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Editors
O. H. DE A. WIJESEKERA
G. C. MENDIS

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UNIVERSITY OF CEYLON REVIEW

The University of Ceylon was established on the 1st July, 1942, by the fusion of the Ceylon Medical College (founded 1870) and the Ceylon University College (founded 1921). It has at present Faculties of Oriental Studies, Arts, Science and Medicine. Its seat is temporarily in Colombo, but it will be moved to Peradeniya, near Kandy, as soon as its new buildings are ready for occupation. The University has taken over from the Government of Ceylon the publication of the Ceylon Journal of Science, which will be developed as its chief means of contact with Scientists elsewhere as soon as paper supplies enable issues to be published more frequently and regularly. The University of Ceylon Review has been founded in order to make similar contact with scholars in literary subjects, to provide a medium of publication for the research in those subjects conducted in the University, and to provide a learned review for Ceylon. The Review will normally be published twice a year, in April and in November. The price of a single copy is Rs. 2.50.



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The Evolution of the New Constitution

THE stages of the evolution of the new Constitution of Ceylon were marked by six documents :—

- (1) The Declaration of His Majesty's Government in May, 1943,¹ which must be read in the light of the Ministers' interpretation of it.²
- (2) The Draft Constitution prepared by the Ministers and published in September, 1944.³
- (3) Mr. D. S. Senanayake's Memorandum to the Secretary of State for the Colonies in July, 1945.⁴
- (4) The Report of the Soulbury Commission published in London in September, 1945.⁵
- (5) The White Paper on Constitutional Reform in Ceylon issued by His Majesty's Government in October, 1945.⁶
- (6) The Ceylon (Constitution) Order-in-Council, 1946.⁷

(1) *The Declaration of 1943 :*

As is customary with such documents, the Declaration of 1943 was issued without any kind of explanation, written or oral. It was a bare statement of policy preceded by a preamble reciting the Declaration of 1941 and asserting that it was in the general interest to give greater precision to that Declaration by removing any doubts. There never were any doubts about the Declaration of 1941; the Declaration of 1943 did not give greater precision to it ;

1. Sessional Paper XVII of 1943, pp. 3-4.

2. *Ibid.*, pp. 4-5.

3. Sessional Paper XIV of 1944.

4. This document has not been published because it contained references to confidential matter. A full account has been published in *Ceylon's Path to Freedom*.

5. Cmd. 6677.

6. Cmd. 6690.

7. *Ceylon Government Gazette Extraordinary*, No. 9554, 1946.

and the Ministers accepted the Declaration of 1943 after rejecting the Declaration of 1941 because the later document, at least in their opinion, offered something quite different from the earlier. After the submission of the Ministers' Draft the Secretary of State for the Colonies sought to show that the Declaration of 1943 pledged His Majesty's Government to nothing that was not in the Declaration of 1941. This appears to be an argument developed to mark a change of policy⁸ and it had no influence on the evolution of the new Constitution save that it gave rise to the dispute which led the Secretary of State to invite Mr. D. S. Senanayake to London in July 1945. The preamble was not in any sense an explanation of the Declaration of 1943.

That Declaration was by no means easy to construe. It stated that the post-war re-examination of the reform of the Constitution would be directed towards the grant to Ceylon by Order-in-Council of full responsible government under the Crown in all matters of internal civil administration.

It went on to deal in paragraphs (2) to (6) with limitations on full self-government, mainly but not exclusively in the realms of defence and external policy. It then stated in paragraph (7) that the framing of a Constitution in accordance with the terms of this Declaration would require such examination of detail and such precision of definition as could not be brought to bear during the war. His Majesty's Government would, however, once victory was achieved, proceed to the examination by a suitable commission or conference of such detailed proposals as the Ministers might in the meantime have been able to formulate by way of a complete constitutional scheme; subject to the clear understanding that acceptance by His Majesty's Government of any proposals would depend first, upon His Majesty's Government being satisfied that they were in full compliance with the preceding portions of this statement and, secondly, upon their subsequent approval by three quarters of all the members of the State Council excluding the Officers of State and the Speaker or other Presiding Officer.

In the absence of any kind of explanation, official or demi-official, of this curious document, the Ministers had to make of it what they could. To one accustomed to an atmosphere of live democratic discussion, the public reactions seemed singularly passive. This Declaration was the most important political document since 1928, yet very few even among the educated middle-class formed any kind of opinion about it. Among the very small sections which studied it, there seemed to be four classes of opinion:—

- (i) There was a substantial group which was inclined to emphasise the promise of full responsible government in all matters of internal

civil administration and what seemed to be the implicit undertaking to accept any Constitution which satisfied the five conditions (2) to (6) and which was accepted by three-quarters of the State Council. Whatever tortuosities there might have been in the local application of British colonial policy, this group thought that His Majesty's Government had carefully weighed the local situation, had been convinced of the desire and the need for internal self-government, had realised that the communal problem could not be solved by negotiation but could be solved by the Ministers if they were given the opportunity, but distrusted the inexperience of Ceylon politicians in matters of defence and external affairs, above all in a troubled post-war world.

- (ii) There was a second group, closely allied in general political sympathy, but affected by the left-wing opinion expressed, for instance, in J. A. Hobson's *Imperialism* and Lenin's perversion of it—that British colonial policy was designed to secure economic "exploitation." This group studied the conditions suspiciously, thinking it probable that they contained some device by which Great Britain could accord the façade of political freedom while maintaining economic control. They found that device in paragraph (5) and in the provisions relating to trade agreements. It was possible so to interpret these provisions, they thought, as to leave economic policy in the hands of the British Government and thus to render the grant of responsible Government nugatory.
- (iii) The third group was even more suspicious. Great Britain, they thought, never gave up control voluntarily. The Declaration was a device to stave off agitation for the duration of the war, and in the end it would find some excuse—probably the communal problem—to refuse self-government and maintain British hegemony. The Declaration was a bluff.
- (iv) The fourth group was heterogeneous but generally "left" in political tendency. They had not the slightest faith in His Majesty's Government. Its aim was clearly imperialist exploitation. It had not the slightest intention of granting self-government. It was, however, quite willing to ally itself with the Ceylonese capitalists, whose strength rested on their Imperial "masters" and who were prepared to betray their country in order to share in the exploitation of the masses.

There were certain cross-currents of opinion produced, in the main, by those who thought of the constitutional problem primarily in communal terms. At this stage, however, the currents were somewhat erratic; and it was only

8. See Jennings, "The Appointment of the Soulbury Commission," *University of Ceylon Review*, Vol. III, No. 2

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when the Ministers' intentions became clear that it was suggested with any great force that His Majesty's Government had surrendered to the Sinhalese the means for obtaining Sinhalese domination.

The general inclination of the Ministers seemed to be towards the first group. Those in the first group could, however, secure the support of the second group by making very precise their interpretation of the conditions of the Declaration. Moreover the third group was prepared to render assistance because even if the Declaration was a bluff it would be tactically wise to call it. Internal self-government, if it could be attained, was better than the Donoughmore Constitution; and if the bluff was called they would either secure internal self-government or make it clear that a strong and united agitation was necessary to force the hands of the "ruling race." The Declaration was issued on the 26th May 1943. On the 31st May the Board of Ministers decided to accept the Declaration subject to an interpretation to be read in the State Council on the 8th June. At its meeting on the 7th June the terms of the Ministers' statement were agreed upon.

The Statement's aim was to press the Declaration as far as possible in the direction of self-government. It emphasised the undertaking for full responsible government in matters of internal civil administration. It claimed that the Declaration went further because it gave the responsible Ministers powers, though not exclusive powers, over defence and external affairs. In relation to internal affairs it claimed full control over finance. It read limitations into the Governor's power to reserve Bills and it translated subparagraph 5(a) of the Declaration relating to Bills of an economic character into the standard pre-1900 Dominion formula, which appeared in the Instructions of 1931. Apart from Bills dealing with currency, the only Bills of an economic character reservable by the Governor would fall within the formula:—

"Any Bill of any extraordinary nature and importance whereby Our Prerogative, or the right and property of Our subjects not residing in the Island, or the trade and shipping of any part of Our dominions, may be prejudiced."

It was also asserted categorically that "every matter which is not defence or external affairs can only be regarded as a matter of civil administration, for example the determination of the composition of the population of Ceylon, protective duties, trade and shipping," though subject, in the case of trade and shipping, to the power of reservation.

This was, perhaps, an unexpected response to the Declaration. Since His Majesty's Government had not told Ceylon what the Declaration meant, Ceylon told His Majesty's Government what it meant. Moreover, one section of opinion, the every suspicious section, insisted that no action be taken until

the Secretary of State expressed his acceptance of the Statement. At first he read it only "with great interest;" but after a vigorous protest he could not find in the Statement anything which must be regarded as essentially irreconcilable with the conditions contained in the Declaration.⁹

(2) *The Ministers' Draft:*

The Ministers had stated on the 6th July 1943, that they would not undertake the drafting of a Constitution unless a satisfactory reply was received to their Statement. Actually, the first rough draft of the Constitution was already in existence, for it had been completed on the 26th June, though it was not yet in a fit state to be discussed by the Ministers. The preliminary discussions continued after the telegram of 11th July from the Secretary of State, and the draft, further revised, was circulated to the Ministers on the 10th October.

The problem which faced the Ministers was twofold. In their view His Majesty's Government was concerned only with the matters specified in the Declaration, and in particular with the relations between Ceylon and Great Britain. The conditions of the Declaration required complicated drafting because a line had to be drawn around defence and external affairs in order to prevent the Governor from encroaching on the powers of Parliament. Nearly a hundred years ago the Australian colonies tried to define "matters of Imperial concern," and failed: Ceylon had to renew the attempt. The Ministers' effort was so far successful as to receive the approval of the Soulbury Commission, with slight modifications, but the Ministers themselves knew that they had failed. The system of dyarchy provided by Part IV of the Ministers' Draft could not work in practice; and the Soulbury Commission, instead of improving it, made it even less workable. Of course, the Ministers were not very concerned to make it workable. They made an honest attempt to carry out the Declaration as interpreted by their Statement of June 1943; but they were more anxious to protect the powers of Parliament than to give the Governor powers that he could exercise. They gave him the powers required by the Declaration but denied him power to tax or to give instructions to public officers. The Soulbury Commission recommended a power to instruct public officers but not a power to tax. The ultimate allocation of expenditure on defence was to be settled by negotiation. Meanwhile, of course, the Governor had no power to spend unless the Imperial Government provided the funds. Clearly the whole scheme would break down in an emergency and would not be required when there was no emergency. Mr. Senanayake was thus presented with an unanswerable case for abolishing the whole scheme, and the White Paper substituted a legislative control by

9. Sessional Paper XVII of 1943, pp. 5-6.

Order-in-Council, a control which would exist in any case if a power of legislation was reserved by the Crown.

In other respects the Ministers' task was to secure a draft which would be supported by three-quarters of the State Council. This requirement settled out of hand one of the most difficult questions, whether there was to be a Second Chamber. One of the drafts included provision for a Second Chamber on the South African model, but it was soon seen that neither this draft nor any other could secure a three-quarters majority. On the other hand, a draft providing Single Chamber government might equally fail to secure the requisite majority. Accordingly, a compromise was inserted. The legislature would consist of one Chamber only in the first instance but that Chamber could, by bare majority, create a Senate. It was felt that nearly all the members of the State Council could support this compromise without doing violence to their convictions.

The three-quarters rule also helped towards a solution of the problem of representation, the most difficult of all. It necessarily excluded any type of communal or "balanced" representation because clearly the requisite majority could not be obtained. On the other hand, account had to be taken of the desire of a great many electors to be represented by members of their own communities. Whether or not they ought to have this desire was beside the point. Given that desire, the result of plain territorial representation might be that outside the Northern and Eastern Provinces all the members were Sinhalese. The proposal, which ultimately secured acceptance, to double the number of constituencies would help the minorities because they were in substantial pockets; but on a strict territorial basis they ran the risk of getting no more than 12 seats in a House of one hundred. It was clear that some system of weightage had to be adopted. It should, however, be based on a principle, not on a numerical ratio. Such a ratio would be purely hypothetical because it would assume (which is not the case) that votes would be cast not only communally, but also in proportion to the communal analysis of the population. If the Sinhalese are 66 per cent. of the population, it does not follow that 66 per cent. of the votes will be cast for Sinhalese candidates, and if 66 per cent. of the votes are cast for Sinhalese candidates it does not follow that 66 per cent. of the members will be Sinhalese. If a 60-40 ratio were adopted and the minorities obtained only 35 seats, they would feel that they had been betrayed.

The solution was found in precedents in Great Britain and South Africa. Weightage for sparsity of population would help the minorities because they were mostly concentrated in the least populated Provinces. It was found that on the 1931 figures if one seat was given for 75,000 inhabitants and one for 1,000 square miles of area, the weightage for area would be 25 in a House

of 95, and that of the 25 no less than 20 would be in the Tamil and Kandyan Provinces. No attempt was made to assess the communal distribution until the members of the State Council began discussing ratios, when a rough guess was made unofficially. The figures produced before the Soulbury Commission¹⁰ were entirely unofficial. They had not been seen, still less approved, by the Ministers.

In fact, the Ministers did not discuss representation until January 1944. The representation clauses were in the original draft but were then removed. While Mr. Bandaranaike's committee of State Councillors was trying to reach a compromise on representation there were no representation clauses. After that committee had failed to reach agreement the clauses were restored to the draft, but they were not discussed, and instead the Ministers invited the minority members to submit proposals. When nine of these members asked to see the Ministers' own proposals there were none, for none had been discussed. Failing a better proposal, therefore, the Ministers considered those in the draft in January 1944 and accepted them subject to a dissent by Mr. A. Mahadeva. The paragraph of the Soulbury Report which deals with the history of the representation clauses¹¹ is thus inaccurate. What is correct is that the Ministers did not submit to public discussion the proposal which they accepted on the 4th January 1944 and included in the draft which went to the Governor on the 2nd February.

The rest of the Constitution was comparatively easy. The Declaration of 1943 had required "responsible government." The term is no doubt ambiguous. In a technical sense it implies a Cabinet system of government; in a broader sense it is a synonym for self-government. Possibly His Majesty's Government meant it in the latter sense, but the Ministers could not run the risk of being told that their Constitution did not satisfy the Declaration, and in any event experience of the Donoughmore Constitution had shown the attractions of Cabinet Government. The provisions (section 8 of the Ministers' Draft) limiting the powers of Parliament in religious matters, the discretionary powers of the Governor, and the independent commissions for appointments, were all necessary to meet the fears of the minorities; and indeed every possible constitutional device to satisfy the minorities, short of communal representation, was inserted.

(3) *The Soulbury Report :*

The Ministers' Draft was not defended before the Commission by anybody who had taken part in its formulation. Some of the independent witnesses were favourable to it, and others merely wanted amendments such as the

10. Cmd. 6677, p. 73.

11. *Ibid.*, para. 91, pp. 30-31.

establishment of a Second Chamber. None of the Ministers gave evidence, however. There was no "boycott," and most of the Ministers met the Commissioners socially. Its members were also shown what they wanted to see—schools, colonization schemes and industrial experiments especially. The statement in the Prologue to the Report¹² that "the Hon. Mr. D. S. Senanayake . . . had an opportunity of expressing his views to us in a series of most valuable private discussions" may easily be misunderstood. There is a difference between a systematic exposition of a case and a process of answering any questions that may be put: and the Commission never had a systematic exposition of the Ministers' Draft, either from Mr. Senanayake or from anybody else.

Nevertheless, the Commission accepted the main lines of the Ministers' scheme. They insisted on a Second Chamber; and history may perhaps question whether this scheme, which was based on the Burma precedent, was better than the South African scheme originally suggested. In relation to representation they really did nothing more than suggest, rather casually, the establishment of multi-member constituencies. What made such constituencies possible, however, was the subsequent decision of the Board of Ministers, again taken in the interest of minorities, that "plumping," or the accumulation of votes, might be permitted. Multi-member constituencies with the existing franchise, as recommended by the Commission, would in fact have operated against the minorities. The power to vary the factor of numerical equality was not a change at all, for it was implicit in the Ministers' Draft; and it is significant that the language of the Order-in-Council reverts to that of the Ministers.

In relation to defence and external affairs the essential principles of the Ministers' scheme were accepted; but, as has been mentioned above, the provisions were made more complicated. Also, a power was to be reserved to the Crown in Council to legislate on defence and external affairs. In other respects the only substantial modification of the Ministers' Draft was a considerable enlargement of the powers of the Public Services Commission.

The Soulbury Report, like all such documents, is a somewhat patchy document. So far as it deals with political and economic issues it is excellent. The general survey in Chapters I to VI is very good, though in Chapter V it does not do justice to the Ministers in relation to the dispute over the appointment of the Commission. They had an unanswerable case,¹³ and the Chapter falls very far short of meeting that case. Opinion may differ on Chapters VII to XI, which deal with various minority issues, including the Kandyan claim.

12. *Ibid.*, p. 4.

13. Jennings, *op. cit.*

Subsequent Chapters lack that quality which the Donoughmore Report also lacks, what is sometimes described as a "feel" for political institutions. It is a peculiar quality, shared by very few, for it consists in a capacity to fashion institutions adapted to the oddest specimen of the human species, homo politicus. Certainly the provisions relating to defence and external affairs could never have worked in any country, above all in Ceylon. It must be remembered, however, that the Commissioners like the Ministers were bound by the terms of the Declaration. The fundamental defect lay in the Declaration itself.

(4) *Mr. Senanayake's Memorandum:*

Mr. Senanayake's visit to London in July 1945 arose out of the dispute over the terms of reference of the Soulbury Commission. Even if the Ministers' contention¹⁴ be not accepted, it will be admitted that the dispute was badly handled by the Colonial Office. However favourable to the Ministers' scheme the Soulbury Report might be, a substantial section of Ceylon opinion had been antagonised; and if the Soulbury Report differed fundamentally from the Ministers' scheme, it would almost certainly be rejected in Ceylon. Colonel Oliver Stanley saw that nothing would be gained by cross-talk through the Governor, while he might be able to reach agreement by direct negotiation with the Leader of the State Council. He therefore invited Mr. Senanayake to London with the intention, apparently, of putting specific proposals before him which it might be possible for the Ceylon Ministers to accept. The Ministers very properly gave Mr. Senanayake a free hand while reserving to themselves the right to accept or reject any proposals which he might receive—a decision, incidentally, which was immediately misrepresented in the British press.

Mr. Senanayake's visit coincided with the General Election, and his negotiations did not begin until Mr. George Hall had become Secretary of State in the Labour Government. This had the important result that he was asked to submit proposals instead of receiving them. It is very doubtful, however, whether the change of Government really affected the situation. While it is true that a Labour Government was likely to grant self-government more easily than a Conservative Government, the policy was fundamentally the same, and a new Government was unlikely to decide out of hand questions affecting the defence of the Commonwealth. The view that the situation was altered by the change of Government derived from the belief, widespread in Ceylon as elsewhere, that colonial policy depended primarily upon economic considerations. It would be an exaggeration to say that such considerations were entirely without influence, but essentially the problem of Ceylon was

14. *Ibid.*

viewed as a problem of defence and external affairs, and on these matters there was little difference between the parties. The decisions taken by His Majesty's Government had in fact, the support of His Majesty's Opposition.

Unlike the Ministers and the Soulbury Commission, Mr. Senanayake was not bound by the terms of the Declaration of 1943. It may not have been anticipated that he would reopen the whole question of the status of Ceylon, but he was at liberty to make what proposals he pleased. Even had he wished to do so, however, he could not have been satisfied with the Ministers' Draft. Had it been accepted by His Majesty's Government early in 1944 it would certainly have been approved by the necessary majority in the State Council; but the appointment of the Soulbury Commission had delayed matters, and what was acceptable in 1944 was no longer acceptable in 1945. The war in Germany had ended, there was some prospect of an early end of the war against Japan, and Burma had been promised full self-government. In Ceylon itself the terms of reference of the Soulbury Commission, which seemed to be in conflict with the Declaration of 1943, had antagonised a substantial section of political opinion; and the Sri Lanka Bill, which was the Ministers' Draft shorn of its restrictive clauses, had been passed by the State Council. The political opinion which supported Mr. Senanayake expected something more favourable than the Ministers' Draft.

On the other hand, it was useless to make proposals which would not be accepted by His Majesty's Government, unless indeed the intention was to create an impasse in the hope that in the end better terms would be obtained by non-cooperation. The Ministers' policy throughout had been to get what they could by peaceful negotiation. In India a different road had been travelled and in Burma there had been collaboration with the enemy. For better or for worse Ceylon had chosen the method of collaboration, a method which, whether or not it be attuned to the popular taste, certainly accorded with the views of the Ministers themselves.

Mr. Senanayake's task was, therefore, to propose a scheme which was capable of being accepted but which gave the maximum of autonomy to Ceylon. In this connection, two facts must be borne in mind. The first is that this is a hard world in which aggressors are not unknown; and the potential aggressors are not necessarily those who have committed aggression in the past. Until a truly international government is established, every country will be compelled to assume the possibility of aggression, even from the most unlikely quarters. A small country like Ceylon must, therefore, choose a protector, for it clearly cannot defend itself in days when the Ceylon Light Infantry is as useful as a toothpick in a coal-mine. It is a country which must be defended by Great Britain in its own interest: why not let the British defend the Island in Ceylon's interest also? Great Britain alone of all the powers has no need

to make Ceylon the victim of aggression. Secondly, Ceylon is a poor country, dependent in large measure on the British market, and likely to have difficulties over foreign exchange unless it can have an assured source of income independent of the fluctuations in the prices of tea and rubber. A few millions of Imperial money, spent on naval bases and aerodromes, would give stability to its exchange position and an assured source of revenue.

To anyone whose thoughts are not bound by Marxist chains, the foundation of the limitations in the Declaration of 1943 was not anxiety for "imperialist exploitation" but fear that the Island would cease to be a link in the chain of Imperial defence. The emphasis was not upon economic relations but upon defence and political relations. References to currency, banking and trade relations were incidental, and their force had been weakened by the acceptance by the Soulbury Commission of the Ministers' interpretation of the Declaration of 1943. The problem was, therefore, to meet the fears on defence and foreign affairs while securing the maximum of autonomy. The nature of the solution had already been indicated in Burma: it was Dominion status with an agreement about defence, backed by an assertion, which the Soulbury Commission had made easy of support, that special powers as worked out by the Ministers' Draft and the Soulbury Report would break down when they were most needed.

To the impartial observer who knows British opinion better than he knows that of Ceylon, the chances of success seemed high. Possibly Dominion status could have been obtained if the scales had been tipped by only a little. It may be—none can either affirm or deny an assertion so subjective in its implication—that had the communal problem not received such insistence in London at this stage, the decision would have been different. The case founded on defence certainly seemed to be convincing. Possibly the real obstacle was one which had not been foreseen at all, the problem of India. It had not appeared necessary to meet the argument that Ceylon could not be given Dominion status before India. On the contrary, it was felt that the unsolved problem of India gave Ceylon an advantage. While India was following the path of distrust and non-cooperation, Ceylon had accepted the task of drafting a Constitution and was now seeking Dominion status by negotiation. This ignored a factor which ought never to be forgotten, that the Government of the United Kingdom is extremely sensitive to its own public opinion. What mattered was not so much the effect of Ceylon's attitude on India as its effect on British public opinion in relation to India. On that subject there was a public opinion, an opinion which expected the Labour Government to produce a solution acceptable to India. There was no public opinion on the subject of Ceylon, and it would be astonished to discover that Ceylon had been accorded Dominion status while the Indian problem was wallowing in controversy.

Possibly, as always, there was a variety of reasons—the problem of India, the communal propaganda, the importance of Ceylon in Imperial defence, the distrust of the European business community, the caution of officials who never like leaps in the dark, the inexperience of the Labour Ministers, the attitude of the Colonial Secretary himself, and maybe others. They would not have been conclusive if the Island had kept a good public relations officer in London since 1931, or at least since 1941. Even Ceylon House, an obscure shop window in a somewhat unfashionable corner of the West End, had been closed since 1939, while just opposite Canada and the Union of South Africa had their palatial buildings. Ceylon had been content to be lumped with “the colonies,” admirably sentimentalised by the public relations department of the Colonial Office which could not, however, draw a distinction between Nigeria and Ceylon. There was in consequence no public opinion about Ceylon. The members of the Cabinet would have achieved no political kudos from giving Ceylon Dominion status. They therefore had no reason for taking a spectacular decision; and what Mr. Senanayake obtained was not Dominion status but the White Paper.

(5) *The White Paper :*

The White Paper was not a despatch to Ceylon but a Command Paper presented by the Secretary of State for the Colonies to Parliament. Its main purpose, therefore, was to inform the Parliament of the United Kingdom of the policy of His Majesty's Government. Its first nine paragraphs form a summary statement of the problem; and only the last three paragraphs are of interest to Ceylon. It may be noted, however, that the earlier paragraphs emphasise, as all the documents emphasise, the importance of defence, external affairs and the minority problem. The local political controversies, which emphasise economic relations, inevitably produce a misunderstanding of the problem as Great Britain sees it. The notion that behind all this talk about defence, external relations and minorities there is a deep-laid plot to maintain “imperialist exploitation” is, to anyone with any knowledge of the working of the British system of Government, mere moonshine.

Mr. Senanayake's claim for Dominion status was not accepted; but paragraph 10 makes clear that, subject to successful working of the new Constitution, it is merely postponed. The argument in paragraph 10 that advance to Dominion status has been achieved by modification of existing constitutions and the establishment of conventions is weak. It does not apply to the youngest Dominion, Eire; India was not offered Dominion status by evolution; the promise to Burma was not a promise to encourage evolution. The fact is that the Cabinet had decided against immediate Dominion status and the draftsman was set the task of justifying it. He wished to encourage and yet

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to procrastinate. Given successful working of the new Constitution and a final solution in India, the obstacles to Dominion status should not be serious.

Important modifications in the Soulbury Scheme were, however, accepted:—

- (a) His Majesty's Government was not prepared to leave the question of the Second Chamber to the new House of Representatives; but the senators' period of office was reduced from nine years to six.
- (b) Mr. Senanayake's argument that the Governor's reserve powers would break down as soon as they were sought to be exercised was accepted, and a reserve power of legislation by Order-in-Council was substituted.
- (c) Mr. Senanayake's proposal that Ceylon be transferred to the Dominions Office was not accepted, and in consequence the Ministers' proposal to have a Governor-General (which was supported by the Soulbury Commission) was rejected.
- (d) It was agreed that the possibility of breakdown in the Constitution should be covered not by a reserve power vested in the Governor, as the Soulbury Commission recommended, but by Order-in-Council.
- (e) The Soulbury Commission disapproved of the provisions of the Ministers' Draft relating to shipping services. On Mr. Senanayake's representation His Majesty's Government went even further than the Ministers' Draft.
- (f) Mr. Senanayake's proposal to reduce to one year the period within which the right to retire from the public service should be exercised was not agreed; but the period was reduced from three years to two years.

Some of these were very substantial modifications and, combined with the contingent promise of Dominion status in paragraph 10, they fully justified Mr. Senanayake's mission. Of especial importance was the complete abolition of the Governor's Ordinance, which finds a place in the Donoughmore Constitution, and which the Ministers were compelled to insert in their Draft by the Declaration of 1943. It is true that comparable powers are vested in the King-in-Council; but a power to be exercised by Order-in-Council is very different from a power to be exercised by Governor's Ordinance. An Order-in-Council bears the relation to a Governor's Ordinance that a pile driver bears to a hammer. In other words, the reserve powers can now be exercised only when some question of real importance, on which a dispute between Ceylon and Great Britain would be inevitable, has arisen.

(6) *The Order-in-Council* :

One of the elements in the success of the Ministers' efforts was that from the beginning they were related to formal drafts designed to indicate with precision what was intended. The Declaration of 1943 did not ask for a draft Constitution : it asked for "detailed proposals . . . in the way of a complete constitutional scheme." From the beginning, however, the Ministers worked on a complete draft. They decided that the discussions at the commission or conference contemplated by the Declaration of 1943 should be held on an actual text and not on a series of resolutions which might subsequently give rise to controversy. Also, only by producing an actual draft was it possible to make certain that every point had been covered. The matters in controversy were few ; but the matters which might come in controversy if loose ends were left were numerous.

This decision proved to be important, for though the Soulbury Commission was not the "commission or conference" contemplated by the Declaration they based their discussions on the Ministers' Draft, referred to by them as "Sessional Paper XIV of 1944." It was said by the Commission that "it naturally provided a most valuable basis for discussion and was of great assistance in focussing attention on the salient features of constitutional reform."¹⁵ It is indeed clear from the Report that it provided the foundation for the so-called "Soulbury scheme." Having listened carefully and courteously to all the evidence, the Commission evidently sat down to consider how far they agreed with the Ministers' Draft ; and, except in relation to the Second Chamber, they generally found that they agreed with it.

After he went to London, Mr. Senanayake continued the process of working on drafts. His memorandum to the Secretary of State for the Colonies was followed within a few days by a draft of the Constitution which he prepared. It was, of course, the Ministers' Draft modified to meet the changed situation and, since it assumed Dominion status, it was in most of its provisions the same as the Sri Lanka Bill. When the White Paper was issued, this draft was revised, and on it Mr. Senanayake based his speech of November 5, 1945, in which he commended the White Paper. In fact, what he really commended was not the White Paper but the final edition of the Ministers' Draft. It was not, however, a formally drafted instrument. It was not intended to be submitted to the King in Council for formal enactment, because it was recognized that redrafting by legal experts was necessary, as indeed the memorandum attached to the published edition of the Ministers' Draft made plain.¹⁶ When the State Council had approved the White Paper, therefore, the final edition was handed over to the legal experts.

The task of the legal experts was to put into legal form the Soulbury Report as modified by the White Paper. The final edition of the Ministers' Draft was the published edition of that Draft as modified by the Soulbury Report and the White Paper. There is in consequence close correspondence between the language of the Order-in-Council and that of the final edition of the Ministers' Draft. The references in the Table of Comparison in the Appendix are to the published editions of the Draft and not to the final edition, but they give some indication of the extent to which that Draft contributed to the Order-in-Council. On the other hand, they also indicate how substantial was the redrafting. There was a very sound reason for this. Though expressed in legal language the Ministers' Draft was a political document. It was intended in the first place to be the basis on which the Ministers could argue their case before the "commission or conference" contemplated by the Declaration of 1943 and in the second place to be a document which the Ministers could pilot through the State Council. The Order-in-Council, on the other hand, is a formal legal document which had to undergo no political scrutiny but which would in due course be put into operation under consistent legal advice and would, in many of its clauses, come up for judicial interpretation.

So far as mere drafting was concerned, the fundamental change was to put the transitional clauses at the end and to alter the method of bringing the Constitution into operation. This is in accord with the general drafting tradition and has the advantage that once the Constitution is in full operation the transitional clauses may be ignored. On the other hand, the advantage which is usually obtained from this device, that the transitional clauses may easily be removed, does not apply to a Constitution. On the whole it may be doubted whether the benefit obtained from complete redrafting was worth the effort expended.

The main task of the draftsman was to make the language more precise, and generally he succeeded in doing so. There is some evidence, however, that he was not very familiar with the legal basis of responsible government. The existence of a Parliament consisting of a hereditary King, a Senate whose members had fixed terms, and a House of Representatives whose membership might be terminated by dissolution, obviously gave him difficulty. He has, for instance, tried to make the Senate a permanent body in a Parliament which is dissolved at least every five years. The simple answer is, of course, that the House of Lords is not a permanent body though most of its members are hereditary. Like the rest of a Parliament it disappears when the King dissolves Parliament.

In some respects, however, the Order-in-Council contains modifications of the scheme contemplated by the Ministers' Draft and the Soulbury Report.

15. Cmd. 6677, p. 31.

16. Sessional Paper XIV of 1944, paragraph 29.

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The more important of these are the following :—

- (1) It incorporates paragraph 10 of the White Paper in the preamble and so gives it even greater force and value than it possessed while it was still a mere statement of policy.
- (2) By section 6 the salaries in the Governor's office and of his personal staff are determinable by Parliament but charged on the Consolidated Fund.
- (3) The Ministers' definition of " external affairs " was not accepted by the Soulbury Commission and has been excluded, but a phrase slightly less vague than " external affairs " has been included.
- (4) The provisions of the Parliament Act, 1911, have not been included bodily in sections 31, 33 and 34, but have been made more precise. In particular, the definition of " money Bill " in section 31 conforms more nearly to that in the final edition of the Ministers' Draft than that in the Parliament Act. The effect is to give the definition a much more extended meaning.
- (5) A power of disallowing legislation was not in the Ministers' Draft and was not referred to in the Soulbury Report, though the Ministers assumed that an effort would perhaps be made to get inserted a provision similar to that in the Dominion Constitutions. Actually, the only provision inserted is section 39, which does not apply unless the Ceylon Government wishes to raise money on loan in London and to borrow from trustees.
- (6) A new proviso has been inserted in section 51(1) to make certain that the Prime Minister is consulted about appointments as Permanent Secretary.
- (7) A Contingencies Fund has been created in accordance with the practice in the United Kingdom.

W. IVOR JENNINGS.

APPENDIX

Table of Comparison.

<i>Order-in-Council.</i>	<i>Soulbury Report.</i>	<i>Ministers' Draft.</i>
Preamble	(White Paper)	—
Section 1(1)	—	Section 1
" (2)	—	" 2
" 2(1)	—	" 1
" (2)-(5)	—	" —
" 3	—	" 4
" 4(1)	Paragraph 346	" 36(1) and 41(6)
" (2) to (3)	" 346	" 36(2)-(3)
" 5(1)	" 360 (VIII)	" 35
" (2)	" —	" —
" (3)	" —	" 35
" (4)	" 348	" —
" 6	" —	" 5(1)
" 7	" 321(vii)	" 5(1)
" 8	" 310	" —
" 9	" 310	" —
" 10	" 310	" —
" 11(1)	" —	" 16(1)
" (2)-(4)	" 314 and 315	" 17
" (5)	" 320	" 26(2)
" 12	" —	" —
" 13(1)	" 321(v)	" —
" (2)	" 310(iii)	" —
" (3)	" 318 and 319	" 19
" (4)	" —	" 19(b)
" (5)	" 318	" —
" 14	" —	" 21
" 15(1)	" —	" —
" (2)	" —	" 25(1)
" (3)	" —	" 25(2)
" (4) and (5)	" —	" 26(1)
" 16	" —	" —
" 17	" —	" 31
" 18	" —	" —
" 19	" —	" 28

<i>Order-in-Council.</i>	<i>Soulbury Report.</i>	<i>Ministers' Draft.</i>	<i>Order-in-Council.</i>	<i>Soulbury Report.</i>	<i>Ministers' Draft.</i>
Section 20	Paragraph	Section 28	Section 40	Paragraph 276	Section 14
" 21	"	" 29(1)	" 41(I)-(3)	"	" 13(I)-(3)
" 22	"	" 27	" (4)	" 278(ii)	"
" 23	"	"	" (5)	" 278(iii)	"
" 24(I)	"	" 22	" 42	"	"
" (2)	"	"	" 43	"	" 13(4)
" 25	"	" 20	" 44	"	"
" 26	"	" 26	" 45	"	" 42
" 27	"	" 30	" 46(I)	"	" 5I
" 28(I)	"	"	" (2)	" 326	" 43
" (2)	"	" 32	" (3)	"	" 43
" (3)	"	"	" (4)	" 325	" 44
" (4)-(5)	"	" 32	" 47	"	" 45
" 29(I)	"	" 7	" 48	" 310(vi)	"
" (2)	" 242(iii)	" 8	" 49(I)	"	" 46
" (3)	"	"	" (2)	"	" 48
" (4)	"	" 10	" (3)	"	" 47
" 30	(White Paper)	"	" (4)	"	" 50
" (3)	"	" 39 and 40	" 50	"	" 52
" 31(I)	Paragraph 310(ix)	"	" 51(I)	"	" 53(2)
" (2)	" 310(viii)	"	" (2)-(3)	"	" 53(3)-(4)
" 32	"	"	" 52(I)	"	" 69(I)
" 33	" 310(vii)	"	" (2)	"	" 69(2)
" 34	" 310(viii)	"	" (3)	"	"
" 35	"	"	" (4)	"	" 7I
" 36	"	" 37	" (5)	"	"
" 37(I) (a)	" 353	" 38(I) (a) and 39(I) (b)	" (6)	"	" 7I
" (b)	"	"	" 53(I)	" 398	" 68(I)
" (c)	" 337	" 39(I) (a)	" (2)	"	" 68(2)
" (d)	" 332(iii)	" 38(I) (b)	" (3)	"	" 68(3)
" (e)	" 332(iv)	" 38(I) (c)	" (4)-(7)	"	"
" (f)	"	" 38(I) (d)	" 54	" 399	"
" (g)	" 332(vi)	"	" 55	" 400	" 69(3)
" (2) (a)	"	" 39(I) (a)	" 56	"	" 65
" (b)	" 242(i)	" 40(a)	" 57	"	" 66(I)
" (c)	" 242(ii)	" 40(b)	" 58(I)	" 376	" 62(I)
" (d)	" 332(ii)	" 40(d)	" (2)	"	" 62(2)
" (3)	"	"	" (3)	" 376	"
" 38(I)	"	" 9	" (4)	"	" 62(3)
" (2)-(3)	"	"	" (5)-(6)	"	"
" 39	"	"	" (7)	"	" 62(5)

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<i>Order-in-Council.</i>	<i>Soulbury Report.</i>	<i>Ministers' Draft.</i>
Section (8)	Paragraph —	Section 65(2)
" 59	" —	" 63
" 60	" 379	" 64
" 61	" 380	" 66(2)
" 62	" —	" 65(1)
" 63	" 369-371	" —
" 64	" 372(iv)	" —
" 65	" 372(iv)	" —
" 66(1)	" —	" 57
" (2)	" —	" 58(1)
" 67(1)-(2)	" —	" 58(2)-(3)
" (3)	" —	" 60
" 68	" —	" —
" 69	" —	" 59(1)
" 70	" —	" 56
" 71	" —	" 61
" 72	" —	" —
" 73	" 310(ix)	" —
" 74	" —	" —
" 75	" —	" —
" 76(1)	" —	" 12
" (2)-(4)	" —	" —
" 77	" —	" —
" 78	" —	" —
" 79	" —	" 24(1)
" 80	" —	" 24(1)
" 81	" —	" —
" 82(1)	" —	" —
" (2)	" —	" 32(3)
" 83	" —	" 53(2)
" 84	" —	" —
" 85(1)	" —	" 53(1)
" (2)	" —	" —
" 86	" —	" —
" 87	" —	" —
" 88	" —	" 54(1)