि चूंकि यह भूमि भारत की थी और उसे इस प्रकार की परिस्थिति को एवार्ड करना था इसलिए उसने इस भूमि को पाकिस्तान को देना ठीक समझा है। इस तरह से टैरिटरी सीड करने की बात है और यह कांस्टीट्यूशन को अमेन्ड किये बिना नहीं होना चाहिये ।

आर्टिकल 51 सी में हमारे ऊपर यह पाबन्दी आती है कि maintain "just and honourable relations between nations" इसमें जस्ट और आनरेबल रिलेशन के निर्माण करने के बारे में कहा गया है। इसलिए मैं सरकार से कहना चाहता हूं कि इस एवार्ड को मानकर हम जस्ट एण्ड आनरेबल रिलेशन्स का निर्माण किस तरह से कर सकेंगे । We are both on unjust and un-honourable ground. हम चाहते हैं कि पाकिस्तान के साथ हमारे सम्बन्ध बनें, अच्छे सम्बन्ध हों और फ्रेन्डली रिलेशन का निर्माण हो । लेकिन मैं कहना चाहता हूं कि फ्रेन्डली रिलेशन का मतलब यह नहीं है कि हम अपने अधिकारों को समर्पण करके, अपने अधिकारों को छोड़कर के उसे उत्पन्न करें । हमारा कांस्टीट्यूशन भी हमें जस्ट और आनरेबल कारणों पर खड़े होने की पाबन्दी करता है, पर किसी भी अनजस्ट चीज को मानने के लिए नहीं कहता है । अगर सरकार इस एवार्ड को चैलेंज करे, जिसके लिए हजारों कारण हो सकते हैं, जो न्याय के आधार पर

[श्री सुन्दर सिंह भंडारी]

नहीं है, जो एक्सट्रेंयस कन्डिशन के आधार पर दिया गया है, उसको स्वीकार करती है, तो वह स्क्य आर्टिकल 51 सी की अवहेलना की दोषी है क्योंकि इसमें जस्ट ए ड आनरेबल ग्राउ ड द्वारा ही सम्बन्ध कायम करने की बात कही गई है । इसलिए मेरा निवेदन है कि सरकार इस एवार्ड को मानने के बजाय इसको रिरस्त कर दे । अगर इसके लिए दुनिया की ताकतों से मदद लेने का सवाल पैदा होता है, तो उसका सहारा लिया जा सकता है । लेकिन देश का हित, नेशनल आनर और नेशनल जस्टिस यही मांग करता है कि सरकार इस एवार्ड को मानने से इन्कार

SHRI RAM NIWAS MIRDHA (Rajasthan): Sir, I rise to oppose the motion that has been moved by my kon. friend, Shri Rajnarain

श्री राजनारायण : आप से तो आशा थी ।

श्री राम निवास मिर्धा : आप सुनिये फिर कहिये ।

This Kutch border controversy like many other things that plague our country are a legacy of the British days. It used to be a dispute between the then State of Kutch and the Province of Sind which was directly administered by the Government of India, and when the country was divided into India and Pakistan, this controversy took on renewed shape. The Kutch State in 1947 wrote to Pakistan that the boundary pillars between the two States should be demarcated and a proper boundary settlement should be arrived at. To this the Government of Pakistan replied to the Government of India, which was then responsible for the administration of Kutch, that (here is no dispute and the Government of Pakistan suggested that a joint boundary commission should be established to go into the whole thing so that a satisfactory solution could be arrived at. But the Government of India, not agreeing with that contention, said that in their opinion there was no doubt on the boundary, and then rejected the suggestion for a boundary commission.

Pakistan again raised this point in 1954 and in subsequent meetings also, and so it is not true to say that the whole thing came up all of a sudden in 1965. In 1958 we had negotiations with Pakistan and all our border disputes were discussed and settlements were arrived at in some cases, and for the settlement of other cases, and agreed procedure was laid down which included negotiations and, ultimately, arbitration. I think this was a very proper course for us to adopt because if that were not the contention it would have meant that we want to settle our border dispute with Pakistan not on the basis of negotiations and arguments but on the basis of sheer force which has never been our intention to do. Therefore, while some disputes were settled, some were left unsettled and for the settlement of those unsettled disputes, it was agreed that a certain procedure should be followed.

SHRI SUNDAR SINGH BHANDARI: Not arbitration,

SHRI RAM NIWAS MIRDHA: That included arbitration.

SHRI SUNDAR SINGH BHANDARI: At that time we had not acceded to arbitration.

SHRI RAM NIWAS MIRDHA: As a matter of fact, reference to arbitration was made much earlier than that so far as the principle of settlement of our disputes with Pakistan was concerned, and we can go as far back as 1955 to trace that arbitration had bee$_n$ accepted as one of the principles of settling our disputes with Pakistan.

SHRI SUNDAR SINGH BHANDARI: When was this accepted?

SHRI RAM NIWAS MIRDHA: It was in pursuance of the principles that had been settled for the settlement of all outstanding border disputes with Pakistan. In 1965, Sir, Pakistan disturbed the *status quo* and started a fight. Naturally our reaction was that we could not cede any territory on the basis of threat or use of force. So the then Prime Minister very rightly said 'If you want to talk over and negotiate, the first thing to do is to restore the status *quo ante,* withdraw to previous positions and then come on and discuss the whole matter, which was really what happened. There was a cease-fire and in that very cease-fire agreement it was mentioned that there would be negotiations and then we would proceed on to arbitration, and it is as a resuW of that agreement that this award . has been given. Now, Sir, arbitration is a well recognised procedure in international law for settling border disputes. And not only that, our policy had all along been, as I have tried to indicate briefly, that our disputes with our neighbours should be settled on the basis of negotiations and, if necessary, by arbitration. It was only in pursuance of that policy that this agreement was entered into and we get this award which is now before us. I would not go into the instances in the world where countries have resorted to arbitration for settling their border disputes. There are plenty. It has been one of the accepted principles that unless you want to decide things by force, there is no alternative but to decide by talks. If you cannot solve it by talking and negotiations, you have to have someone impartial to come and say that this is how it should happen,

AN HON. MEMBER: impartial?

SHRI RAM NIWAS MIRDHA: Well, Sir, an 'impartial man' under the agreement would be anyone who has been appointed under the procedure. Now that the award is against us, we can very well dispute anyone's impartiality. That is perfectly open to us. But if we go a little deeper into the matter, I do not think that sort of objection should be raised.

The point is whether the reference was proper or not. Even now the House has to consider whether the policy of the Government of India to resort to arbitration in this matter was a valid one or not, or whether our general policy ojf resorting to arbitration to settle our border disputes is a va'id one or not. If we do not adopt this policy, there is no other way. There are some of us who are probably spoiling for a fight to settle our border disputes. There are other$_s$ who probably want to take political advantage of such things and hit at arbitration. But that would be a very dangerous path—to decide and to assert that we will not resort to arbitration, that we rule out arbitration completely and will resort to force and fighting and our superior arms to settle our disputes with our neighbours. I think it would be a very dangerous path because violence solves no problems, however mighty we might be. We can say that we will get it all accepted by our neighbours. But armed might has serious limitations as, for example, the United States is discovering in Vietnam. It says it 3*, and it is, a very powerful country. But armed force has also its limitations. I would not go further than that, and it can never be accepted that it is only on the basis of our strength of arms that we will have these problems solved. So this policy was valid at that time and even now it is a perfectly valid approach in such matters- Now Sir, it has been said that the arbitrators have exceeded their brief and have gone beyond their terms and have adduced reasons which are not valid in international law for giving an award of that nature. I will just give two cases in

(Shri Ram Niwas Mirdha.) international law wher$_e$ just similar problems arose. One is between the United States and Norway. In 1923, the United States paid a large sum of money to Norway in satisfaction of a$_n$ arbitral award. The United States maintained that it did so in acknowledgment of its devotion to the principle of arbitral settlements even in the face of a decision proclaiming certain theories of law which it cannot accept. Just now it was said that the arguments adduced by the tribunal are not valid and, therefore, we should challenge it. But here is a case in which the same argument was raised, that the United States was not going to accept certain theories of international law on which the award was based, but it complied with that. Then there is another case. It was a dispute between the United States and Great Britain regarding the boundary of Canada. Arbitration was held and the arbitration went in a particular way against the United States. Then it was said that the arguments advanced could not be—I quote—"considered as sufficiently preponderating to determine a boundary or line in favour of either one or the other of the two lines claimed by the two Governments." And this is what the arbitrator says. "I have not been able to decide from the proof that is before me as to which should be the proper line between them." But ultimately the arbitrator prescribed a certain boundary line and said that this should be accepted as the boundary between the two countries. Now the United States refused to accept the award on the ground, just as it is sought to be done right now, that the arbitration had exceeded its powers. So the dispute lingered on for a long time and it was ultimately settled through! a treaty. In the ultimate settlement the United States lost 1,000 miles of territory more than it would have under the arbitration award. So if we keep a dispute lingering, there is no guarantee that it would be settled to our own satisfaction. Therefore, I think that if we see these precedents and other practices in international law, we should accept the award.

Then, much has been made about the two terms, "demarcation" and "determination." A lot has been said that it was wrong that the arbitrators were asked to determining, instead of demarcating the boundary. I think. Sir, this is a needless sophistry. The two terms are really different. Demarcation jactually means and implies a physical act, to delineate a predetermined line on the ground. But you cannot demarcate unless you know where the line has to be. So there has to be determination before there can be demarcation of any area. And from that point of view, Sir, even a demarcation of one pillar from here to there would imply determination of boundary. The two things are not antithetical in the sense that they have been propounded here. The two terms are perfectly complementary and they have to be taken together because demarcation cannot proceed unless there is determination of where and in what manner the boundary exists. So, I do not think much should be made of this and if we do so, it will be nothing but a futile exercise in semantics. You can quarrel about words, the meaning of words, but it will take us nowhere. So, whatever term has been used has been used properly and there is not much we can say on this score.

Now, it has been suggested that we should not accept this award and even following the procedures of international law, it should be taken to a superior tribunal. The International Law Commission was mentioned. I think it was wrongly mentioned because the International Law Commission does not come into the picture. Probably what was meant was th« International Court of Justice. Now, Sir, when we acceded to the statutes; of the International Court of Justice,

we clearly excluded all our disputes with Commonwealth countries. We said that we will not submit our disputes with Commonwealth countries to the International Court of Justice. And this was done for very proper and very valid reasons. We did not want that Pakistan should at any time take our disputes to the International Court and drag us as unwilling defendants to fact a situation which could be most unpalatable. So I think it was a very wise decision that disputes with Commonwealth countries would be kept out of th$_e$ International Court of Justice. And now if you say that we should take it there, I do not think we can do it under law and it would not be wise thing to do . . .

SHRI SUNDAR SINGH BHANDARI: Which law bars it?

SHRI RAM NIWAS MIRDHA: When we acceded to the statutes of the International Court of Justice, we said that w$_e$ would exclude disputes with Commonwealth countries from the purview of the International Court of Justice.

SHRI SUNDAR SINGH BHANDARI: Is it an agreement?

SHRI RAM NIWAS MIRDHA: Yes. I repeat that we should still stick to that position. How will our hon. Members savour the Kashmir dispute being taken by Pakistan to the International Court of Justice? So it was with that intention, looking to the strained relationship with Pakistan and their desire to take us to all sorts of international forums where we would find nothing but embarrassment, that this stipulation was made. It was a very wise exception that was made when we acceded to the statutes of the International Court of Justice and that is why we cannot go to the International Court of Justice in this respect; and there is no way but to accept it.

Now, Sir, a few days back Shri Chagla gave his very weighty reasons! on this (kward. With a rhetorical flourish worthy of a great lawyer, he said that "If this thing could come to me in the interpretation of municipal law, I would not take five minutes to dismiss it." But he very well knows, and so does the House, that it is not a question of municipal law in which We have a Supreme Court or High Court or courts of appeal and things like that. It is a question that involves our accepted principles of international law and therefore it is just not possible to argue that what holds good for judging arbitral awards under municipal law can also be imported in the sphere of international law. *(Interruption)* Well, Sir, it is an extension to some extent of the principles of international law in the sense that all principles of international law are based on good equity, good conscience and very well accepted principles of natural justice. But how many of such principles have been codified or accepted as practices valid under international law? I hope they are very few, not many. Article 51 clearly lays down that we should endeavour to respect international law and even the arbitral procedures. Article 51 (d) lays down resort to arbitration as one of the Directive Principles. And do you think that we would be working according to those Directive Principles if we repudiate this Award? Would we be advancing the cause of international law to which we all subscribe, if we reject this Award? Unfortunately the international law has not yet reached a stage where domestic law has and therefore these things cannot be taken in the same spirit. *(Time bell rings)* Even in the domestic law resort to writ jurisdiction of the Supreme Court is never clearly mentioned anywhere. It says if it is on certain grounds, then alone you can go. So, Sir, this argument also does not hold good. I think we should endeavour in all ways that international law and morality are upheld in the world, much so because we have already been talking in

[Shri Ram Niwas Mirdha.]

terms of our commitment in that respect. I

So Sir, I am winding up by saying ' that we should accept this Award with good grace. And we have done our bit in the sense that our case was presented to the Tribunal by the best possible legal brains in our country for whom we should have some good words to say. There is no body of lawyers in the country which could have done it better than what our representatives did there. We have exhausted all legal procedures. Therefore, Sir, I oppose this Motion and I would commend to the House that it concurs in the acceptance of this Award.

THE VICE-CHAIRMAN (SHRI M. P. BHARGAVA): May I again appeal to the hon. Members not to exceed their time?

DR. B. N. ANTANI: Mr. Vice-Chairman, hardly do I support in this House anything that is done by my friend, Mr. Rajnarain. But it is my good fortune to rise to support his Motion today, his Motion to disapprove of, what is euphemistically or otherwise called, the Award. Mr. Vice-Chairman, the wearer knows where shoe pinches. When after the 19th of February, "the black day in the history of Kutch in particular and India in general, this document is being discussed everywhere, I as an old man born and brought up in Kutch and ready and willing to be cremated in Kutch, wish to say that the chivalrous people's history of 600 years has been trampled down. Neroes have been playing in Delhi on fiddle. Mr. Vice-Chairman, I am not here only to appeal to your emotions because on these benches it is futile to appeal to any emotions whatsoever. But I will give the historical background of the whole question. I will go even to the legal aspect of it. I think my hon. friend, Shri Chagla, has to learn a lot from these people about constitutional practices, etc. What I find is that they are hunting with the hound and running with the hare 'and they have not got any courage of conviction. The hon. Deputy Prime Minister for whom I have very great respect also has said in the other House that "In future we shall not go to these international tribunals." If I am not altogether such a bad lawyer, by implication it is an admission that this was not only a fatal mistake but a mortal wound to the integrity of India that has been inflicted by this Award. In fact it cannot stand on any judicial anvil 'as an Award. My friend, Shri Chagla, has said it is a political settlement. Mr. Vice-Chairman. I am too much of a Kutchhi. Shri Chagla's ancestors were from Kutch. I am still eating the bajri of Kutch which I want to continue eating until I die. If I may say in blunt parlance, it is a political fraud inflicted on India by this Tribunal of great jurists. Sir, what has not been done in 600 years' rule of tiny feudal princelings, in spite of aggression from Sind from time to time, has been done in the time of our mighty Government of India, in spite of her loyal move of integration in the wider sphere of India. Ghulam Shah Kalora, the Mir of Sind, invaded Kutch from the same route of Rann. Men and women chivalrously attacked him, opposed him and repulsed him from the same area of the Rann which is now proposed under this Award to be given away to Pakistan. The Mir went away crying for water.

Now, Sir, I do not know when this boundary was disputed. It has never been disputed in the past. Even the then autonomous Sind Government never disputed this boundary. It was the whim of Pakistan to find out some excuse to take it because of the impotence of the weak-kneed Government of India. That has been our history. During the last week, Sir, when I visited these points. I had an occasion to have a friendly talk

with a Major on the table drinking only coca cola. He told me: Why should we fight' He was an Army man and a Major. He said: "Why should we fight at all for the future? Whenever Pakistan attacks, whenever we win, it is ultimately given away to her." As my late lamented friend Shri Ganesh Shankar Vidyarthi, who during the First World War edited a paper called 'Pratap' wrote:

> प्रेस वालों की खबरों से नतीजा यह निकला है फतह सरकार की होती है और कब्जा उनका होता है।'

So by all these international tribunals what do we do? The Tashkent Agreement which we are lauding from House tops, for which we had to sacrifice our late lamented Shastriji, is there. We have been lauding it but I ask you, I ask my revered Deputy Prime Minister: 'If we are bound by international commitments, are not the opponents bound?' Is it an one-way triffic, I ask. They say: 'Oh. what will happened? We shall lose all our world friends'. Have we got any one friend? Has not Pakistan got the sam$_e$ anxiety to maintain world friends? I say that this is only a suggestion of your impotence and cowardice. If you want, govern or quit at once. That is the question for the nation to pose. Such a thing in history has happened. Mr. Anthony Eden—his name will go down in history—when he bona *fide* or otherwise attacked Suez and when he was criticised, when the nation was against him. even when his Conservative Party was with him, he resigned in order to satisfy the call of the nation. Have they got the courage? To them clinging to power and clinging to the office is greater than the country. Otherwise, with what argument would you come out and say: "Accept this Award". What i$_s$ the justification?

Now, apart from emotion, I request the Government that before accepting this Award, to weigh two or three arguments. Have we got it decided

that this is an Award? If it is really a pronouncement or a political settlement to avoid conflict, are we, for international purposes, bound to accept it? Thirdly, can we not, even at this stage, as the Prime Minister herself admitted that extraneous matters have been brought into it, refer the Award back to them for reconsideration in the light of those observations made by the nation? That is not sought. They are ready somehow or other to accept it and give away the Jagir of Kutch as if it was the personal property of some Congressmen and some people are indulging in judicial prudery and some people are teaching us law.

SHRI CHANDRA SHEKHAR (Uttar Pradesh): But you do not teach patriotism to Congressmen. You must know your limitation. Do not cross your limitation. Do not teach love for the country to Congressmen.

DR. B N ANTANI: Do not get touchy.

SHRI CHANDRA SHEKHAR: Do not teach. You are too small to teach them.

SHRI DAHYABHAI V. PATEL: Why do you not learn to listen?

श्री राजनारायण : चन्द्र शेखर जी, तुम तो झूठे ही लड़ रहे हो ।

श्री चन्द्र शेखर : झूठे ही क्यों ? वह क्यों सिखाते हैं ।

श्री राजनारायण : अब वह कांग्रेस नहीं है जो हम लोगों के सामने थी ।

श्री चन्द्र शेखर : वही है । जो हम कांग्रेस के हैं । वह कांग्रेस के है । वही है वह ।

श्री राज नारायण : आज कांग्रेस देश को बेच दे । बड़े ठेकेदार कांग्रेस के बने हैं ।

श्री चन्द्र शेखर : हम आप से कोई भी झगड़ा नहीं करते हैं। वे हमें सिखायें नहीं ।

THE VICE-CHAIRMAN (SHRI M. P. BHARGAVA): Order please.

DR. B. N. ANTANI: I have here 'The Law of Treatise on the contemporary practices in India'. It is a considered brochure by Indian jurists. They have considered similar instances made by Pakistan. They have come to the conclusion that the acceptance of international pronouncements of this nature is not mandatory on us at all. I may also say that at one stage when this arbitration was going on, my friend Mr. Chagla was the External Affairs Minister and he proposed that the members of the Tribunal were to visit the place and see the points for themselves. Why, I am here to enquire, and in what circumstances it was subsequently decided that they should not visit the place? I tell you there is everything fishy in this matter. I know, I have investigated. We have surrendered too much and that is the reason. If they would have visited these points, they would have immediately come to the conclusion, as the representative of India on the Tribunal has come to the conclusion, that not an inch belongs to Pakistan nor was it ever in their possession. What was Alsace-Lorriaine to France those points are for Kutch. It took two world wars for France to forget and forgive. It will be so many generations for Kutch to forget and forgive this rape on the boundaries of Kutch which has been perpetrated and which is being imposed and proposed to be (accepted by the Government to whom it was our misfortune to have abdicated ourselves when we integrated. We never expected this sort of thing at all. The Prime Minister is severely afflicted by this. She is not happy, nor is the Deputy Prime Minister nor are the Members on these Benches. If they lay honestly their hands on their conscience they will say:

यह तो सही है लेकिन करे क्या । मर जाना है, यही बात है ।

I appeal to the Prime Minister. She has been saying, in order to give an auto-suggestion of some relief to us the Kutch people and to Gujarat, ever since the 19th of February—I am sorry she is not here nor is the Deputy Prime Minister—f^f ^ \ but now, in order to safeguard the interests of Gujarat, she says: 'Let the Narmada project be fulfilled'. I am appealing to her: *We are talking of the Sradh ceremony of my mother, Why are you talking of the wedding of somebody in Gujarat?' Even then I say that the foundation for the Narmada Project was laid by the father of the Madam Prime Minister ten years ago. Thi$_s$ is not a new gift that you are going to give to Gujarat. Is Gujarat supposed to take everything lying down when the Government of India for the purpose of national interests, are going to sacrifice Gujarat? I therefore say this and I am voicing the unanimous feeling of desperation—mark my words—of exasperation and anguish of seven lakhs of people of Kutch. The Ruler of Kutch had a talk with me on the other day. My grand-father fought for two villages for 16 years, *{Time bell rings.)*

वह तो मैं एक्सपेक्ट करता था, वह आ गया।

This blow of the bell has also fallen. Whether the Award is judicial or whether We should go to the International Tribunal, I will leave to another occasion but I will say this that they are talking of honouring international agreements as if argee-ment regarding the Privy Purse to the Princes was not an agreement-and can be broken but this should be accepted.

SHRI CHANDRA SHEKHAR: The cat is out of the bag.

DR. B. N. ANTANI: They say:

खुदा की खातिर छोड़ो मुझे कुछ कहना " पड़ेगा I

As my friend Mr. Gaikwad said the other day: If they take away my cloth, what remains? The Maharaja of Kutch has told me that they may take away not only "my privy ^>urse, but also take away my head from its abode in this territory which belonged to my grand grand fathers and the people of Kutch which they are presently ceding to Pakistan. Now this, Sir, is a breach of faith, a breach of faith with the princes and the princely States with whom you entered into all these covenants, which should not occur, and you are bound to defend this territory of ours.

When Chaad Bet was first invaded in the time of the late Pandit Jawa-harlal Nehru, I asked the Treasury Benches to tell me whether Pakistan did come out and say that that boundary was disputed. They did not, and when faced with retaliation they with tail in between their legs went away. But when they saw that psychological moment ^ ^ ^rif ^fafiR ^TPT |,

^H*R fiTST I *ftT |^5 fa^TCff" eft |T

fT qT I Now this is the sort of weak-kneed policy evident in this Government. I therefore, in the name of the chivalrous history of Kutch in the name of good faith, in the name of the confidence the people reposed in you, in the name of the loyalty that we extended to you, demand that this area be not ceded to Pakistan.

Sir, I recall the days when there was not one soldier on the border of Kutch—there was only the Central Reserve Police Force for Gujarat —and when men and women rose to one man and stood in a queue of fifty miles long and supplied water to this force. And for twenty years these friends of mine never constructed roads, and when the horses bolted away they began to lock the stable. What have you got now to say in the fact of this Award?

सरदार जी चलिए कच्छ को । मेरे साथ चलिए मैं आपको दिखाऊंगा । मेरे को ले जायेंगे एक दिन के लिये तो मैं आपको बड़ी बारात दिखाऊंगा ।

My people have fought for national honour and have stood for the country's integrity. Now with all these sentiments I yield to none in my knowledge of politics and the other sciences, and there is not one argument in any international treaty to warrant unquestioned acceptance of this document which is euphemistically called an Award.

I therefore support the Motion of disapproval of this Award.

Thank you.

SHRI M. C. SETALVAD (Nominated): Mr. Vice-Chairman and brother Members, 1 have not been a politician and I have not followed closely the events which led to the Agreement out of which this Award has resulted. But I know this that that Agreement was reached when Pakistani and our forces were in conflict on the borders of Kutch. The alternative then was to carry on the fight, or arrive at an amicable settlement. How an amicable settlement could be arrived at except by reference of the disputed question to a tribunal? Let us not forget that the dispute concerns the demarcation and the determination of the boundary, the international boundary, on the one hand, between Kutch and India and on the other hand, Pakistan. So the Agreement provided for a cease-fire of the then conflict between India and Pakistan. It also provided for the determination and the demarcation of the boundary by the Tribunal which we had agreed "to appoint. Now pausing there, the choice was between continuing a conflict, an armed conflict with a neighbour, and arriving at a peaceful solution through the medium of a tribunal and its decision. It is obvious that if we could have a proper tribunal to look at the question and decide or adju-

(Shri M. C. Setalvad.)

dicate upon the question of the boundary, it was far better that we should be at peace with our neighbour and arrive through the medium of the tribunal at a settlement of the question. We must not forget that, 'after all, peace and peaceful existence is the solution to many problems. We have got many problems with Pakistan many of which, I am sure, will have to be settled sooner or later by some sort of settlement, either by negotiation or by some other method. Now therefore it appears to me that we resorted to this method of settlement by a decision of the tribunal, I see nothing wrong about that step having been taken.

I have heard it said here—I have not verified it^-that the determination to go in for adjudication by a tribunal was accepted by Parliament. I could not vouch for it because I was not here then. Then came the actual adjudication of the Tribunal, an adjudication by two to one. Having accepted the method of adjudication, how can it be open to us as a nation which generally or always chooses to carry out its pledged word? How can we go back upon our pledged word and act otherwise when we agreed to put this matter to adjudication? Particulary when the matter has been decided by adjudication and when in the Agreement itself we have agreed that we shall carry out the Award and demarcate the boundary accordingly? How could w>e then as a nation which honours its .pledged word go back upon it? It may be that a part of the Award does not satisfy us. In fact every litigant who goes to a court of law, when the judgment comes out, does feel that he has been done injustice, or not full justice, that a Part of the judgment or decision or award went wrongly against him. However that may be, I say it is futile and not practical politic now to talk of not accepting this ward. What then helps, or how ai" we helped by our resolving, as we are asked to resolve,

that we disapprove of the Award? I do not understand the Motion. If you agree to abide by the decision of a tribunal, I talc it that as honourable men we must accept that decision. And if the disapproval only means that we do not like a part of the decision, one could have no objection. But if disapproval of the Award means—and I think it so implies— that we wish to go much further, that we want to disapprove of it and take action consequent on such disapproval. I say such action would not be justified having regard to the way in which we have dealt with the matter.

It has been said that the Award is motivated politically. I do not agree. One has to go through the Award—as I have done—and find that very weighty reasons have been given to arrive at the conclusion for conced ing Pakistan's claim to Chhad Bet and the other areas. Numerous reasons have been given out in the opinion of the Chairman of the Tribunal in sup port of his conclusion. I do not say that that conclusion is the only conclu sion which could be arrived at. In a number of cases in courts we know that more than one conclusion can be reached by fair-minded and honest men dealing with a question. Indeed, as you know, very often there have been differences 0$,. opinion among the Judges themselves and yet, even though we may not like the decision, we cannot say—and I think it would be wrong for us to say—that the Award is politically motivated. Something was said about our distrust in international tribunals. There again I beg to disagree. International tribunals have to be resorted for the adjudication of various disputes including boundary disputes like the one which we have. They would come hi use more and more because that is the way to solve international conflicts and differences between nations.

Thank you.

SHRI M. M. DHARIA (Maharashtra): Mr. Vice-Chairman, I was patiently listening to Mr. Setalvad and I have also gone through the Award very carefully. Even after listening to the hon. Member's sPeech and after going through the Award I honestly and humbly feel that the Tribunal has done a great injustice to this motherland of ours. I say this not because we shall be losing some territory; but even on the basis of principles of justice and equity, I feel that this is not a judicial decision but it is a political settlement. Sir, even when this question was being referred to the Tribunal I had a feeling—and even today I have that feeling—that we were committing a blunder in going to an international tribunal. Why should we have gone to this International Tribunal? Was it any international dispute? I know that our Constitution in article 51 says that in such international disputes we shall encourage ways of arbitration. That is there, but I feel there was no international dispute here and there was no need for going to any international tribunal for arbitration at all. But because we committed that mistake of going to this Tribunal this award has come and so the question now before the country is whether to implement this Award or not. Sir, I do feel that though it is the underlying idea in our Constitution that whenever such disputes arise they should be settled through arbitration, in this case the arbitration has failed to render justice. So what should we do? In the case of the privy purses I have stated on the floor of this House that we want the abolition of these privy purses, that we do not want to stand by those assurances because we are making a demand for equity, justice and equality in this country. Similarly in the case of this Award also I feel that it has failed to render justice and so the time has come for us to consider whether it should be implemented or not and then take a decision. I was really sorry to note the haste with which things are taking place here. There was the demand that there should be discussion on this Award in the Loka Sabha and in the Rajya Sabha and that the meeting for the implementation of the Award should be deferred. That could have been done. I do not know why they could not show even this much respect to the Houses of Parliament.

SHRI AKBAR ALI KHAN: But then there is the agreement that within fourteen days it should be implemented.

SHRI M. M. DHARIA: I know, I have read the Award and also the agreement.; Even then we could have moved the authorities in the matter. They could have been approached and we could have told them, Parliament is in session and it has to be discussed. And instead of meeting on the 4th, the countries could have met on the 3th or 10th. After these discussions in Parliament were over they could have met. When the decision had already been taken naturally we expect Parliament would have voted in favour of it. But then I do not know why even this much respect could not have been shown to this House and to the other House also.

When we look into the history of the past twenty years what do we find? I know it was Mr. Harold Wilson who intervened in. this matter iand brought the two countries together for a settlement. He wanted the two countries, according to international conventions to go to an international tribunal and then accept that tribunal's decision. But what is going on in Britain now? They in Britain under the very same Mr. Harold Wilson passed a law by which people of Indian origin holding British passports and who are therefore British nationals ate being shut out from Britain. The very same Government of Harold Wilson has committed this international atrocity and that for the sake of their own motherland. Right or wrong we can-

[Shri M. M. Dharia.] not deny that they are doing it. When they go to that length of committing this international immorality have we not got the courage to say that we are not satisfied with this Award, that this Award has not done justice. All the evidence is in our favour. In the whole proceedings you find that all the maps submitted to the Tribunal are hi our favour. What the Tribunal was concerned with was what existed on the 15th August, 1947. They had no business to go into past history, into what happened before, in 1860 or 1870. They should have examined what wag the state of affairs oh the 15th of August, 1947. It is very clear from all the maps that were in our possession and also all the maps that were in the possession of Pakistan that this territory which is now going to Pakistan is part of India, a territory of our motherland and the Tribunal had no business whatsoever to gs into past history.

[THE DEPUTY CHAIRMAN IN THE CHAIR.]

M'adam, we have to draw a lesson from all these things that have happened. I am speaking with a very heavy heart. What has been the behaviour of Pakistan towards India? Immediately after the partition, Pakistan committed aggression on Kashmir. Then there was the ceasefire. But was that cease-fire ever-observed by Pakistan? There were hundreds and hundreds of intrusions and violations of the cease-fire line. They intruded into our motherland. Afterwards there was the attack by China. What has China done? We know how on the 14th of November, 1961 nine dead bodies of our soldiers were presented to India on the birthday of the Prime Minister, Pandit Jawa-harlal Nehru. I am all for standing by international obligations, but when somebody commits these aggressions should we not feel in our heart of hearts that we shall prepare ourselves in such a way that the day shall come when we shall take back the territories which had been taken by China by aggression and which had been taken by Pakistan also by aggression? Should we not have that feeling if we are patriots? We cannot forget that the blood of our brave soldiers has been shed, that thousands of our people of all parties had suffered and died in the struggle for independence. So also during the partition and in the subsequent aggressions and now on our borders, our brave jawans have shed their blood. How can we forget that? But I feel that this kind of action on the Part of the Government will demoralise not only the people but ft will demoralise our armed forces also. I should like to say to this Government that this cannot be the approach of a patriotic Government and we shall have to stand up and face the whole world and say, Yes, if there is injustice, we shall not aooept injustice. We stand for justice and for the sake of justice we are prepared to make all the sacrifices needed,~"that we are prepared to go to that length. But unfortunately have we got that kind of a feeling and fervour of patriotism in this country? No, what do we find? We are dependent on other countries, right from food we depend on foreign countries. And the result is that we have to surrender to pressures either from the left or from the right. Have we then come to this position? I feel that we have to think of these things and we have to see that an absolutely new atmosphere is created in this country and if this country is to stand on its own legs and if we are to uphold the honour and prestige of this country then all possible resources of the country, in the form of manpower and money and what not all the resources of the nation should be channelised and galvanised in order to maintain the honour and dignity of this country. But unfortunately that atmosphere is not there. Even while accepting this Award, was it not the duty of the Government to have told the country. "Yes, we owe an apology to this country,

to the motherland because we referred this matter to the International Tribunal which has now done an injustice." I know even the members of the Cabinet are unhappy; I don't jnean all. But that was also a very sad experience of mine. When it was being discussed there were some responsible people who said: why should we use that word unhappy? I say 1 am not only unhappy but I am agitated about this issue. In losing this piece of our motherland should we not feel unhappy? I just cannot understand, I just cannot bear this sort of feelings when they are expressed in that way. Madam, I do feel that in this context we should not forget that we have our obligations to this country. There are many countries which are hostile but as Disraeli has rightly said no country has permanent friends and no country has permanent enemies, but there is only one thing which is permanent and that is the interests of the country. How can we forget that? Should we not bear that in mind? In case we do not accept this international Award what will happen? Why should we think of what this country will say or that country will say? But because we are dependent on those foreign countries we are not prepared to take an independent decision. This cannot be independence which can be said to be hundred percent independence and from that point of view I would like to urge upon this Government today to take into consideration all these factors. This country as it stands today is etanding in a demoralised atmosphere and we shall have to change this atmosphere. It is this which allows the feeling of disintegration to have a grip over us. Why should we allow that? Are we prepared to galvanise the whole nation and the parties in this direction? I feel' that this gives us an opportunity to have a retrospective view of the situation; it has given us an opportunity (to think what we are going to do in the future. Why should not the Government categorically declare that we will have nothing to do with international tribunals and that we committed a blunder in going to the international tribunal? These international tribunals will not render any justice to us and we should not go to them. So far as this Award is concerned we shall take our own time and we shall deal with it on merits. If the various issues with Pakistan are to be decided it cannot be a piecemeal deal. I would like to bring to your notice that at the time of the Tashkent Declaration .it was agreed that both the countries should return the cargo and the properties that were seized. We have honestly done that but hundreds of crores worth of cargo and other property have not yet been returned by Pakistan to this country. And in spite of the fact that this reference was made on 30th June 1965 Pakistan had the courage to commit naked aggression on our motherland. Why should We not say: let this agreement go to hell; if you can commit that aggression we are not prepared to stand by it? Why should We not do that? I do feel that the time has come when a restrospective view of all these things shall have to be taken. Before the Government takes any decision the Government should ask the Pakistan authorities: Yes, if these international obligations are to be fulfilled what about the other international obligations which you have never observed? There was the cease-fire line but they sent their men, guerillas, in thousands across that line into our country and they committed naked aggression. Even then we are lying low. So, "Madam, I would like to urge upon this Government that this is a question of safeguarding the honour of this country. Those who have shed their blood for the country have done so to preserve and maintain the honour, the dignity, the integrity and the sovereignty of this country and we should not do anything which will harm the interests of this country.

And lastly Madam I would like to make one request to the Government.

[Shri M. M. Dharia.]

The External Affairs Ministry and the Defence Ministry should immediately appoint a Committee which will go round, a Survey Committee which will go round to all the borders of the country and see that all the vulnerable points are safely protected. They should immediately declare that such a survey team will go and arrangement for complete protection of all our borders shall be made.

So far as our tussle with Ceylon Is concerned I do appreciate the approach of the Government. Such disputes shall have to be settled at this level; I have no doubt about that. But even while doing that, let us not surrender and do it; let us do it with grace. At the same time so far as our rights are concerned, let us go to any length, to any sacrifice, for protecting the interests and integrity of this motherland.

Thank you very much.

THE DEPUTY CHAIRMAN: Before I call Mr. Mulka Govinda Reddy, I may inform you that I have got 23 names here. And the Chairman has allotted only one day.

SHRI MULKA GOVINDA REDDY (Mysore): We can have it tomorrow.

THE DEPUTY CHAIRMAN: The House can sit late hours if they like and if the Members agree.

श्री राजनारायण : माननीया, हम चेयरमैन साहेब से भी रिक्वेस्ट करेंगे कि वे कल भी इसको बढ़ा दें ।

THE DEPUTY CHAIRMAN: The Chairman has allotted one day.

SHRI BHUPESH GUPTA: You can extend it I don't mind. But we would like to know this thing because we can fix our programme accordingly.

THE DEPUTY CHAIRMAN: I was saying that the Chairman has allotted one day and that would be up to 5:30 P.M. If the Houst is interested in this debate then we may sit an hour longer.

SHRI BANKA BEHARY DAS (Orissa): Who will not be interested?

THE DEPUTY CHAIRMAN: Another point also I would like to say that if each Member keeps to his fifteen minutes more people will get the chance.

THE LEADER OF THE HOUSE (SHRI JAISUKHLAL HATHI): We can continue this debate up to 5.30 P.M. or . . .

THE DEPUTY CHAIRMAN: That is already there.

SHRI JAISUKHLAL HATHI: . . . even up to 6.00 'and the Prime Minister would intervene tomorrow so that many Members can take part.

श्री राजनारायण : मैं नेता सदन से निवेदन करूंगा कि एक दिन इसको और बढ़ा दें तो कौन आफत आ जायेगी । उस से न धरा धसेगी और न गगन फटेगा ।

THE DEPUTY CHAIRMAN: That is for the Government to say. I am telling the House that the Chairman has allotted one day. If the Leader of the House has any other suggestions to make he can do so.

SHRI JAISUKHLAL HATHI: Madam, you have just stated that there are so many Members who want to participate. So instead of one day, if the House desires we can extend it by a few hours, the Prime Minister would intervene tomorrow and then there will be reply.

THE DEPUTY CHAIRMAN: I would like to know what you mean by a few hours.

SHRI JAISUKHLAL HATHI: Not today, the debate will be continued tomorrow.

THE DEPUTY CHAIRMAN: Tomor. row till?

SHRI JAISUKHLAL HATHI: Till the Prime Minister can intervene, up to 3 o'clock.

SHRI BHUPESH GUPTA: Madam, don't try to fix it.

SHRI JAISUKHLAL HATHI: We can finish it by 3:00 P.M. tomorrow.

THE DEPUTY CHAIRMAN; Let the debate go on. Mr. Mulka Govinda Reddy.

SHRI MULKA GOVINDA REDDY: Madam Deputy Chairman, I wholeheartedly support the motion moved by Mr. Rajnarain disapproving the Award (February 19, 1968) of the Indo-Pakistan Western Boundary Case Tribunal on the Rann of Kutch. I listened to the debate, particularly to the points made by the hon. Mr. Mir-dha and Mr. Setalvad. Mr. Dharia sup_ ported this motion and only two Members on the Congress side wanted this Award to be accepted. And they have raised the question of international image of India and India's prestige. They felt that India's friends may think ill of us and that they will say that the Government of India and the people of India have no regard for the pledged word. The question as has been rightly put is this. Is this an impartial Award? Is this an Award based on the merits of the case? Is this an Award based on the facts of the case? Is this an Award based on justice? This Award is not based on any of these considerations; this is a political Award. This is a reward given to Pakistan for the aggression which she committed on the sacred soil of India. This is not an Award which has been based on the facts of the case or on the maps or on the documentary evidence that was produced before the Tribunal. It is based on extraneous considerations, on political considera. tions. Mr Chagla rightly said the other day: "If I were a Judge I would not have touched it with a pair of tongs." This is an Award which should be discarded.

SHRI BHUPESH GUPTA: I wonder what would have happened if the judicial Tribunal .consisted of Mr. Setalvad and Mr. Chagla.

SHRI M. C SETALVAD: I would have differed.

SHRI MULKA GOVINDA REDDY: Therefore, Madam Deputy Chairman, there is absolutely no justification for us to accept this Award. This is not an Award in the strict sense of the word. Even in 1965 when this Agreement was discussed in this House and in the other House the Prime Minister the late Mr. Lai Bahadur Shastri, made a categorical statement that this was only for a demarcation of the boundary between India and Pakistan in the Rann of Kutch. The question of determination does not arise. The agreement was suppressed for some time. It was cooked up in Great Britain by the arch enemy of India, Mr. Harold Wilson. A categorical assurance was given that we have a sound case, that the boundary line has been demarcated on the map, but only on the ground it has to be demarcated. That was the solemn assurance given to us. The other assurance that was given to us in 1965 was that the territory that has now been forcibly occupied by Pakistan would be vacated and Parliament has taken a pledge to see that the aggrtssion is vacated. Government is not serious to fulfil its commitment to Parliament, to this House, to see that aggression is vacated and the aggressors are driven out of this country. On the other hand, Government is very anxious to fulfil the Award that has been given by the International Tribunal. I would ask: How many times has Pakistan broken its pledge? In 1948 and 1949 in the Securiy Council Pakistan accepted the Resolution of the Security Council Pakistan agreed to vacate the portion occupied by it in Kashmir, but till

[Shri Mulkha Govinda Reddy.]

today Pakistan has not vacated its aggression which it so blatantly committed immediately after 1947. How many times has Pakistan committed aggression, even though it says that any dispute between India and Pakistan should be resolved peacefully? In the very preamble to this Kutch agreement it is stated: "In order to lessen tension, in order to bring about a proper solution of the disputes between India and Pakistan, peaceful attempts will be made." But almost immediately after the conclusion of this agreement Pakistan committed naked aggression on Kashmir. So, this question of implementing the award unilaterally should not be allowed.

It was also stated in 1965 that this dispute was there and it was conceded in the agreement that was arrived at by Sardar Swaran Singh, the then Minister of External Affairs, and Lt-General Sheikh of Pakistan. I would ask: What was the Government doing from 1960 to 1965? When this dispute was raised, why did not the Government of India take steps to see that it was solved amicably? They kept quiet and in 1965 again Pakistan committed aggression in the Rann of Kutch. It was vacated because some of our valient soldiers fought for it.

I would like to refer to the judgment given by the Chairman of this Tribunal. He has clearly stated: —

> "In my opinion it would be inequitable to recognise these inlets as foreign territory. It would be conducive to friction and conflict. The paramount consideration of promoting peace and stability in this region compels the recognition and confirmation that this territory, which is wholly surrounded by Pakistan territory, also be regarded as such. The points where the boundary will thus cut off the two inlets are these."

Again, it is stated at page 153: —

> "The boundary marked by symbols along the outer edges of the peninsula of Nagar Parkar and up to the Eastern Terminus is a jagged one. As such it is unsuitable and impracticable as an international boundary. The boundary shall accordingly lie in conformity with the depiction on Map 'C between the outer points on jutting-out tongut, of land from Point 'M' and until the Eastern Terminus, marked as "EI" on Map "C".

This clearly shows that extraneous, political considerations were brought into play in making this Award. The Indian representative has clearly stated that these things should not have been taken into consideration and that they will be transgressing the terms of reference that were given to the Tribunal. Not only has the Tribunal gone beyon dits limits it has brought in extraneous elements to arrive at a decision.

It is not a majority decision that was expected, according to the terms of the agreement. It is very clearly stated in the terms of the agreement: The Award shall be signed by all the three members of the Tribunal. It is evident from this that the Award should have been a unanimous Award. By implication it is stated that all the three should have come to the same conclusion, as the majority of the Tribunal has come to. If the third member, Mr. Ales Bebler, had agreed with the Award given by the majority, then the Award would have been binding on this country as well as on Pakistan. If you go through the United Nations Charter, you will find that the permanent members of the Security Council have got veto power. Why is this veto power given to the permanent members? It is because on any important, major issue, there should be unanimity by all the permanent members! of the Security Council. The same thing was imported into this. The Award in order to be effective and acceptable should be a unanimous award

and it should be signed and agreed to by all the three members of the Tribunal. This is a majority Award and, therefore, it is not acceptable
to us. »

Another point which I would like to bring to your notice is that this Government is not competent to take any decision and implement the Award. It is not merely demarcation of the boundary line. It involves secession of Indian territory. Parliament is competent to give away 300 sq. miles of our territory to Pakistan only if it passes it by a two-thirds majority. This is a very important issue. You must also realise that we were not a part to the Resolutions that were passed in 1965. In fact, we all opposed reference of this issue to an international Tribunal. Because they had a majority, they did not accept it and the matter went to an international Tribunal. But today the political map of India has changed. Even in Parliament the Congress has lost its majority to a considerable extent. If thirty Members were to vote against the Congress, the Government would fall. In nine out of fourteen States, the Congress has lost 'ts majority. Therefore, whatever the present Government does, it does it on behalf of the Party and not on behalf of the nation. In order to show that it has the backing, it must have the courage to bring it before this House and get the sanction of Parliament. To say that there i3 no need to refer the matter to Parliament, since the reference to arbitration was voted upon and that approval was given in 1965 does not hold good. Even if it did, this is a new Parliament in 1967. So, this Parliament has a right to assert itself that it is not this Government that can give away, barter away this precious land oi ours to Pakistan in this cavalier way. We arrived at the Tashkent Agreement with the sacrifice of our jawans. We were able to drive out the Pakistani aggressors in 1965 and after this Tashkent Agreement at the intervention of the U.S.S.R. we had to vacate certain strategic points, which were Indian, to the Pakistanis. In the Tashkent Agreement it was stated that the Ministerial meeting should take place. In spite of repeated requests to Pakistan President Ayub does not care to have a Ministerial meeting to discuss outstanding disputes between India and Pakistan. But see with what haste and hurry President Ayub has sent a message to the Prime Minister that this award should be implemented, and the Government of India has surrendered its moral authority and has already invited the representatives of Pakistan for a conference for the implementation of this award. It is treacherous on the part of this Government to implement this award which is not based on facts of the case or merits of the rase or on justice. There are cases where these international awards are repudiated if they •are not based on facts of the case and merits of the case. Mr. Bhupesh Gup[4],a in his brochure "Quit Commonwealth" on page 19 has stated—he had anticipated that this would go against the interests of India and he had stated: "Well-established international conventions do not at all rule out questioning an award on certain specific grounds". On these specific grounds this award should be questioned and it should not be implemented. I wholeheartedly support the motion moved by Mr. Rajnararn.

SHRI BHUPESH GUPTA: The only thing I would like to say is I criticised Shri Lai Bahadur Shastri, the Prime Minister at that time, for having accepted the terms that the award shall not be questioned on any ground whatsoever. My friend has quoted me not very justly. I criticised that. (Interruption.)

THE DEPUTY CHAIRMAN: Mr Chagla.

SHRI M. C. CHAGLA (Maharashtra) : Madam, I do ask this House to look at this award from different aspects, from the legal aspect, political aspect and international aspect.

AN HON. MEMBER: Please come tiear to the mike.

SHRI BHUPESH GUPTA: You are coming nearer.

SHRI M. C. CHAGLA: I am in the middle direction. It is always a good direction.

Madam, may I first deal with the legal aspect? It is perfectly well settled in international law that arbitration means the determination of difference between States through a legal decision. I emphasize the words "legal decision". The decision must be legal in order to bind the countries that had gone to arbitration, and it has also been stated that jurisdiction is based on the will of the parties as expressed in the agreement. An award rendered in excess of the power conferred upon the arbitrator is null and void. India is a sovereign country. So is Pakistan. The two sovereign countries through their will expressed in the agreement conferred jurisdiction upon the arbitrator. Now it is perfectly clear that the arbitrator cannot exceed his authority. Any award which represents an excess of authority, which means a departure of the arbitrator from the jurisdiction conferred upon him is null and void. There are several instances where countries have repudiated awards on this very ground. May I give one or two?

Disputes between the United Kingdom and the United States were referred to the King of Holland in 1831, and both the countries repudiated the award on the ground that the arbitrator had exceeded his powers.

In 1909 Bolivia refused to submit to the award given in 1909,- the same year, by the President of Argentina in its boundary disputes with Peru. That was on the ground that the arbitrator had exceeded his authority.

Madam, I do not understand why Government is so anxious, al'most so enthusiastic, to put forward the case that the award is binding on us. The hon. Prime Minister's first reaction was very right. She said she was unhappy at the award. The same day or the next, day she said that the award was influenced by extraneous circumstances. Her first reation, her first instinctive reaction was the right one. But today we find that members of the Government are vying with each other in telling the country that this award is binding on us and we cannot as honourable people repudiate it. What is the honour of the country? What have we agreed to? We have agreed to accept a legal award, not a political award. We have agreed to accept an award where the arbitrator does not exeed his authority. If the arbitrator exceeds his authority, we have every right to say that this award is a nullity, it is void, it is not binding on us. My friend, I think Mr. Rajnarain or Mr. Bhandari. quoted the statement of the Deputy Prime Minister :<7ror 5^ rrT^T^T fT^rrf l' What is the 'vachan'? I quite agree that as a nation we have honour. We are proud of our standing in the international world and we should stand by our solemn obligation. But what is our solemn obligation? Let us analyse the obligation before we tell the country that we must accept the obligation. I repeat, Madam, that the obligation is to accept an ward which is legal, not to accept an ward which is political. My friend, Mr. Setalvad —I have great regard for him . . .

DR. GOPAL SINGH (Nominated): Just I would like to ask . . .

SHRI V. M. CHORDIA: Afterwards, not now.

THE DEPUTY CHAIRMAN: If Mr. Chagla yields. Otherwise you cannot.

DR. GOPAL SINGH: I think he is prepared.

SHRI M. C. CHAGLA: Let me go on. My friend, Mr. Setalvad, for whom I have very great regard, normally. I agree with him; but I do not understand when he says, I have taken down his words, as honourable men we should accept the award. Does he advise his client to accept a decree which \s a nullity?

SHRI M. C. SETALVAD: Is this award a nullity?

SHRI M. C. CHAGLA: It is a nullity. I am sure Mr. Setalvad is too good a lawyer to tell his client when he goes to him for advice that he comes to the conclusion that the decree is a nullity but as an honourable man he must accept the decree. Why does he ask us to accept the award although it is a nullity?

SHRI M. C. SETALVAD: It is not a nullity.

SHRI M. C. CHAGLA: A great deal has been said, I think Mr. Barua said in the Lok Sabha that we have agreed for determination of the border in the light the respective claims. At page 3 it is said: ""The decision of the Tribunal referred to in (iii) above shall be binding on both Governments and shall not be questioned on any ground whatsoever." A great deal of emphasis has been placed on this that whatever the award we as an honourable country have agreed not to question it on any ground whatsoever. It is clear, Madam, it is clear 'beyond doubt, any lawyer would say it, 'hat when you say you will not question the award on any ground whatsoever, it means provided it is within the jurisdiction of the arbitrator, provided he does not exceed his au'hority. if the arbitrator had not exceeded his authority. Suppose he had misread the maps or he had come to different conclusions from the data, we could not question it. But when he exceeds the authority, no further question remains. It is a nullity, it is void. How can it be said that you are bound by a decree or an award which is a nullity and which is void? "Now. this is as far as the legal aspect ic concerned. T quie understand, and Government will be perfectly justified in telling the country, "Look. this Award is not binding on us . .

AN HON. MEMBER: Why?

SHRI M. C. CHAGLA: "... but be-cause we are interested in peace, because we are interested in good relations with Pakistan, we want to im plement it." That is a perfactly different approach. Today we are telling Pakistan and we are telling the world that we are handing over part of Kutqh because off legal compulsion, which is entirely wrong. If you want to give away this because the Government—after all, the Government is the best judge—takes the view that our relations with Pakistan will improve . . .

SHRI BHUPESH GUPTA: What will be your view?

AN HON. MEMBER: He is giving his views.

SHRI M. C. CHAGLA: ... if the Government takes the view that because we have always stood for peace, because of world opinion, because of the reaction on our friendly countries, because of our relations with Pakistan, notwithstanding the illegality of the Award, we should accept it, that is a perfactly proper aspect. But why are we giving away this advantage? Instead of telling the world, where our stature will rise, that we are so much interested in peace and good relations with Pakistan that we are prepared to accept an illegal Award, we are now telling the world that we are bound to accept it, we are under a legal compulsion. I do not understand this approach.

Therefore, my respectful submission to the Government is, let them consider the international aspect. Why are we in such a hurry proclaim to the world and to our own country that our hands are tied, w^ went to this arbitration, we agreed to accept it and therefore we cannot change it? I would rather ask, request, the Government to tell our country and to tell the world that our interest in international rela*ions is so great that notwithstanding the fact that the Award is not binding, we are prepared to implement it. Tha+, of course, is for the Government to decide.

T do not want to take much more time of the House. Just one thing I

[Shri M. C. Chagla]

want to say and sit down. Government should clearly realise what the affect of the acceptance of this Award is going to be both from the legal and the political points of view. Let us not forget that what the arbitration was called upon to do was to fix the boundary as it was in 1947, not as it ought to be. And it is clear when you read the judgment of the Chairman that what he has tried to do is not to determine the boundary as it was but what the boundary should be, according to him. I will just read out one passage to which my friend, Mr. Reddy, has referred on page 183—

> "In my opinion it would be inequitable to recognise these inlets as foreign territory. It would be conducive to friction and conflict. The paramount consideration of promoting peace and stability in this region compels the recognition and confirmation that this territory, which is wholly surrounded by Pakistan territory, also be regarded as such

Now, who is this Chairman to tell us how we should conduct our external affairs? Who is this Chairman to tell us how we should regulate our relations with Pakistan? Who is this Chairman to tell us that if we give away Indian territory, our relations with Pakistan will improve? I do not know whether Mr. Setalvad has read this sentence. You have only to read this sentence to come to this conclusion that this Award is wholly political, it is politically motivated, and should not be accepted. If we accept this Award or implement it, in my opinion, the consequences of this will be that we are going to give away to Pakistan a territory which is Indian territory, because do not forget that according to this decision, even the decision of the Chairman, according to the boundary as H was in 1947, this part of Kutch was ours; it continues to be ours till today. It is because of the political aspect which the Chairman has taken into consideration that he has awarded this part of Kutch to Pakistan.

Therefore, in fact and in substance and in law, the result of the implementation! of the Award would be not. a border dispute. I know, some members of the Government told me,.

"Oh! this is settlement of a border dispute." How can this be a settlement of a border dispute when the Chairman says that he is going to draw up the boundary as it should be, not as it was in 1947? If he had drawn the boundary as in 1947, undoubtedly it would be a border dispute. But if he chooses to draw up the boundary as it should be because of the view he takes with. regard to our relations with Pakistan, then, in effect, he is asking us not to settle a border dispute with Pakistan but to give away a part of territory which is Indian. The legal consequences of" this are very important.

I do not want to elaborate on them,, but I do appeal to the Government to take this aspect into consideration and not take a facile view that as we referred to the arbitrator our border dispute, his Award deals with the border and nothing else.

SHRI M. C. SETALVAD: May I make an explanation with your permission, Madam, in reply to my honourable friend Mr. Chagla? I had read that passag to which he drew pointed attention; I think it is it page 151. And that has no relevance to the general award made; it has relevance only to the two inlets which happened to be surrounded by Pakistani areas. It is in reference to that and that alone that the operation is made; the rest of the Award is not affected by that.

(Interruption)

THE DEPUTY CHAIRMAN: Mr. Ramachandran. Mr. Bhupesh Gupta, it is your party's turn. Do you want to speak first?

SHRI BHUPESH GUPTA: No, no. Let him speak.

SHRI G. RAMACHANDRAN (Nominated): Madam Deputy Chairman, we have heard from different sides of the House opinions expressed with great frankness and courage. I must begin by complimenting my friend, Shri Rajnarain, for the magnificent manner in which he put forward his case. He also said that we must look at this matter not from a party point of view but from the national point of view. It is for Mr. Rajnarain now to decide for himself whether he spoke not from his party point of view but from the national point of view.

श्री राजनारायण : इसका मतलब अगर सीतलवाड़ साहब की बात मानी जाय तो अवार्ड का उतना पोर्शन ग़लत है ।

SHRI G. RAMACHANDRAN: If he is satisfied that he spoke only from the national point of view, I will not quarrel with him. But knowing him as we do, there is not one matter on which he can speak anything except from the point of view of his party. His loyalty to his party...

श्री राजनारायण : हमारी पार्टी का पोइन्ट आफ व्यू नेशनल है ।

SHRI G. RAMACHANDRAN: ..his devotion to his party is something which has always excited my admiration. But let him not throw stones at others saying they are not speaking from the national point of view. Take the ruling party. I do not belong to the ruling party. I am not in any party. I have made that clear every time I have spoken on the floor of this House. But we have to-day people from the Congress Party who have attacked the Government's decision. A stalwart like Mr. Chagla, who the other day was sitting on the Treasury Bench and now sitting here, has spoken with great vigour and emphasis attacking the acceptance Of this Award. The ruling party has thus exhibited remarkable vitality. And one of them Shri Dharia whom we know very well and whom we call a "Young Turk also had his say. I do not know where he stands. He went this way and he went that way and he came back to the starting point and is standing now where, I do not know. I do not know where he really stands.

SHRI LOKANATH MISRA (Orissa): One thing is sure that he stands with Mr. Chavan.

SHRI M. M. DHARIA: I have made myself absolutely clear. I do not stand by this Award.

SHRI G. RAMACHANDRAN: Thank you for that explanation. Madam the issue today is mot whether we should or we should not have accepted arbitration earlier. It is too late now to-look back and say that to have sent up this 'matter for arbitration was a blunder. If it is a blunder and a mistake we committed it with open eyes. We knew what an arbitration was. Somebody today produced some article of the Constitution where it is said that where there are international disputes our nation will encourage arbitration. I do not for one moment grant, Madam, that it was a mistake to have gone up for arbitration. There was a war between India and Pakistan. I nemember when this motion for arbitration came, at that time I added my feeble voice in support of arbitration. We had fully agreed to arbitration. It is no use sitting back now and saying what a pity we went to ai-bitration! I consider it a very senile attitude of mind to refer something to arbitration after a war and cease fire knowing all the consequences of it and then sitting back and saying, "What a pity we went up for arbitration", because we did not get all we want. It is too late in the day to bring that point.

SHRI B. K. P. SINHA (Bihar): We *are not* infallible.

SHRI G. RAMACHANDRAN: If we are not in fallible let us grant that even today we are not infallible. Infallibility does not aHach to a person or to a particular time in history.

[Shri G. Ramachandran.]

So I come back to my point, Madam. We referred the matter to arbitration and we have the award of the arbitrators. One person was selected by us, the other person was selected by Pakistan and the third person was agreed to by both the other two. This is how an arbitration works. Today we are angry with certain parts of this Award. May be, I can join friends in being angry. I can join friends in expressing dissatisfaction. I can even join Mr. Chagla, though I do not, that this is a political decision. Mr. Chagla was the Chief Justice of Bombay, and he has rightly earned a name as a great jurist. But, I am a afraid today he argued like a lawyer. May be, he is a great Judge but today he did not argue like a great lawyer. Mr. Setalvad crossed sword with him. It is always interesting to see two giants cross swords in an Assembly like his, and let us hope we shall have more occasions to listen to such disputations.

Madam, where is politics in this Award? Mr. Setalvad pointed out to a particular passage. Some one may say this is politics. But to me as to Mr. Setalvad this is not politics. But the whole approach of Mr. Chagla was political, if I may say so. It was neither that of a jurist nor of one who. after having pledged his word to the arbitrators that their arbitral award would be accepted upholds the solemn pledge.

We went up for arbitration and we hove the Award. And mind you, Parliamen approved of the idea that whatever'- decision comes from this arbitration will be accepted by us. Now this is nothing .absolute about our pledge. Supposing the Arbitrators had said something far more difficult than this far more fundamentally wrong than this, then there might be another situation. It is rot as though 'here is any such thing as absolute acceptance in eve"y situation. That I grant. But there is no'hing in this Award which today can make us repudiate the solemn pledge of, the Parliament and of the Government of India. Madam, I am very happy that for once Mr. Bhupesh Gupta is in agreement with this side on this matter and that he has said that when there is an award the award, should De accepted.

(Interruptions)

THE DEPUTY CHAIRMAN; Order, order.

(Interruption by Shri Bhupesh Gupta)

DR. B. N. ANTANI: Mr. Bhupesh Gupta will not even mind if India is given away to Moscow.

SHRI G. RAMACHANDRAN: When somebody's decision is political you do not like it but when somebody else's decision is political you applaud it. I think, Madam, there is no escape for an honourable nation which has pledged its word but to accept this Award.

If a person says that he shall never in future go up for arbitration, I will say. "Amen'" to such a statement. But I wonder if anybody, anywhere, can at all say that we shall never at any time hereafter go up for adbi-tration. This House may say that today. But another generation will go back on it when it finds that there is war and conflict, which cannot settle a problem, and the only thing to do i_s to adopt a peaceful approach. Let us not adopt any absolute stance.

Some are in a mood *oi* anger, very angry with the British Prime Minister and his Government that they are breaking the pledge to the people of Asiatic origin in Kenya. Some are very angry that Pakistan has broken its word again and again. Why are we angry with them? If this kind of breaking a pledge is legitimate, if it is right, let everybody do it. Let us all repudiate agreements $_a$nd then face chaos and endless conflct? But let us not go out on that fatal path, Madam. I plead that we look at it,

not from the party point of view, I plead that we look at it from the national point of view, from the point of view of the long-range interests of India and also the interest of India in relation to our neighbours and friends, all over the world.

Mr. Chagla said something very-interesting. He said that if the Government could only say that we are accepting the Awaed not because we are obliged to accept it, but we are willing to accept it in order that there may be peace with Pakistan, then he will not have any objection. Then let him vote for the Award on that basis. Let him vote for the acceptance of the Award because this is one of the likely results that might accrue from the acceptance of the Award. What induces a person to vote for it is a matter between him and his conscience. But on the whole we have a moral obligation to accept this Award. Let us not imitate other people who break their pledges with whom we become angry and then say we two will do the same kind of wrong. So I plead, Madam, quite irrespective of party and party considerations let us accept the Award. We must stand by the Government because in this matter ;the Government is not facing an internal situation but it is facing the wOrl(j outside. When we face the world outside, we must, be united. We can fight all our quarrels inside but when we turn our face to the world we must be one India, one people and one Government and one acceptance of what is right and what is wrong. Thank you, Madam.

SHRI B. K. P. SINHA: Madam, this Award is a bitter pill. But then the issue is shall we swallow this bitter pill or not? I think it has been made very clear by the previous speakers that the terms of th$_e$ Agreement give no room for manoeuvre they are of a compulsive nature. And therefore, I see no way out of this imbroglio except by the acceptance of the Award.

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Madam, Mr. Chagla, a man of great learning referred to a few incidents in which awards had not been respected. But then much depends upon the terms of the agreement, the terms of reference. And those cases relate to certain terms of reference in which a restrictive clause like the one that we have in this agreement was absent. I know of only one case in the history of international disputes in which the terms wece as restrictive and compulsive as in this case, and even then, the parties concerned refused to accept or implement that award. That was the famous Chamazil dispute between the United States of America and Mexico. The clauses were of the same compulsive and restrictive nature, but th$_e$ United States refused to accept that award, and the matter went on for near about 50 years. The award was given in 1911 and it was only in 1960 or 1961 that the U.S.A. and Mexico came to some settlement on that issue. But that is an exception, an exception which proves the rule. Even when such restrictive clauses ar$_e$ not present in an agreement, nations usually have to accept these awards. Madam, in this connection I $_w$ill quote a few lines from "International Law" by Hall, edited by Pearce Higgins.

> "It may be observed also that it must always be difficult for a State to refuse to be bound by an arbitral award, however unjust it may be. The public in foreign States will seldom give itself the trouble to form a careful judgment of the facts, it will prefer the simple course of assuming that arbitrators are probably right; a State by rejecting an award may stir up foreign public opinion against itself; and this is not worthwhile to do—unless very grave issues are involved."

Therefore, there is no option except to accept the award. This observation of Mr. Hall, one of the great authorities on international law, is contained in a book written in 1924. Thereafter, the world community has assumed a more organised form and there is a greaUf

[Shri B. K. P. Sinha.}

desire to submit disputes to arbitration and accept the judgment of the arbitrator. Therefore, this observation that I have quoted has greater force to-day and we have to accept it. So far as the general award is concerned, since the tribunal by a majority judgment has taken the view that certain territories like Chhad Bet or Dhara Bani have never formed part of the territory of India, that can be implemented by a mere act of the State. But then as has been pointed out by Mr. Chagla, there are two small areas, One in the region of Nagar Pakar and the other in a slightly different region where the tribunal has not come to the conclusion that that area did never belong to India. Rather the implications of the language used by the Chairman are that that area belonged to India and in the interest of peace and harmony between India and Pakistan, he has come to the conclusion that those areas should go to Pakistan. While generally speaking, so far as the other areas are concerned, action of the State only is necessary, in these two cases, particularly after the judgment of the Supreme Court in the Berubari case, Parliament will have to go through a process of Constitutional amendment before these two small areas can be transferred to Pakistan. I hope Government and its legal experts will apply their mind to this aspect of the case.

Madam, the dispute is over, but the issues that arise out of this award are very very important. It is no use taking the view that we have got nine-tenths of the disputed area and Pakistan has got only one-tenth. That one-tenth part of the area is really the most valuable part of the territory in dispute. These are high points which are in the nature of an extension of the mainland of Sind, and if Pakistan controls these high points, it would be easy for Pakistan to control with its armaments at least half of the Rann of Kutch. The Syrians because they controlled the Golan heights were able to control a large part of the territory of Israel with their big guns. Therefore, the least that the Government of India should do now is to establish countervailing strong points in the region that we have got so that Pakistan is not able to commit any mischief in future and reduce our control of the northern region of Kutch to nullity by use of its force.

Madam, this brings me to another aspect of the matter. How far has it been proper for us to rely on these international bodies? Our Constitution has been quoted. Let me inform this House, rather this House knows it very well, that in the first flush of independence, we took an idealistic view of many issues. We introduced many articles in the Constitution which later experience indicated were couched in a much too idealistic language and based on idealistic conceptions. Therefore, in 20 years, We have subjected the Constitution to more than 20 amendments. And this article which lays down that we should try to get international disputes settled by arbitration is in my opinion one of those instances where idealism took the fore-seat and reality the back-seat.

SHRI P. N. SAPRU: It is truism.

SHRI B. K. P. SINHA: We have brought up in this country on the conception that these high bodies like the U.N. Assembly, the Security Council, the International Court of Justice and international tribuna's are judicial in character and, therefore, their operations are also judicial. But I can tell you from my little experience of the United Nations Assembly and the Security Council that they are not judicial bodies. They are not bodies which deal out justice on merit. They are the arena of struggle for the power interests of the various nations. It has been our good fortune that we

had a great man like Pandit Jawahar-lal Nehru. It has been our great fortune that we had a great idealist like Dr. Radhakrishnan &s our President. But as the Chinese say, all that is good has some failings and all that is bad has some virtue. And one of the things for which we suffer is the extreme idealism of Pandit Jawaharlal Nehru and Dr. Radhakrishnan. They impressed m this nation all the time that these international bodies are high judicial bodies while the reality is entirely different. Mr. Setalvad has been there, Mr. Chagla has been there, Mr. Swaran Singh has been there. I will particularly ask Sardar Swaran Singh—I was with him i$_n$ the United Nations— what his experience of the Security Council and the U.N. Assembly. It was a naked exhibition of the power interests of the more powerful nations of the world. Therefore, we must be extremely wary, in spite of what the Constitution demands, in referring such disputes to international bodies. Madam, it has been said that we should accept this award in the hope of peace and amity between India and Pakistan. Madam, I have made it clear that I am for accepting the award except in respect of those two small territories because conclusions in respect of these are beyond the jurisdiction of the tribunal. But then when we say that we accept this award because it could open a new chapter of amity, peace and friend-liness between India and Pakistan. I am afraid it is one of those instances in which hope triumphs over experience. Madam, I can reminded of an anecdote of a certain gentleman who had a bitter experience with his first wife and there was a divorce. Then he went in for a second wife and one of his friends asked him "How is it that in spite of your bitter experience of your first marriage you are going in for a second wife?" His reply was "It is a triumph of hope over experience." When we say that because of this Award our relationship with Pakistan will improve, I am afraid we are in the unfortunate position of that man who married a second wife in spite of his bitter experience. Madam, the leaders of Pakistan have made it very clear to the whole world, to their own people and to India, that the crux of the problem between India and Pakistan lies in Kashmir and so long as that problem is not solved, there can be no peace, no friendship between India and Pakistan. In view of that experience, in view of these assertions by the great leaders of Pakistan, in my opinion it is hoping against hope that our relationship with Pakistan will improve. Let us have no doubts about that.

Madam, lastly I will come to another aspect of the matter. How is it that this region became a matter of dispute between India and Pakistan? How is it that there were terms of this nature? Madam, I am reminded of the story of a camel and the Arab. The camel was shivering in the cold. The Arab was in the tent. The camel said "Let me project my nose inside your tent." After some time it projected its leg, the$_n$ it projected h'alf its body and then the whole body. The result was that the poor Arab was out of the tent. What has been the history of this dispute? It is said by competent people that a dispute has always been there but that is not what a small brief that I have made indicates. Pakistan made certain claims that the line in the Rann of Kutch was the middle line but in 1948, 1954 and 1955 we always outright rejected those claims of Pakistan and we always took the view that that area Which Pakistan says was a disputed territory has really been our area all through history. Madam, then in September 1959 Prime Minister Nehru and President Ayub Khan agreed to devise measures to settle the Indo-Pakistan boundary dispute. We do not know what were the disputed items or the items of dispute in this agreement. But the real mischief came in 1959. On 24th October, 1959, a joint communique was issued by Pakistan and India. Our spokes-

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man was Sardar Swaran Singh, our Defence Minister. For the first time that communique indicated that all disputes raised so far by either country should be investigated. Till that time we had outright rejected the claim of Pakistan. For the first time we said " -------disputes raised so far by either country.." But the word 'dispute' has certain general connotation. It is not a term of law. What is the meaning of 'dispute'? I have taken it from the Concise Oxford Dictionary. It gives 'disputable' means 'open to question', 'uncertain'. But uncertainty implies general uncertainty, not uncertainty in the mind of one party only. It implies uncertainty in the minds of both the parties. Before 1959, before that unfortunate agreement, the whole issue was certain. We had rejected their claim. But then after we put this language in the communique, the matter became a subject of dispute. That is the first mistake we committed. Then after three or four months we decided to collect the material. It is extraordinary that before a dispute is accepted to be a dispute before a controversy becomes a dispute, materials are not collected. It was really putting the cart before the horse. Actually before that controversy could be accepted all the materials should have been collected. But the normal procedure was changed. It was all topsy-turvy. We accepted the dispute and then we started collecting the material. *(Time Bell rings)* I am just finishing. These are the few issues which need clarification. Some people say it is a bad dream and we should treat it as dead. But it is not dead. It has relevance for the present; it has relevance for the future. How was it that Pakistan's claim went on advancing and we went on retreating and ultimately we accepted that it was a disputed matter? It was entirely in virtue of that agreement that Shastriji found himself bound hand and foot. In July 1965 he said "In terms of the 1959 agreement which had provided for such a reference there was no alternative for India." So that is the first matter which requires an enquiry. Madam, when was that agreement signed and where was that agreement prepared? That agreement was prepared in London. It was prepared by one Mr. Cyril pickard. Who is this Mr. Cyril Pickard? This gentleman was one of the stormy-petrels of Prime Minister Wilson. When Pakistan invaded our territory, Prime Minister Wilson came out with a statement that India was the aggressor. When the fighting broke out in September in the region of Kashmir and Punjab, the United States was exteremely unhappy with Pakistan and wanted to put curbs on Pakistan then this gentleman, Mr. Cyril Pickard, was flown by Prime Minister Wilson to the United States of America to lobby for the view that Pakistan was not the aggressor but India was the aggressor. And this stormy-petrol was later on rewarded with knighthood. Today he is where he should have been—Her Brittanic Majesty's High Commissioner in Karachi. *(Interruption)* In London there were three people but the language of the agreement was drafted by Mr. Cyril Pickard. This is my information It was accepted by Shastriji, Sardar Swaran Singh and Mr. L. K. Jha. It is an unfortunate fact that the Foreign Secretary was not present there. The Foreign Secretary was in Algiers. The legal experts of the Foreign Ministry were not present in London though Algiers is only three hours' flight from London. An important agreement was signed but neither the legal experts of *be Foreign Ministry nor our Attorney-General nor other legal luminaries were consulted. I would like to know something further. The hostilities Ln Kutch ended in April 1965. The agreement was signed in June 1965. A period of 3 or 4 months intervenes. What was the attitude of the Foreign

Ministry during this period? Had this issue been discussed ? Had the issue of reference to a Tribunal been discussed in the Foreign Ministry? If so, what was the attitude of the experts of the Foreign Ministry or the Foreign Secretary? These are all big gaps in our information. I think some fill-up is called for not to find out the guilty but with a view to knowing whether the procedures that have been evolved were adhered to or not, whether the procedures were violated or not. Unless we know that, it would not be possible for us to correct our mistakes in the future. Therefore, Madam, this requires a thorough proble. How is it that such mistakes were committed? Why was it that the Attorney-General of India, when such a vital agreement was being signed, was not consulted nor were the legal experts of the Foreign Ministry available in London? They were doing something about the Afro-Asian Confer-ernce which was really a stillborn child, because the Afro-Asian Conference was never convened because of the opposition of China. Therefore these matters require an enquiry, a thorough parliamentary enquiry. Let that enquiry be conducted by the Prime Minister of India to-day who is also the Foreign Minister of India and let some men of eminence—I can think of two who are sitting here Mr. Chagla and Mr. Setalvad and you can think of a detached man of great stature like Pandit Kunzru— be associated with the enquiry so that we know what mistakes were committed in this whole transaction and be careful for the future. These are my only observations on this Award.

SHRI A. P. CHATTERJEE (West Bengal): Madam, hearing Mr. Chagja, for whom I have the greatest respect, I was really thinking whether the imputation of political motive which he made in regard to the Award of the International Tribunal is not really a reflection of his own political approach to the entire problem because sometimes we reflect our own views on others, project our views on others, colour them with our own feelings and sentiments and then say by a kind of fallacy which is well known that the feelings and sentiments which are ours really vitiate the judgement of the Award or action of the other party. I do not I know wherefrom it can he argued legitimately be argued—apart from passions into which I am not going, how it can be argued—that the Award which has been given by the International Tribunal should not be and would not be obeyed by us because it is a political Award. For good or evil, these was an International Tribunal and to that the Indian Government referred the dispute and not only it referred the dispute but there was an agreement which is an agreement between the high contracting parties. That agreement said that the decision of the Tribunal shall be binding on both the Governments and shall not be questioned on any ground whatsoever. Not merely that the agreement also says that if there is any difficulty in the matter of implementation of the findings of the Tribunal, even then, the difficulty shall be referred to the same Tribunal again for solution. Not merely that. It is clearly stated that both the Governments undertake to implement the findings of the Tribunal, I do not know whether there is any scope for any doubt, any questioning or any argument as to the complete jurisdiction which was vested in the Tribunal by the agreement of the two contracting parties. It is true that according to the Municipal Law a particular person would not get away from the award of a Tribunal if the parties agreed to be bound by the Tribunal. Then it would not be heard that the award of the Tribunal to which the two private parties referred the dispute is motivated, is not a proper award except oft the ground of misconduct of the Tribunal or the Arbitrator and therefore it would not be obeyed or followed. I have heard Mr. Chagla and others who are for scuttling the Award with rapt attention but I have not found anything *a* their statements stating that the

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Tribunal misconducted itself. The only thing that has been heard over and over again is that the Tribunal awarded a political Award but mere chanting of the word 'political' will not do the job. We have to find out whether the Tribunal has really been actuated by political motives or not. If we could prove conclusively that the Tribunal's Award has been motivated politically, then extending the principle of misconduct in private arbitration proceedings, perhaps we can say that the Tribunal misconducted itself and therefore the Award is not binding but I have not found anything and I have not been shown anything so far to come to that decision. Rather I will find that complete jurisdiction, exclusive jurisdiction has been vested in the Tribunal and the *bona fides* of the Tribunal were never questioned, were never open to question by any of the parties. I have read the agreement between the high contracting parties. I will also say what happened in the course of the proceedings themselves, before the Tribunal. Look at page 4 of the Award which relates some of the agreements; between the parties on various questions of procedure and on page 4 it is said in regard to the heading of evidence:

> "The Tribunal will be the judge of the relevance and the weight of the evidence presented to it. If the Tribunal, whether on the request of a Party or otherwise, considers it necessary to inspect the

That is, we agreed while the proceedings of the Tribunal were going on and we agreed at the meeting of the Tribunal at the first meeting which was held on 15th February, 1966 at Geneva that the Tribunal will be the judge of the relevance and the weight of the evidence presented to it. Not merely that. On page 10 containing the Award it is said:

> "Both parties agree . . .

This is also in reference to the proceedings of the Tribunal and refers to the agreement between the parties before the Tribunal and it clearly says:

> "Both Parties agree, that, s-hould the Tribunal find that the evidence establishes that the disputed boundary between India and Pakistan lies along a line d'fierent from the claim lines of either Party, the Tribunal is free to declare such a line to be the boundary."

I do not know of any other words which can delegat? the extremist iuvisdiction to a Tribunal before which parties appear. The parties not only agreed that the Tribunal will give its own weight and assessment to the evidence. The parties also agreed that if the evidence establishes a line which is neither the claim-line of Pakistan nor the claim-line of India, then the Tribunal is free to declare such a line to be the boundary. Look at page 16 which summarises the position of India and it says:

> "As to equity, the position of India may be summarised as follows: The Tribunal has to ascertain where the boundary has been and is and not to ascertain where a boundary ought to be."

That is to say, the Tribunal was given the jurisdiction to determine where the boundary has been.

SHRI RAJNARAIN: No.

SHRI A. P. CHATTERJEE: The Tribunal further said this and the parties agreed . . .

SHRI RAJNARAIN: You are mistaken.

SHRI A. P. CHATTERJEE: It says: "This is a question of fact and not a question of law." It is a question of fact pure and simple. If it is a question of fact and that question

was referred to the Tribunal, and the Tribunal, by a majority comes to that finding as to the fact, then it does not lie in the mouth of anybody that the findings on the facts are liable to be set aside or challenged by any of the parties.

SHRI RAJNARAIN: You read page 13.

SHRI A. P. CHATTERJEE: I was submitting also that this Agreement of India that the Tribunal will determine what is the boundary Is not only in the passage where I have read it, but it is also in the passage in the Articles of Agreement themselves, and the Articles of Agreement clearly say this in Article 3:

> "(ii) In the event of no agreement between the Ministers of the two Governments on the determination of the border being reached within two months of the cease-fire, the two Governments shall, as contemplated in the joint communique of 24th October, 1959, have recourse to the tribunal referred to in (iii) below for determination of the border in the light of their respective claims and evidence produced before it and the decision of the Tribunal shall be final and binding on both parties."

So determination of the boundary is left exclusively to the jurisdiction of the Tribunal, and it is again and •gain said in the Agreement that the decision of the Tribunal will be binding on both parties.

Madam, I may also read an extract from Joint Communique dated October 24, 1959, and that in fact says this:

> "Both Governments re-affirmed their determination to resolve border disputes by negotiation and agreed that all outstanding boundary disputes on the East Pakistan-India border and the West Pakistan-India border, raised so far toy either country, should, if not settled by negotiation, be referred to an impartial tribunal for settlement and implementation of that settlement by demarcation on the ground and by exchange of territorial jurisdiction if any."

The Communique of October 24, 1959, is also important, Madam, and in that Communique the Indian Government has said that if they cannot agree to a particular boundary with Pakistan, if they cannot agree to a particular settlement of border dispute with Pakistan, they will refer it to a tribunal and the settlement by the tribunal will be implemented by demarcation and by exchange of territorial jurisdiction if any. I do not know whether there can be any more emphatic words than this that the territorial jurisdiction of India or *vice versa* of Pakistani over territories will have to be given away if the tribunal determines otherwise. Madam Deputy Chairman, therefore, there is no doubt and no question about this that the two high contracting parties referred the dispute to the tribunal and, well, they submitted to the jurisdiction of the tribunal. After submitting to the jurisdiction of the tribunal, now you cannot turn round and say that you will not admit the Award of the Tribunal. And who are the Judges of the Tribunal? You know you have also agreed to the procedure there—it is also in the proceedings here in the book itself, that India shall nominate one arbitrator, that Pakistan shall nominate another arbitrator, and that if both disagree on the question of Chairman, then the question of the nomination of the Chairman will be referred—that was also agreed—will be referred to the United Nations Secretary-General. Well, we could not agree on the nomination of the Chairman and therefore it was referred to U Thant, the Secretary-General, and the Secretary-General, well, nominated the President of the Court of Appeal of Western Sweden to be the Chairman of this Tribunal. So therefore every-

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thing has been done by consent and Dy agreement. Now can we say that we will not agree to the Award of the Tribunal? I know that international law is the vanishing point of jurisprudence. But this is an argument of despair, an argument of cynicism. Those who say that international law is the vanishing point of all law, is the vanishing point of all jurisprudence, they cynically say so meaning that in international law ultimately shall prevail the force of arms, and not the force of logic. But we who claim to be civilised and cultured, we Indians who say that we shall abide by—I am one of them— by the decisions of the legally constituted tribunals and arbitrators, we cannot be heard to say that because international law is the vanishing point of jurisprudence, therefore we shall not listen to law, we shall not listen to reason, we shall not listen to jurisprudence and we shall settle everything by force of arms.

THE DEPUTY CHAIRMAN: Please wind up now.

SHRI A. P. CHATTERJEE: Madam Deputy Chairman, I am concluding within two minutes.

Madam, then what happens? After all, there was a war between the two countries over this border, and the war was concluded by virtue of this Agreement to refer this matter to arbitration. Now, if we do not admit this Award, if we do not agree to this Award, what next? Are we going to war wi-th Pakistan again over this, because this is the only conclusion that follows from *a.* rejection of this Award. If it were admitted that we had sumitted ourselves to the jurisdiction of the Tribunal, had agreed to be bound by this Tribunal, that the decision of this Tribunal shall be binding on us and Pakistan and also that the difficulties if any faced in the implementation of this Tribunal's Award shall be solved by the same Tribunal, if after all this we go back upon our words, where do we stand? We stand only on this that everything will be decided by the force of arms. Certainly, hon. Members of Parliament, who are rejecting this Award will not ask the country again to go to a lengthy, a protracted and a destructive war between two neighbours. Therefore, that is the argument on the test of which, on the crucible of which, we will have to see this Motion. This is the constitutional position of the Award. Therefore, from the point of view of international law, from the point of view of jurisprudence, from the point of view of peace between neighbours, from the point of view of our culture and antiquity, and of our much boasted implicit dependence upon the principles of international law to which we have always owed allegiance, from the points of view of the things, Madam, I will say that it should not be the case that we go back upon our solemn agreement, but we should submit to this Award.

THE MINISTER OF DEFENCE (SARDAR SWARAN SINGH): Madam Deputy Chairman, I have listened with rapt attention to this debate. For me personally it is not only a debate in which present issues are involved but, unlike many other hon. Members, either from this side or from the opposition who have participated in the debate, I had the good fortune and honour to be associated with the processes of partition from the very beginning. I know how painful the process of partition was, and it is easy now, in retrospect, to view these things with a legal background, criticising this bit here and objecting to something there. It is understandable; this is part of democratic functioning, and I welcome this opportunity. It is on such occasion that there is time for stocktaking, and I would like to take this House through the history of partition

ind through the processes which had been agreed upon by the two countries to effect and implement this rather difficult decision relating to partition.

In effecting settlement of disputes, now a great deal has been said against the mode of settlement of disputes by tribunals, by arbitration by third parties or of whatever description they might be. Let us not forget that in the entire process of partition, almost the whole of the partition was effected through this process of tribunals and arbitration.

I will not go into details, but the Radcliffe Award, the Bagge Award, those were the Tribunals on which both India and Pakistan were lepre-sented, and there was that third party which was supposed to decide and ad-judicate upon the points of difference. It is necessary for us to remember all these things because some hon. Members, because of the present difficulties, have attacked the very basis and approach to this problem. This, I want to say clearly, is not justified by the course of events or by the course of history.

Then again, before the Radcliffe Tribunal and the Bagge Tribunal—I might recall—Mr. Setalvad, a distinguished Member of this House, argued some of these cases. They were unable to finally settle these matters and there were several disputes both in relation to those Awards and also in relation to other places in which both the countries claimed certain areas. This was a matter which was inherited by us as a result of the partition and it had to be settled. There are two ways of settling this matter. One is to take a determined view that whatever we say is correct and the other party should accept whatever we say- This is one way of looking at it. Perhaps the more rational and more practical way is the way of discussion and pettlement. If there are several points of dispute or controversy—I do not want to go into the legal phraseology or sophistry of the exact meaning of the terms dispute, claim or counterclaim, controversy or points of difference, you may call it by whatever name you like—the fact remains that on the ground the actual demarcation had not taken place as a result of these various Awards and there were several areas both in the border between East Pakistan and India and in the border between West Pakistan and India, where both India and Pakistan had claims and counterclaims. You may just take this attitude that we do not want to dis-cuss with the opposite party any of these matters and we want to decide them by gun diplomacy, that whatever we say is correct and the other party on bended knees has to accept what we say. I would respectfully urge that it would be a wrong position for any Government to take. I have been: associated with this matter from the very beginning and I do not want to be apolegetic when I say that the only way to get a settlement of this problem is to discuss with the opposite parties all those matters where there are claims and counter-claims at several places and try to arrive at a settlement. If a settlement cannot be arrived at and if there is some reasonable dispute between the two parties then as Prime Minister Nehru said on the floor of Parliament wr should take the advice of a third party and accept that party's advice, whether that advice is in our favour or against us. It would be a bad day if in the conduct of international affairs we say and take up the attitude that we would accept the principle of going for aribitration and taking the advice of a third party, but we will accept it only if it is in our favour and we will reject it if it is not in our favour is that a responsible way of dealing with these international matters? Is that the way to conduct our relations with other countries? Is that the image which we want to build of our country? I would ask this question in

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all seriousness. Something more is at stake here than just this dispute. What is the direction in which we want to proceed when we want to settle international disputes? That is the question,

Not only that, some people even said that our Constitution was based on idealism. Has idealism become a crime now? I would like to be an idealist even if I have to pay a price for it. The day we leave idealism, the day we leave important basic principles the day we leave the sheet-anchor of certain principles, that would be a bad day internally and externally. I was surprised that some people should have the cheek to say that we had adopted certain articles of our Constitution in an atmosphere of idealism. I would like to be idealistic because if a country ever ceases to be idealistic and forgoes principles and does not attach importance to certain basic principles it will always slip both internally and externally, and I do not want my country to slip. Therefore I would like to stick to these principles. And are these principles so dangerous that we should really get frightened by them? I have after deliberate consideration come to this conclusion that it would be wrong for us not to stick to the principle of settlement of international disputes by discussions. We should recognise and stick to the principle of settling international disputes by arbitration, by negotiations and so on, and all peaceful means must be exhausted before we take to arms to settle any matter. So whatever may be our present difficulties in this context, let us not forget that negotiations, discussions and settlement by arbitration and tribunals are recognised pinciples for settling international disputes. This is so not only in our Constitution but even according to the U.N. Charter to which we are signatories. So we should view all these things in a broader perspective and we should not try to import considerations which will always lead us to a blind alley and create more difficulties instead of settling things.

I mentioned two Tribunals which had been constituted to settle all these borders. Again, the Stearing Committee which was in charge of these matters was in the charge of a very distinguished civil servant who, I would like to inform particularly the Leader of the Swatantra Party, belonged to his own State of Gujarat. He is also a member of his own party now, I mean Shri H. M. Patel. He was the Indian representative who was in charge of so many of these partition matters. And it was at one of the Steering Committee's mentings in 1955 that it was agreed upon by the two representatives on the Steering Committee that outstanding matters and all these border disputes should be settled by reference to a tribunal on which India and Pakistan should be represented by their judges and also there should be a third judge to be agreed upon by both the sides. Then again in 1958 it just happened— it is a very interesting coincidence— that again a distinguished civil servant, Mr. M. J. Desai—also belonging to Gujarat—took up the Kutch disputes. He had discussions with the opposite party, the representatives of Pakistan, and in a joint statement that was issued they said that there were several disputes existing between the two countries on the borders and they should be settled according to the well recognised and accepted principles between the two Governments, namely, reference to a tribunal of the type to which I made reference a little while ago. Memories are short and we forget that actual position.

In 1957-58 there was a great deal of tension at the borders. Trigger-happy persons, particularly on the Pakistan side, were creating troubles a,nd there were border disputes, shootings and so on and several persons were killed in the disputes in the border between West Pakistan

and India and also in the border between East Pakistan and India. I was in the mutual interests of both parties that they should get together and try to settle the border and demarcate it so that the person who is there at the border post knows precisely what is the territory he is called upon to defend, and then these irritants that are there be got rid of. It was in this spirit that Prime Minister Nehru of India and Prime Minister Noon of Pakistan entered into an agreement for the exchange of some enclaves in both the counties. There was Berubari and others in relation to East Pakistan and India and there were other enclaves too. It was agreed to exchange them and then several other matters were also discussed at that time between Prime Minister Nehru and Prime Minister Noon.

श्री राजनारायण : तो यही लॉजिक काश्मीर में दीजिये। काहे झगड़ा करा रहे हैं। तमाम लोगों को कटवा कर के मरवा कर के वह क्यों करते हैं . . .

SARDAR SWARAN SINGH: I am glad; now it appears that the arguments are going home and the hon. Member . . .

SHRI RAJ NARAIN: Do you think there is any logic in your argument?

SARDAR SWARAN SINGH: The hon. Mr. Rajnarain knows that the border disputes are entirely different from the Kashmir question and I would like to remind him . . .

श्री राजनारायण : नेहरू जी ने काश्मीर में प्लेबेसाइट माना है। यही हमारा गला फिर पकड़ेगा और आप ही पकड़वायेंगे।

SARDAR SWARAN SINGH: I would like to remind Mr. Rajnarain that it was I and not Mr. Rajnarain who walked out of the Security Coun-cinl as soon as I found that Pakistan was raising issues which I considered to be purely domestic issues. So I know the distinction between the Kashmir issue and the border disputes and it will be weakening our case if even by implication or even indirectly we try to equate the Kashmir question with border disputes. I would beg of him and other hon. Members to resist the temptation of merely trying to interrupt me or to raise debating points. I am accustomed to it and that will not help. The distinction is quite clear and I do not claim any personal privilege for it. I was pursuing the Government policy . . .

श्री राजनारायण : श्री नेहरू ने काश्मीर के मामले में प्लेबिसाइट की बात मानी है। अब हम को आप यह सिखाना चाहते हैं कि एक बात जो हम ने मान ली है कहीं गलती से तो उसको हमें मानना पड़ेगा। जो लॉजिक इस समय सरदार स्वर्ण सिंह जी दे रहे हैं वही लॉजिक काश्मीर के बारे में चार महीने बाद देना शुरू कर देंगे।

SARDAR SWARAN SINGH: I would like to say, Madam Deputy Chairman, that there is no analogy and it should be confused with this. This issue is entirely different and I would appeal to him not to bring in that issue because on this question of Kashmir we have clarified our position not only in Parliament but also in the Security Council and elsewhere too.

श्री राजनारायण : आन ए पाइन्ट आफ आर्डर। मेरा पाइन्ट आफ आर्डर यह है कि जो इंडिया के रेप्रिजेंटेटिव गये हैं और जो उन्होंने अपने आर्ग्युमेंट्स दिये हैं . . .

SARDAR SWARAN SINGH: This is not a point of order.

SHRI AWADHESHWAR PRASAD SINHA (Bihar): Madam, I rise on a point of order.

श्री राजनारायण : जरा सुनिये, घबड़ाइये मत।

श्री अवधेश्वर प्रसाद सिंह : आप जब बोले तब कोई नहीं बोला । जब दूसरे बोलते हैं तब आप इंटरफीयर करते हैं । अब आपको हम बोलने नहीं देंगे ।

श्रीमती सरला भदौरिया (उत्तर प्रदेश) : कैसे नहीं बोलने देंगे ।

श्री राजनारायण : अच्छा, तो हम किसी को नहीं बोलने देंगे । चलिये, तुम्हारा चैलेंज स्वीकार है ।

श्री अवधेश्वर प्रसाद सिंह : अनर्गल बात मत बोलिये . . .

श्री राजनारायण : तुम्हारा चैलेंज स्वीकार है । तुम्हारा चैलेंज स्वीकार है । चाप-लूसी कर रहे हैं प्रधान मंत्री जी की . . .

THE DEPUTY CHAIRMAN: Order, order. If you do not come to your point I will have to ask you to sit down.

श्री राजनारायण : माननीया, . . .

THE DEPUTY CHAIRMAN: You come to your point and be very brief.

श्री राजनारायण : मैडम पेज 6 जो है इंडिया पाकिस्तान अवार्ड का उस में लिखा है :

"The Tribunal cannot find that the Agreement of 30 June 1965 does authorise it clearly and beyond doubt to adjoudicate *ex*-aequo et bono. Therefore, and as the Parties have not by any subsequent agreement consented to confer the power upon the Tribunal to adjudicate ex *aequo et bono,* the Tribunal resolves that it has no such power."

मेरा यह कहना है कि जब भारत के प्रतिनिधि ने ऐसा कह दिया कि ट्रिब्युनल को यह पावर नहीं है कि वह इस तरह से जजमेंट दे सके नई बाउन्ड्री क्रिएट करने के लिये, तब भी उस के विपरीत सरदार स्वर्णसिंह जी आज इस सदन को लॉजिक दे रहे हैं ।

THE DEPUTY CHAIRMAN: That will do.

SARDAR SWARAN SINGH: I was mentioning, Madam Deputy Chairman that after the talks between the two Prime Ministers, the Prime Minister of India and the Prime Minister of Pakistan, Prime Minister Nehru made a statement in the Lok Sabha and there he reiterated the stand that we had always taken in the Government of India about our approach to these problems, the mode of settlement and the modalities that should be adopted in order to settle them. This is what Panditji said at that time.

THE DEPUTY CHAIRMAN: Order, order.

श्री राज नारायण : डिस्आर्डर वे क्रिएट करते हैं तो मैं आर्डर में कैसे रहूं ।

SARDAR SWARAN SINGH: In the Lok Sabha on the 12th September 1958, Shri Jawaharlal Nehru, on the talks held between him and Prime Minister Noon of Pakistan on the 9th and 10th September 1958, said: —

"On western side the points which are to be determined are these: Chhad Bet in Kutch. Pakistan raised this question two or three years ago and we did not do anything. We thought that there was no dispute about it and we sent them a rather lengthy reply to which their answer really came about 10 days ago after two years. Anyhow because they claim something this is also a matter to be considered. Therefore the posi-

tion is this. Quite a number of matters which were leading to irritation between the two countries have been disposed of."

The Berubari agreement and the Enclaves agreement had been arrived at earlier.

"Naturally that is a matter for satisfaction for each little thing creates confusion on the border and the people there suffer. We thought and we still think that the best course to decide any remaining matter which cannot be decided by talks between ourselves is to refer it to some independent authority or tribunal to decide because there is no other way. Either we come to an agreement ourselves or ask somebody else to decide and will accept whatever decision is arrived at whether it is in our favour or against us. For the present the Pakistan Prime Minister was not agreeable to this being done in regard to one particular matter but the matter is open for consideration. In our statement that has appeared in the Press it is said that these matters are reserved for further consideration between us. The point that I am urging is . . .

SHRI A. D. MANI (Madhya Pradesh) : Madam, on a point of clarification, may I ask . . .

SARDAR SWARAN SINGH: I am not yielding. You can ask later.

THE DEPUTY CHAIRMAN: He is not yielding. Please let him continue.

SARDAR SWARAN SINGH: After this when the two Ministers met we came to the conclusion that there were several matters in which India was claiming something; there were several matters in which Pakistan had raised claims. So we sifted al[1] of them in a preliminary manner and we came to the conclusion there were nve disputes on the western side, there were several on the eastern side including the Patharia forest, the Kusazara group of villages, two head-works in Punjab and several other areas in -which there were disputes which required settlement in accordance with the principles that had been agreed upon. We have to see this in this context as a packet. There were several areas which came to us as a result of these talks which were in the possession of Pakistan; there were several areas which we had to surrender when we actually demarcated on the ground the boundary at various points as a result of these discussions and as a result of those mutual agreements. Now one of the points raised by a valuable colleague on this side was that as a matter of fact there was no dispute on the question of Kutch and that we wrongly accepted that there was a dispute. That I would respectfully submit will be shutting our eyes to realities. In this Award itself there is evidence. It has been mentioned in the Award itself that there were disputes about the boundary between Sind and Kutch. I leave that part because that is past history. I would like to say that the Durbar of Kutch, the Diwan Of Kutch in a letter of 26th May 1947 addressed to the Chief Secretary of Sind proposed demarcation of the Sind-Kutch boundary. On the 14th July 1948 the Government of Pakistan forwarded to the Government of India a copy of the letter of the Diwan of Kutch and informed the Government of India that the boundary in question was still in dispute and that it may be settled by a joint Boundary Commission of the two parties.

5 P.M.

SARDAR SWARAN SINGH: There is no dispute about it that it was written by the Dewan.

श्री राजनारायण : दीवान आफ कच्छ से यह एसर्टेन किया गया कि यह उसका लैटर है । क्या सरकार ने यह जानकारी हासिल की ?

श्री राजनारायण : यह सब फोर्ज्ड लेटर है

SARDAR SWARAN SINGH: Now, if we look at with suspicion, all this correspondence, then I am afraid there is no other _way of dealing with this. In our responsibility if I make a statement, it should not be lightly challenged, unless the hon. Member has got any evidence to the contrary.

श्री राजनारायण : माननीया, मैं तो भुज से लौट कर आ रहा हूं। मेरी जान- *(Interruption}* क्या क्या फोर्ज्ड लैटर बनाए गए । इसलिए मैं जानना चाहता हूं कि सरदार स्वर्ण सिंह से, यह उनका सवाल नहीं है, यह मुल्क का सवाल है । पाकिस्तान की दलाली हो रही है ।

THE DEPUTY CHAIRMAN: Please take your seat.

SARDAR SWARAN SINGH: There is no dispute about the authenticity of that letter. I strongly resent any such insinuation because I do not require any statement to be made to establish either my *bona fides* or my credentials. In fact, it is very painful that, after my long service t'o this country, there should be people in our country who should talk in that strain. All that I need say is that it is not either in good taste or consistent with the dignity that this House expects all of us to observe.

Thereafter the two sides had exchanged a number of diplomatic notes, India maintaining that the boundary along the northern edge of the Rann was well established and Pakistan disputing it. On 12th September, 1958 Prime Minister Nehru made a statement, as I have said, in the Lok Sabha. Now, in this light it will be seen that there was this matter in which Pakistan was claiming that the boundary between Sind and Kutch was not settled. Even though the Award says 'hat their claim is unfounded, the claim was there. There was a lengthy exchange of notes between the two Governments covering several pages. It would be wrong, therefore, to suggest that, when the Ministerial Conference took place, any new agreement was arrived at, which altered the position as it existed before. I am mentioning this not to put forward any alibi. I am responsible for signing that agreement and I am prepared to justify it, to abide by it. My case is not that because others had already approved it, I should be protected. That is not my line. I am not a coward. I had signed it because it was in the best interests of the country. This was consistent with the realities of the situation. I signed it and I am fully responsible for having placed my signature and it is for me to defend it.

There are two points that I have tried to cover. One is. Was there a dispute? The other is. Was there any departure from the recognised principle, accepted principle, for settlement of disputes by arbitration? These are the two points which I was anxious to clear. I know that sometimes in a very circuitous manner my name is drawn in and I wanted to clarify the position.

Another point which pains me somewhat is the one about the 1965 agreement and I am very sorry that a very senior member of our Party, Mr. Sinha, should have spoken in the vein in which he did towards the end of his speech. This is about the Kutch agreement of 1965. Prime Minister Shastri was our leader. I do not want to say that he was responsible. I was Minister of External Affairs at that time and I am responsible. I am prepared to face any scrutiny, any examination, and I will abide by whatever may be the result of that scrutiny. I would very humbly point out that to suggest that there was a British draft and that the British draft had been accepted or signed by us is not correct. Well, I

am a small man, but to suggest this thing about Shastriji that he accepted something which the British had suggested to him, without scrutiny or without looking to the interests of foe country is, to say the least, most uncharitable. May I remind the hon. Member, who now says that it was a British award, that it was a British draft, which had been accepted by me or by Shastriji, in all fairness to the country, in all fairness to this House, of which he is a Member, that he should have raised it when this agreement of 1965 was being hotly debated on the floor of the House? It was incumbent upon him to have come forward with that statement and to have confronted Shastriji, who was at that time in charge of this. Now, it is no use for my hon. friend to come forward and drag in his name and say that he was responsible and that he signed a draft which had been prepared by the British. It is absolutely incorrect. There were several drafts which were exchanged. I know that about twenty to thirty drafts came. We made some suggestions. Several modifications were made and ultimately something had to be accepted, which was acceptable to both the parties.

SHRI G. RAMACHANDRAN: A point Mr. Sinha made and to which I would like you to give a clarification is this. Mr Sinha said that somebody had tied the hands of Lai Bahadur Shastri and that in a speech in Hyderabad he almost said that his hands had been tied.

SHRI B. K. P. SINHA: I have quoted that.

SARDAR SWARAN SINGH: I refuse to believe that my leader Shastriji's hands could be tied by anybody. It could not be tied by any person. On the face of it I would not have bothered really even to reply to any such thing, if it had not come from an hon. Member of my own Party. It pained me very much. We were together. He is a colleague of mine. We were together in the United Nations. It was a very difficult time, when we handled the Kashmir question in the Security Council and we were constantly in touch with each other about Kashmir. When the matter came up, we were together for several weeks in New York, after this Kutch agreement. I do not recollect that on any occasion Mr. Sinha, either on the floor of this House directly or even informally, had mentioned to any one of u_s that Shastriji's hands were tied or that there was a draft given by somebody on which he signed. This to my mind is a most unkind cut. I would leave it at that. Blame me, because I am alive. Do not drag in Shashtriji's name, who is no longer here. I will bear the burden, without dragging in Shastriji's name, and I know how to< defend myself.

SHRI M. RUTHNASWAMY (Madras); Mr. Sinha's charge was . . .

SARDAR SWARAN SINGH: please wait a minute. Let me finish, in the case of an award which had been approved by Parliament., by this House . . .

SHRI A. D. MANI: Not approved.

SARDAR SWARAN SINGH: I am sorry. I am talking of the 1966 agreement, not the Award. My arguments relate to the 1965 agreement. That was an agreement which had been approved by this House and it was openly discussed. If there was any information of the type which" Mr. Sinha is mentioning for the first time today, in all fairness, he should have come out with it on that day. He should not have waited for the Award to be announced and when the Award happens to be against us, now he should not say that at that time somebody's hands were tied or somebody signed on the dotted line. I think Mr. Sinha. knew enough of me, because he had seen me functioning, in the Security Council. I may have my own weaknesses. I may-not be able to put across my case as-

[Sardar Swaran Singh] best as perhaps Mr. Sinha can. I have my own way, but surely no one can cow me down. No one was able to cow me down. I walked out of the Security Council, although there were many others who were wavering at that time as to what should be our attitude on the question of Kashmir when it was raised there.

SHRI M. RUTHNASWAMY: Mr. Sinha's charge was that you had no legal expert or other expert from the External Affairs Ministry.

SARDAR SWARAN SINGH; I would say that it is not justified. There were others who knew what treaties were, agreements were and all possible advice had been taken. It was done only after taking legal advice and proper advice. These are procedural matters. But to suggest that his hands were tied, to suggest that some Britisher or somebody else prepared a draft and we accepted it blindly or that we did not know what our interests were or we could be pressurised by anybody is not right. It is this which we object to, not these procedural things.

SHRI A. D. MANI: Since the matter has been raised by Mr. Sinha, the record must be set right, and I would like the Minister to tell us who his advisers were in this. An allegation has been made that the phrase; "any matter can be raised by anybody" or "'any dispute may be raised by any person" was put into the agreement without proper consultation with the External Affairs Ministry. May I ask the Prime Minister also to reply to the charges made by Mr. Sinha that in regard to the procedure for the setting up of the tribunal the matter was decided in London without any consultation with the External Affairs Ministry? That means this has been done as a result oij political pressure put by Mr. Wilson. I want Mr. Swaran Singh to answer the first point and the *Prime* Minister to answer the second point.

SARDAR SWARAN SINGH: I would not like the Prime Minister to be bothered about it because I was in charge of External Affairs. Although she was also a member of the Cabinet at that time, we took the main responsibility, I and Shastriji. *(Interruption)* I was the External Affairs Minister myself. Everyday you accuse Ministers that they take decisions not of their own and are bound too much by what the others advise. But to satisfy his curiosity I would tell him that in that delegation, which had not gone for this purpose but for other purpose, the high official of the External Affairs Ministry who was dealing, with this matter was also there in London. Then between London and Delhi there are constant means of communication and consultation. I say with the fullest sense Of responsibility that the best legal advice, best advice from the External Affairs Ministry was taken and every care was taken to ensure that there were no loose ends in the agreement. There can be criticism that the agreement was not proper, that it could be improved. It can be improved I can improve it. But it is an agreement, not my draft alone. Agreement means that there is an element of give and take in the sense that there were some things which we accepted which probably we did not like, but we took a conscious, deliberate decision to accept because we were trying to arrive at an agreement which should be acceptable to the two Governments. It was not a statement before a Parliament or a statement which unilaterally could be made. There are points there in that agreement, I will be quite frank, which probably were a sort of modification of the original draft with a view to accommodating the other view point. We were not j in this posture, "either you accept it I or reject it"; that was not the atmosphere.

I would appeal to the Hon. Members that these are matters of history

and we should not lightly drag in those considerations without proper verification, without proper authentication. It is easy to make catchy speeches. It is easy to blame me. Blame me by all means but do not blame those great leaders, the two Prime Ministers with whom I had the honour to serve, and there is no use imputing or importing things for which there is absolutely no justification whatsoever. After all in these matters no one is infallible, and it will be a bad day for the country, for any person who speaks on behalf of the country—decides things on behalf of the country if every time in retrospect^ if the result is not to your liking, you go back, open all your 'bahies' and try to find out and dig things which might be against an individual. That is not a proper way. That is not a responsible way of looking at a matter of this nature. I would beg of this House not to slip into that great error of running after the shadows and forgetting the basic things. Was there anything in our approach to refer an international dispute to a tribunal which was inconsistent either with our policy or with our thinking, or with the normal international behaviour? I am fully convinced that there was nothing. Was there anything in the dispute which required settlement? I am fully convinced that there was and I take full responsibility for accepting this.

You forget all those things that were settled. I know several people have criticised me. In Punjab there was that very difficult problem of the two headworks. The actual alignment according to the award was cutting the masonry work of both. By give and take we settled this. We completely brought one under the control of one and the other under the control of the other. There was that very important and difficult question of Kusajare group of villages; twelve villages were involved in the same area. Unfortunately our own Judge there, our own representative, a retired Judge of the Supreme Court had given statements in the judgment which were against Indian interests. I do not blame him because he was a Judge and he might have thought that that was the correct thing. But by agreement, by persuasion, by negotiation, we were able to settle that to the entire satisfaction of our Indian stand which was also greately appreciated by the Government of Punjab. There was the question of the Patharia forest. There was a great deal of commotion on that. We were able to set tle that. You forget all those things which we settled. One thing about which we had agreed was about the mode of settlement, and that mode of settlement does not give a result which is entirely to your liking. Therefore, the whole thing you examine in a topsy turvy manner and try to set the clock back and try to misread history, try to misquote facts and try to import considerations which are wholly foreign, which are absolutely unwarranted and unjustified in any dispassionate examination of the situation and the facts that I have placed before the House. What is at stake in this? Had we at any time said that we will accept the award only if it goes in our favour? If there was such a feeling in anybody's mind, I am sorry I never had any such feeling. The award is an award. Parties claimed certain areas. Pakistan claimed that everything up to the middle of that Rann of Kutch was theirs. We said "no", they had got no claim. You say, "why have you said that that it is binding on both parties?" I plead before this honourable House, supposing your entire claim had been accepted and the entire claim of Pakistan had been rejected, would you like Pakistan again to agitate it, to go to the International Court unilaterally rejecting it, go to third party and find some able man like Mr. Chagk to argue that it is without jurisdiction, and again unsettle the whole thing? Now that tht thing is not entirely in your favoui you want to raise every reason to wriggle out of that commitment. It

[Sardar Swaran Singh]

would be wrong from the national point of view, wrong from any point of view, not to accept the obligation that you have undertaken under the award. I am amazed at the facile manner in which some of the arguments had been put forward. Do you want Pakistan again to reopen the whole issue that they are entitled to half of the Rann of Kutch and it should again become *sub judicel* Is that the intention of those who are asking us to go to this court or that court or to re-agitate that? There is no such forum, as has been ably argued by Mr. Mirdha. We have kept Com-imonwealth disputes out of the purview of the International Court. There is no point in going back to the International Court. This is a two-way traffic. It will be wrong *to* unsettle something which had been decided and again import an element of uncertainty into the whole thing. It is not entirely to your liking, but do you want the whole thing again to be re-agitated? Do- you accept, do those who are accusing us impliedly accept, that Pakistan can also re-agitate in some Other -foruim and can claim that their claim -has been wrongly rejected? Is that in our national interest? Is that fair? Is that correct? Is that consistent with the attitude that you are taking? I feel, Madam Deputy Chairman, that political considerations unfortunatedy are now being imported that the award is politically motivated. Two great law-years clashed. I do not want to come into that clash. I know they will settle it themselves. *(Interruption)* The award to my mind is quite simple and quite clear. It is very interesting. What do they say? Mind you, this is now signed by all the three Judges. See the three lines at page 155. "The alignment of the boundary described in the Opinion of the Chairman and endorsed by Mr. Entezam has obtained the required majority. It is therefore the boundary determined by the Tribunal."—

signed at Geneva by the Chairman, by Nasrellah Entezam, by Ales Bebler. So, this is really the Award, this is the operative part, this is th« decree. Arguments are arguments. But sometimes arguments are slipshod.

SHRI SUNDAR SINGH BHANDARI: It carries no value.

SARDAR SWARAN SINGH: भंडारी जी आप वकील हैं तो कर लें बहस । मैंने वकालत छोड़ दी है मुद्दत मुद्दत से ।

If you want to argue legally, I am prepared to argue. But let us not look at it from that point of view. I have experience perhaps a little more than that of Mr. Bhandari. If he is a lawyer I do not know. And whenever I have argued that a judgment is wrong, I can never forget the words of a very eminent Chief Justice before whom I appeared. He said, "Mr. Counsel, do not bother. I will write a better Judgment. Let us decide as to whether the conclusions are correct or not." In this case, the conclusion to which all the three Judges—mind you—have subscribed is that this is now the finding of the Tribunal, this is the Award. This is the Award. Who am I to say that it is a nullity. Mr. Chagla is a great Chief Justice, he is a great diplomat. He has got sufficient flexibility to describe a decision as a nullity, to which another eminent jurist, Mr. Setalvad, was violently protesting. He said, no, it is not a nullity. Whether it is a nullity or not, I cannot judge it. I know, in this Award of three lines they say that the boundary determined by two of them has got the requisite majority. This is the boundary that is determined, that is the boundary. And it will be a bad day if we do not accept the international Award. It is bad for us internationally, bad for us nationally and it is the height of chauvinism to continue to dispute such things in a very light-hearted manner.

Thank you.

SHRI B. K. P. SINHA: I have to seek clarifications on certain points. I never sought to deliver a catchy speech. The Hpuse, with more than 15 or 16 years of experience, knows that that is not one of my weaknesses. I am not noted for deliverying cetchy speeches. Nor was it my effort to sail the memory of Shastriji. Shastriji loved me like his younger brother. I can claim with justification that I was as close to Shastriji, if not closer, as Sardar Swaran Singh.

I want to point out to seek one or two clarifications, why I quoted a line from Shastriji. I then said in my speech, it was a brief prepared by me for my own use. Really, this is a brief from "The Press Information Bureau, Government of India." This brief was approved by the Foreign Secretary of the Government of India before it was issued to the Press". Let me disclose the origin. On page 7, they quote—

"July 6, 1965."

What did Shastriji say?

"In terms of the 1959 agreement, which had provided or such reference, there was no alternative for India."

Does not that really indicate that Shastriji's feeling was that the 1959 agreement really bound him to this course? That is number one.

SARDAR SWARAN SINGH: Your interpretation is fantastic. I can only remind him that Shastriji was a member of the Government even in 1959.

SHRIB. K. P. SINHA: Maybe.

SARDAR SWARAN SINGH: Therefore, I have said. I do not seek shelter under any other name. I have signed it on my responsibility. Point out what is wrong?

SHRI B. K. P. SINHA: Therefore, I want to make jt clear. When I quoted that, it was in an endeavour to extricate the memory of Shastriji.. .

SARDAR SWARAN SINGH: I am glad that you have been.....

SHRI B. K. P. SINHA: ... when some mud is sought to be thrown at him. Another issue that I would like to seek clarification about from the hon. Minister is this. Again, I quote from this Press Information Bureau hand-out. On page 3 they say this and the agreement is put within inverted commas:

"Both Governments reaffirmed their determination to resolve border disputes by negotiation and agreed that all outstanding bound ary disputes on the East Pakistan-India border and the West Pakis tan-India border, raised so far by either country....."

What is the special significance of this clause "raised so far by either country". If this was not accepted here to be a dispute by India, it would have been rejected by Prime Minister Shastriji as it had been rejected so many times over so many years. Therefore, these words clearly indicate that something which was not a dispute was accepted as a dispute by both parties. Simply because one party raises it as a dispute, it becomes a matter for a tribunal. Otherwise, where was the necessity of this clause 'raised so far by either country?' They could have simply said, 'any dispute'. Why did they use this specific language? Thirdly . . .

SHRI M. N. KAUL (Nominated): 'So far' excludes future disputes. That has also to b_e borne in mind.

SHRI B. K. P. SINHA: It has other implications also. That is not the only implication. I never claim to be a great lawyer. Sardarji has much longer experience than I in law courts because I have practised only for three or four years. Since then I have been a wholetime Congress worker. I would like to know

[Shri B. K. P. Sinha]

if between April 1965 and June 1965 which means the end of hostility in Kuteh and the signing of the agreement"—was the Foreign Ministry at work on this issue? Did the Foreign Ministry, the Foreign Secretary, indicate on what lines there should be an agreement? If so, what was that?

Lastly, you said that the Prime Minister was there. I know, in theory the Prime Minister can do anything. But if that theory is to be followed in practice, then scrap all the South Block and the North Block. Any Prime Minister has to get the assistance of competent people and that is where the Secretaries, the Joint Secretaries and other experts of the Ministry come in. Who was there from the Foreign Affairs Ministry?

THE DEPUTY CHAIRMAN: Mr. Sinha, you need not repeat your speech. Make the points.

SHRI B. K. P. SINHA: I am only explaining the points which he has to clarify. He himself said, we went there with a different purpose. They did not go for this, purpose. This then is, according to his own admission, a snap agreement.

SARDAR SWARAN SINGH: Not a snap agreement.

SHRI B. K. P. SINHA: Who was there from the Foreign Ministry present because my information is Chat Mr. C.S. Jha was in Algiers, that Dr. Krishna Rao, the Legal Expert of the Foreign Ministry, was also in Algiers. And therefore, who were the competent people? I do not blame Shastriji for that. Shastriji was a very simple man, an idealist who puts faith in others. My only charge in my earlier speech was that the machinery of the Foreigxi Ministry which is there to assist the Government of India was absent and that charge has not been rebutted by Sardarji in his speech.

SARDAR SWARAN SINGH: I do not want to enter into a controversy with my colleague because I value his analysis. And may be on this particular occasion he wants to adopt this attitude. But I do not want to enter into an acrimony. I do not mind his blaming me, I can defend myself.

THE DEPUTY CHAIRMAN: You have said that.

SARDAR SWARAN SINGH: I was anxious that he should not bring in Shastriji's name; it is not very creditable to say about a colleague that he did not have the. capacity to get the best possible advice. All I would say is that it is wrong to say that it was a snap agreement in 1965. A great deal of diplomatic work had already taken place when he was still in India. A large number of communications and cross-communications had been exchanged between us and our High Commission in London, spelling out the various aspects, the various terms of this agreement. And it was gone into in very very great detail. The whole thing was being handled by the External Affairs Ministry and the External Affairs Ministry vetted every word. There were long discussions, arguments. I am sorry, normally it is not customary to bring in others because the Prime Minister and myself have signed. We should protect our Secretaries or the others. Wher we have placed our signatures, we are responsible. Why, I cannot defend it by the plea that this was an advice given wrongly or rightly by my Secretary or anybody else. To put the record straight, I thought that I should mention this aspect.

About the earlier agreement also, to be fair to Shastriji, I would like to remind, because, again, unfortunately, that thing was brought in. Speaking on the June 30, 1965 Agreement, Shri Lai Bahadur

Shastri stated as follows in the Rajya Sabha itself, on 24-8-65:—

> "..India was partitioned bet ween Pakistan and India, and it is but natural that there should be border disputes or border differ ences. These matters have been 'often discussed and some of the border differences have been set tled ___Therefore, I say in our border differences, on our border points between Pakistan and India as far as possible, we have to settle them peacefully. And we did enter into agreements in 1959 and 1960. These agreements are before you. They were placed before the House. Those agreements provide for certain procedures through which these differences could be processed and finally decided. So, in accordance with the terms of these agreements we felt that we should pursue this matter and as far as possible try to settle it peacefully. T, therefore, think Sir, that whatever we have done is right."

SHRI B. K. P. SINHA: My one query remains unanswered. I said the hostilities ended in April. The Agreement was signed in June, three or four months after. In between what was the advice of the Ministry of External Affairs? What were the conclusions to which they came, and was that advice adhered to when the agreement produced by Mr. Wilson was signed?

(No reply)

THE DEPUTY CHAIRMAN: Mr. Ramachandran, please be very brief.

SHRI G. RAMACHANDRAN: I am asking two questions. The Mini*' ter is in excellent form. So I think h? can throw light on all matters raised by Mr. Chagla. One was that the Tribunal went beyond its terms of reference. Do you think so? Secondly, Mr. Chagla said that it is a political award and not a judicial award. What would you say about these two points?

(No *reply)*

THE DEPUTY CHAIRMAN: Let the debate go on now.

[[THE VICE-CHAIRMAN (SHRI M. P. BHARGAVA) in the Chair.]

SHRI M. N. KAUL: Madam Deputy Chairman, I have listened with great interest to the debate in this House as also the debate in the other House and kept an open mind on this question. Now the first point that arises is the treaty-making power of the executive. So far as our Constitution goes, there is no express provision in it conferring power on the executive entering into treaties and agreements with foreign countries. But if two or three provisions of the Constitution are taken together, the necessary implication is quite clear. Entry 14 in the Union List provides:—

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

Now article 73 says:—

> '^Subject to the provisions of this Constitution the executive power of the Union shall extend (a) to matters with respect to which Parliament has power to make laws."

So it is made clear that the power of the executive to enter into treaties with foreign countries is co-extensive with the legislative power. That is the position which corresponds roughly to the position as prevails in Britain which we have inherited in this country in our Constitution.

It is clear also that there is no provision in our Constitution as there is in the United States that agreements entered into with foreign countries by that government should be subject to ratifiiation by the senate. But there have been cases where Government in their discretion have provided in the agreements themselves that the agreement should be subject to ratification by Parliament. There was one such motion which was moved by the then Prime Minister. It was a treaty with Iran.

[Shri M. N. Kaul]

The treaty itself provided that it shall come into force when ratified by the Parliaments of the two countries. So it is no doubt true that it is not obligatory on the Government to bring an agreement for ratification before Parliament in the technical sense of that word. It is still open to the Government to provide in the treaties and agreements themselves that they will be subject to ratification by Parliament.

Modern writers on these matters hold the view that a provision for ratification should, in a majority of cases,' be included in agreements, and the reason that is given is that it gives an opportunity to the States to have an opportunity of re-examining and reviewing instruments signed by their delegates before undertaking the obligations therein specified.

Often a treaty calls for amend-- ments or adjustments in Municipal law. The period between signature and ratification enables States to pass the necessary legislation or obtain the necessary parliamentary approvals, so that they may thereupon proceed to ratification. The third ground that such a provision should be included in agreements is that there is also the democratic principle that the Government should consult public opinion either in Parliament or elsewhere as to whether a particular treaty should be confirmed. It may well be that public opinion violently disapproves of the treaty, in such a case a signatory State might feel constrained not to ratify the instrument.

What I say is that we should draw some lessons from this episode, and one lesson that is clear is that in respect of an important treaty there should be a provision or ratification by Parliament; otherwise many complications arise. For instance, one question is still unresolved, namely, whether[1] in implementing this Award, cession of territory is involved or not. I think that is a moot point. Our case was that both parties agreed that the relevant date for ascertaining the boundary of Sind would be 18-7-47, the date of the passing of the Indian Independence Act. That is quite clear. There was war in Kutch in April, 1965, subsequently this war was ended by the London Agreement, it was clearly provided that the *status quo* should be restored. That is to say, both the parties should go back to the position that they occupied on 1-1-65. That is to say, one of the benefits of the London Agreement was that Pakistan was immediately and conclusively deprived of the fruits of the aggression that were achieved at.that time, and we reverted to the boundary and the position which we maintained before the Tribunal. So I feel that it can be argued with force that it would be inconsistent with our stand from the very beginning and also our stand before the Tribunal who were con-fronted with maps to say that there is no cession of territory involved in the Award. There is cession in the sense that as a result df the Award certain territories have now to be given over to Pakistan which, according to the well-established boundary belong to India. So the Government has to proceed very cautiously in this matter.

It may be that they may consult the Supreme Court. That is one of the courses open to them. But my own feeling is that the course that they are likely to take is that they will go through this Award according to the time schedule and take the risk of some one from Gujarat or elsewhere challenging the award in the courts, and there is always the risk of the courts issuing a stay order. And then the Government will say to Pakistan, "Well, so long as we are governed by our courts and so long.as the stay order subsists we cannot go ahead." So this is a question which is a very important

question and which still remains unresolved. How the future events will develop is difficult to predict.

Now, Mr. Vice-Chairman, a great deal has been said and the matter has been ' argued extensively that the Award is a political Award. When it is said that it is a political Award what is meant is that the majority have gone beyond the terms of reference. Now much can be argued on both sides. So far as I am concerned, as a lawyer I do feel quite clearly, in any case, in one instance the Chairman has gone beyond the terrhs of reference. If you read his own words, he says: —

> "in my opinion it would be inequitable to recognise these inlets as foreign territory. It would be conducive to friction and conflict. The paramount consideration of promoting peace and stability in this region compels the recognition and, confirmation that this territory, which is wholly surrounded by Pakistan territory, also be regarded as such . . ."

Now, if you read that, can there be a clearer internal evidence to show as the Chairman himself has said, that he has given those enclaves, as we are accustomed to call them, to Pakistan on the ground of promoting peace and stability? I do not question his motive, honesty or integrity. But equally according to the words used by him, it is clear that he has gone beyond the terms of reference. And he went beyond the terms of reference because he knew for certain that this award could not be questioned. It was said in the agreement "provided the decisions of the tribunal shall be binding *on both* Governments and shall not be questioned on any ground whatsoever." He also knew that the terms of reference were not demarcation only, but both determination and demarcation. "Whereas it is necessary that after the *status quo* has been established in the aforesaid Gujarat—West Pakistan border area, arrangements should be made for determination and demarcation of the border in that area . . ."

Now, in future we should draw a lesson from this episode that the terms of reference should, not be as conclusive as they are in this case. We should not be bound hand and foot to a tribunal however eminent that tribunal may be. There should be internal provisions in the terms of reference itself which will enable the parties to challenge . . .

SHRI SUNDAR SINGH BHANDARI: But what about this one?

SHRI M. N. KAUL: There should be some internal provisions in th« agreement itself which would provide a mode of challenging the award. So far as this reference is concerned, you will always be open to the charge that you have not honoured the agreement. It is not a legal question. The question is that the then Prime Minister put his signatures or authorised signatures to be put on the document. I do not know whether he himself signed it or any plenipotentiary signed it. So it is a question of honouring our word. That is the sole ground on which I put it. The Award has gone beyond the terms of reference. I feel that the Government of the day was wrong in not providing for ratification in the agreement, in not providing for other safeguards and so on. The lesson that has' to be learnt—I am more concerned with the future, is that such agreements should contain internal provisions of safeguard. The present agreement does not contain internal provisions of safeguard. It is true—I have consulted authorities—that Parliament has the sovereign right. It is not a question of Government. The successor Government has decided to follow the course that of Mr. Shastri approved and took. But Parliament can throw out the agreement. Look at the practice in U.K. which we have adopted. The texts of most international agreements are laid before Parliament for its information. Approval of the agreement or treaty is

[Shri M. N. Kaui] not requneu, but an adverse vote would prevent tneir ratification. Mo-Ihing legally 'and Constitutionally can prevent ratification of this award except an adverse vote in Parliament. So Constitutionally that is clear. Tne Government is able to get througn this award because it is its opinion that this award should be honoured and it has certain political advantages and they have the requisite majo. nty to carry it through. But tecnni-caiiy and Constitutionally, tne paramount and sovereign power is vested in Parliament. Whatever signatures may have been appended by Ministers 'and Prime Ministers, Parliament can always, in the exercise of its sovereign power, override Government and pass an adverse vote. Parliament is not bound in a matter on which its approval has not been obtained. That is the Constitutional and legal position in this matter and that is absolutely beyond doubt.

SHRI SUNDAR SINGH BHANDARI: Can the area be transferred without a Constitutional amendment?

SHRI M. N. KAUL: There may still be an opportunity for Parliament if the courts in India declare that the Award involves cession of territory. Government will have to bring forward legislation and when they bring forward such legislation—I have not studied th$_e$ matter carefully—a special majority will be necessary in both Houses to pass it.

SHRI SUNDAR SINGH BHANDARI: Will not a Constitutional amendment be needed?

SHRI M. N. KAUL: If it is held by courts that it is cession of territory there will have to be an amendment of the Constitution. But the Government take a contrary view. They say that it does not involve cession of territory. I think it would be inconsistent with their stand to say that it involves no cession of territory. It does involve cession of territory unless the courts take the view that the boundary determined by the Award should be deemed to be the boundary $_a$t the time of partition.

Tnis debate in both Houses has been a very healthy and good debate. But if the lessons are not drawn, ii they are not crystallised in resolutions iormaily moved and approved here, the same kind of mistake may be made by the Executive. The Executive is prone to make mistakes. It is the duty of Parliament to be watchful and correct these mistakes. About this particular agreement, there is no question of throwing it overboard except by an adverse vote of Parliament.

SHRI ARJUN ARORA (Uttar Pradesh): Mr. Vice-Chairman, Sir,- I rise to support the decision of the Government to accept the award of the tribunal. When I say that I support the decision $_0$t the Government to accept and implement the 'award of the Kutch Tribunal, I do so with the utmost sorrow. I share the sorrow and the anger and the anxiety of friends like Mr. Rajnarain, that some territory which we claim is ours is going to a neighbouring country. But I feel that the fact that we entered into an agreement that we would honour the verdict of the tribunal and that whatever the verdict of the tribunal it would be binding and shall not be challenged by 'any party anywhere under any circumstances, is something which we should not forget.

I am sorry. Sir, that today a number of Members of this House remarked that we in this country were led by idealists like Jawaharlal Nehru and Dr. Radhakrishnan. I personally feel that some sort of idealism is necessary in every leader. I feel that if Mr. B. K. P. Sinha did $_n$ot waste all his time in a district court but took to Congress work it was because of some idealism. If Mr. Rajnarain who came from a rich zamindar family did not become a richer zamindar, but became a fighter for the downtrodden, it was because of some ideal-

ism. If the idealism of Mr. B. K. P. Sinha and the idealism of Mr. Raj-narain . . .

श्री राजनारायण : श्रीमान्, यह गलत कह रहे हैं कि मैं किसी बड़ी जमींदार फैमली से आता हूं । मैं किसान हूं और किसान का बेटा हूं ।

SHRI ARJUN ARORA: If the idealism of Mr. B. K. P. Sinha and the idealism of Mr. Rajnarain has to be admired, the much superior and lofty idealism of Jawaharlal Nehru and Dr. Radhakrishnan has also to be admired.

श्री राजनारायण : आप आइडियलिज्म और आइडल में कंफ्यूजन मत कीजिये । वे आइडल थे और मैं आइडियल हूं ।

SHRI G. RAMACHANDRAN: He is talking about idealism, not ideal.

SHRI ARJUN ARORA: Mr. Rajnarain has forgotten whatever English he learnt at the Banaras Hindu University.

श्री राजनारायण : हम तो हिन्दी हैं ।

श्री अर्जुन अरोड़ा : हां हिंदी हैं, हिन्दी में आदर्शवाद इसको कहते हैं ।

श्री राजनारायण : उस में फर्क है ।

SHRI ARJUN ARORA: There are certain elements in this country who are opposed to every international agreement. Sir, I would like the' Members of this House and the country at large to go into the history of all the international agreements to which this country has entered into. There are certain elements, notably the Jana Sangh and the S.S.P.. which have always opposed them.

SHRI SUNDAR SINGH BHANDARI: Because you enter into wrong agreements.

SHRI ARJUN ARORA: They have opposed all the agreements and it appears that if they have their sway and if unfortunately they come into power, which they never will they will not enter into any international agreement and will rely on perpetual warfare with the neighbours. I personally feel, Sir, that it is not a correct Way for lany good citizen, because while we are the citizens of this country, while we are sons aad daughters of this country, we are also citizens of the world and it is necessary that we should develop traditions of friendship and good neighbourliness with our neighbours and try to settle all our disputes with our neighbours around the table by direct negotiations and when the negotiations fail, by resort to arbitration by a mutually accepted tribunal or party or whatever it is. Bilateral talks of course come first. If persistent bilateral talks do not produce the desired result or settlement, there are only two ways open, war or arbitration. There are only three ways of settling international disputes, by diplomacy which means bilateral talks by reference to Tribunals and by warfare. Sir, before this Award came and before this debate took place, I never realised that the dispute about certain portions of the Rann of Kutch was such an old dispute that there were not once, twice, but a number of meetings and discussions and bilateral talks to settle the dispute and the bilateral talks failed and in 1965 it led to a war. Now, sir, we have to refer to the mention of the Kutch war of 1985 in this House and elsewhere. Sir, the same elements which are opposing the acceptance of the Award today were blaming our Army, were blaming our Government for their performance In the battle in the Rann of Kutch.

SHRI SUNDAR SINGH BHANDARI: Because they did not defend it.

SHRI ARJUN ARORA: I want you to say that. Now according to ' my friend, Mr. Bhandari, the war was not going in our favour and if the war was not going in our favour and

[Shri Arjun Arora]

if we decided to end the war -ind took recourse to a Tribunal, we were no fools, we were wise in that *(Interruptions.)*

श्री राजनारायण : आप कहिए कि डिफेन्ड नहीं कर सकते थे इसलिए ट्रिब्यूनल में गए ।

श्री सुन्दर सिंह भंडारी : कहिए कि हम इसलिए गए ।

. SHRI ARJUN ARORA: I am not the Government. But 1 want Mr. Bhandari and Mr. Rajnarain tp realise the logical conclusions of their own statements, and I want them to remember the statements which they made in 1965. Either they were incorrect then or they are incorrect

श्री राजनारायण : इसको साफ कीजिए कि हम उस समय कैसे इनकरेक्ट थे और आज कैसे इनकरेक्ट हैं ?

श्री अर्जुन अरोड़ा : आप दोनों समय इनकरेक्ट हैं । उसको साफ करने की जरूरत नहीं है ।

श्री राजनारायण : यह रेडियो मास्को बोल रहा है ।

श्री अर्जुन अरोड़ा : मास्को की तरफ से तो भूपेश गुप्त बोलेंगे । मैं तो कानपुर की तरफ से बोल रहा हूं, कानपुर के गरीब मजदूरों की तरफ से बोल रहा हूं जिनकी सेवा में मेरी सारी उम्र गुजरी है ।

श्री राजनारायण : 1924 में वे सब से पहले कानपुर में आए ।

श्री अर्जुन अरोड़ा : सब अच्छी चीजें कानपुर से शुरू होती हैं । आपकी पार्टी ने यही गलती की कि उसकी शुरुआत कानपुर से नहीं हुई ।

SHRI ARJUN ARORA: Sir, the time at my disposal is very limited and I may be allowed to come to the subject. The agreement whoever drafted it was a foolproof agreement. Particularly articles 3 (ii) and 3 (iv) have to be read with care.-In article 3 (ii) it is said "... shall be referred to the Tribunal for determination of the border jn the light of their respective claims and evidence produced before it and the decision of the Tribunal shall be final and binding on both the parties."

SHRI ARJUN ARORA: This article says that the decision of the Tribunal shall be final

श्री राजनारायण : सुनो, हमारा कहना है कि दो ही क्लेम थे, इंडिया का और पाकिस्तान का । इंडिया का क्लेम था कि डिमारकेशन होना चाहिये, रेल स्टेबिलश्ड बाउन्डरी है, पाकिस्तान का कहना था कि नहीं, 3500 वर्गमील जमीन का, टेरीटरी का सवाल है । इन्हीं दो में फैसला करना था, यह नहीं था कि 3500 वर्गमील में से काट कर 350 वर्गमील दे दें ।

श्री अर्जुन अरोड़ा : ऐसा लगता है कि राजनारायण जी कभी किसी अदालत में न वकील की हैसियत से गए हैं, न गवाह की हैसियत से गए हैं, सिर्फ मुलजिम की हैसियत से गए हैं । और जब मुलजिम की हैसियत से गए हैं तब भी उन्होंने अदालत की कार्यवाही में हिस्सा नहीं लिया ।

श्री राजनारायण : हमने बराबर अपना केस खुद डिफेंड किया है ।

and binding on both the parties. As Sardar Swaran Singh very ably pointed out, it is binding as much on Pakistan as it is binding on India and it would nave been as much binding on Pakistan as on India even if the entire claim of Pakistan was totally rejected. Mr. Rajnarain thinks an international Tribunal is like a witness who had to say 'yes* or 'no*. Now I remind him

of an old story. Somebody came to the witness box and he was asked a question: When did you stop beating your wife? He was asked to give a day. Such a thing, Mr. Rajnaiain should remember, could not be placed before the Tribunal and the Tribunal could not be compelled to say 'yes' or 'no' in one word to the claim either of India or of Pakistan. The Tribunal has considered the respective claims and evidence produced before it by both the sides. When I heard Mr. Chagla for the first time in this House on this subject, I had not got the Award with me. But today I could not follow how a jurist of the eminence of Mr. Chagla ignores the significance of the word 'determine'. He ignores the significance of the word 'determine' in this article. Mr. Chagla wanted to make a subtle distinction and said that the Tribunal was only to say about the border, where it is and not where it should be. The Tribunal was of the view and all the three Judge$_s$ of the Tribunal were of the view that their function was to decide as to where the border should be and that alone will come within the mischief of the meaning of the word 'determine'. Otherwise the word 'demarcation' would have been used.

श्री राजनारायण : मिस्टर अरोड़ा, अगर आप पढ़ेंगे ट्रिब्युनल के चेयरमैन के फैसले को तो वह भी यह मानता है कि उसे नई बाउन्डरी क्रिएट करने का अधिकार नहीं है ।

6 P.M. . SHRI ARJUN ARORA: The word 'determine' does not mean 'demarcation'. The word 'determine' means that the Tribunal on the basis of the evidence produced by both the sides, will decide what the boundary should be . . .

SHRI SUNDER SINGH BHANDARI: Including the enclaves.

SHRI MULKA GOVINDA REDDY: That is what they have done.

SHRI ARJUN ARORA: Enclaves ate part $_0$f the boundary. Enclaves are not separate from the boundary.

SHRI SUNDER SINGH BHANDARI; Also coming under the demar. cation.

THE VICE CHAIRMAN (SHRI M. P. BHARGAVA): Mr. Arjun Arora, it is time to wind up. Take one of two minutes more.

AN HON. MEMBER: He can continue tomorrow.

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SHRI ARJUN ARORA: I shall continue tomorrow.

THE VICE-CHAIRMAN (SHRI M. P. BHARGAVA): No, no. You may take a couple of minutes more.

SHRI ARJUN ARORA: Sir, I am glad that some Members of this House correctly pointed out that the agreement and our duty to honour the agreement is an international commitment. India has a place in the comity of nations which is a glorious one and in order to continue to be in that place, in order to continue the reputation that we enjoy as a peace-loving country, it is our duty to ftonour an international commitment and to implement the Award, which in any case, is binding upon us. I am afraid.

SHRI SUNDER SINGH BHANDARI: The Prime Minister has different ideas about it.

SHRI ARJUN ARORA; I am not the Prime Minister.

SHRI SUNDER SINGH BHANDARI: You are defending her.

SHRI ARJUN ARORA: The meeting being held at Delhi since yesterday between the representatives of India and Pakistan has also been assailed by some Members of this House, both yesterday and to-day. I think this meeting is also a part of the agreement. The .agreement which Is an-

[Shri Arjun Arora] nexure I to the Award correctly lays down that the representatives of the two Governments shall meet at Delhi not later than two weeks after the Award is rendered to discuss and decide upon certain things.

AN HON. MEMBER: Within one month.

SHRI ARJUN ARORA: This was also a part of the agreement. This meeting was also a part of the agreement.

SHRI B. K. P. SINHA: Yesterday.

THE VICE-CHAIRMAN (SHRI M. P. BHARGAVA): No, no, please. No. more.

SHRI ARJUN ARORA: With these words, I support the decision of the Government to accept and implement the Award and I know that this is in the best interests of the country.

THE VICE-CHAIRMAN (SHRI M. P. BHARGAVA): The House stands adjourned till 11 A.M. tomorrow.

The House then adjourned at four minutes past six of the clock till Eleven of the clock on Wednesday, the 6th March, 1968.

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68—570.