

A COMPREHENSIVE STUDY ON STATE OF JAMMU AND KASHMIR: INTERNATIONAL PERSPECTIVES

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Abstract

Kashmir, heaven on earth, a valley where all the beauties of the dreams become a reality, and a valley which has bestowed us with its fragrance, its springs of cool and sweet water and its spell bounding sites for centuries has become a victim of human rights violations for more than 55 years or I might write a lifetime of slavery. The Kashmir issue has been a bone of content between India and Pakistan since their inception as a sovereign state in 1947. The state of Jammu and Kashmir was one of the 600 princely states in the British Empire with a Hindu maharaja and an overwhelming majority of Muslims according to the partition plan of 3rd June 1947 the princely state had a will to accede to either India or Pakistan. The Kashmir Muslim conference passed a resolution calling for accession to Pakistan but the maharaja paid no importance to the resolution. Then under the leadership of sheikh Abdullah, the people of Poonch, Mirpur and some parts in Jammu started a revolt against maharaja, which resulted in the emergence of Azad Kashmir. The maharaja tried to crush the movement and alleged that it was Pakistan inspired. Then he tried to enlist Indian military help and India atones sent its Army to Kashmir. The matter became more complex when the legal aspect of the maharaja's accession to India was challenged. As, the situation became worse and got out of control India took the case to the UN Security Council. The present article intends to analyze the international perspectives of Jammu & Kashmir state, India.

Keywords: Jammu & Kashmir, India, disputes, United Nation

State of Jammu and Kashmir Vis-à-vis United Nations

In a letter to the President of Security Council, dated 1 January 1948,¹ the Indian government brought before the Security Council, under Article 35, paragraph 1 of the Charter, the situation resulting from aid, which invaders, comprising Pakistan nationals and tribesmen from areas adjacent to Pakistan, were alleged to have received from Pakistan for operations against the state.² It, therefore, requested the Security Council to ask the government of Pakistan:

To prevent Pakistan government personnel, military and civil, from participating or assisting in the invasion of the Jammu and Kashmir state;

To call upon other Pakistani nationals to desist from taking any part in the fighting in the Jammu and Kashmir state; and

To deny to invader: (a) access to and use of its territory for operations against Kashmir; (b) military aid and other supplies; (c) all other kinds of aid that might tend to prolong the present struggle.³

To put it in a nutshell, the government of India charged Pakistan with aggression. In fact, India's complaint specifically referred to Pakistan's attitude as an act of aggression against it.⁴ Prior the Council's examination of the Indian communication of 1 January 1948, addressed an urgent appeal to the government of both India and Pakistan to refrain from any step contrary to the Charter and liable to result in an aggravation of the situation, thereby

¹ See Appendix VIII for the text of the original letter of complaint, lodged by India with the Security Council

² H S Gururaja Rao 'Legal Aspects of The Kashmir Problem' pp.68

³ Ibid.

⁴ India's complaint lodged with the Security Council specifically refers, in two places, to 'an act of aggression against India' and 'active aggression against India'. See Appendix VIII, paragraphs 11 and 13.

rendering more difficult any action by the Security Council. In their replies, the two governments assured the President of the Security Council that they would refrain from any action which might be incompatible with the charter.⁵

A Statements of India and Pakistan

The Council met on 6 January 1948 to consider the situations brought before it by the government of India. On 15 January, the Indian representative explained the circumstances which led to the sending of troops to Kashmir after the instrument of accession was signed by the then maharajah of Kashmir in favor of the government of India. He explained at length, the aggressive tactics adopted by the government of Pakistan, viz., the economic blockade of that state in contravention of the standstill agreement, which had later developed into a 'plan of coercion with propaganda and armed raids into Kashmir from the West Punjab'. He alleged that Mr. Jinnah had treated a note of protest from Kashmir, indicating that the state might ask for 'friendly assistance' unless 'unfriendly acts' were stopped, as an 'ultimatum'. After recapitulating the advance of the tribal forces into Kashmir, the maharajah's appeal to India, and the dispatch of Indian troops to Kashmir in response to that appeal, the India representative went on to accuse Pakistan of giving aid to the 'raiders' and of allowing them to use Pakistan territory for their operation. He alleged that the Pakistani nationals and service men 'on leave' were participating in the raids and declared that Pakistan had refused to dissociate itself from the raiders. Pakistan, according to the India representative, had acquiesced in the mass trespass on its own territory openly, to violate the integrity of a neighboring state. He requested the Security Council to use its good offices to persuade the government of Pakistan to prevent its nationals from participating in the raids and to deny aid to the invaders. Further, he pointed out that the government of India had accepted the accession. In a letter to ruler, he added, the government of India had expressed its 'wish' that the issue should be settled by a preference to the people when law and order had been restored in the state.⁶ Replying on 16 January 1948, the Pakistan representative flatly denied the participation of Pakistan forces and also asserted that Pakistan had neither aided the raiders nor abetted in the aggression. He denied the participation of Pakistani nationals in the invasion of Kashmir. He declared that Kashmir's accession to India was the 'outcome of the Hindu maharajah's collaboration with the government of India in fraud and violence', and accused the maharajah of double-dealing in having first made a standstill agreement with Pakistan 'to appease the Muslim majority of his subjects' and then having 'staged massacres to create a situation which would offer an excuse for accession to India'. The result, he said, was the 'inevitable uprising' of the Muslims of Kashmir, who were 'resolved to sell their lives dearly before they suffered the fate of their co-religionists in the East Punjab'. The Pakistan representative declared that it followed from the above that 'Pakistan cannot accept the accession of Kashmir to India'. While not rejecting the proposal from plebiscite in Kashmir to decide the question of accession, he declared that a plebiscite, while Indian armed forces were in Kashmir, would be a 'farce' and invited the Council to appoint a Commission which would, inter alia, arrange for the cessation of fighting.⁷ From the arguments and counter-arguments of the representatives of India and Pakistan, it is clear that the following two facts were at issue:

- i. Aggression against Kashmir alleged by India and denied by Pakistan.
- ii. The instrument of accession-by which Kashmir became an integral part of India-was obtained, according to Pakistan, by force and fraud, and this was denied by India.

The question of plebiscite was not an issue, for India had asserted that it was its wish to make a reference to the people when normal conditions were restored and the soil was cleared of the invader.⁸

⁵ H S GururajaRao 'Legal Aspects of The Kashmir Problem' pp.68

⁶ Security Council Official Records, third year, nos. 1-15, p.19

⁷ Ibid.

⁸ H S GururajaRao 'Legal Aspects of The Kashmir Problem' pp.69

B. Recommendations of the Security Council during 1948

The Security Council, after hearing the representatives of India and Pakistan, adopted a resolution on 17 January 1948, recognizing the urgency of the situation and called upon the two governments:

To take immediately all measures within their power (including public appeals to their people) calculate to improve the situation, and to refrain from making any statements and from doing or causing to be done or permitting any acts which might aggravate the situation.

It further requested:

Each or those government to inform the Council immediately of any material change in the situation which occurs or appears to either of them to be about to occur while the matter is under consideration by the Council, and consult with the Council thereon.⁹

On 20 January 1948, the Security Council adopted another resolution establishing a Commission with a dual function, namely, (i) to investigate the facts pursuant to Article 34 of the Charter; (ii) to exercise mediatory influence.¹⁰ The resolution also required the Commission to keep the Council Currently informed of its activities and of the development of the situation.¹¹

Later, when the Security Council reassembled on 18 April 1948, its president, Dr Lopez of Colombia, announced that a comprehensive resolution had been drawn up by Belgium, Canada, China, Colombia, France, Great Britain and the USA, designed to secure a final settlement of the Kashmir question. After protracted discussions on the merits of the case, the Security Council adopted yet another resolution on 21 April 1948 which, inter alia, provided for an increase in the size of the Commission established by its resolution of 20 January 1948, and directed it to 'place its good offices and mediation at the disposal of the government of India and Pakistan with a view to facilitating the taking of the necessary measures, both with respect the restoration of peace and other and to the holding of a plebiscite by the two government , acting in cooperation with one another and with the Commission', and further instructed' the Commission to keep the Council informed of the action taken under the resolution'.¹²

3 Kashmir Vis-à-vis The United Nations Commission for India and Pakistan (UNCIP)

A Introduction

The United Nations Commission for India and Pakistan, constituted under the Security Council's resolution of 21 April 1948, arrived at Karachi on 7 July 1948, charged with the responsibility of investigating facts pursuant to Article 34 of the Charter and to exercise mediatory influence without interrupting the work of the Security Council. Soon after its arrival, the Pakistan foreign minister informed the members of the Commission that three brigades of Pakistan's regular troops had been sent to the state of Jammu and Kashmir in the first half of May 1948. On 20 July 1948, the Commission sent a confidential cable informing the Security Council about the presence of the Pakistani troops in the state of Jammu and Kashmir.¹³

B UNCIP resolution of 13 August 1948

As there was heavy fighting the Commission was deeply interested in bringing about cessation of hostilities immediately. With this end in view, the Commission carried on protracted negotiations with the representatives of both the government of India and Pakistan and finally formulated the will-known resolution of 13 August 1948.¹⁴

⁹ For the text of the resolution, see Appendix IX

¹⁰ For the text of the resolution, see Appendix X

¹¹ H S GururajaRao 'Legal Aspects of The Kashmir Problem' pp. 70.

¹² For the text of the resolution, see Appendix XI

¹³ H S GururajaRao 'Legal Aspects of The Kashmir Problem' pp. 101.

¹⁴ This was first Resolution adopted by the UNCIP on 13 August 1948.

C UNCIP Assurances Pertaining to the Resolution of 13 August 1948

The government of India accepted the resolution on 20 August 1948, but Pakistan rejected it. While accepting the resolution of 13 August 1948, the government of India sought certain Clarifications and assurances¹⁵ from the commission which the Commission unhesitatingly gave.¹⁶ These clarifications and assurances are of paramount importance, as the resolution of 13 August by itself is of little significance inasmuch as the government of India's acceptance of the resolution of 13 August 1948 is contingent upon the clarifications and assurances sought by it and given by the Commission.

The moment the resolution is separated from these clarifications and assurances, it loses its force and legal validity. The following are the assurances sought by India and given by the Commission:

1. The sovereignty of the Jammu and Kashmir government over the entire state cannot be brought into question.
2. There shall not be any recognition of the Azad Kashmir government.
3. The territory occupied by Pakistan will not be consolidated to the disadvantage of the state.
4. Responsibility for the security of the state of Jammu and Kashmir solely rests with the government of India.
5. Pakistan will have no part in the conduct of the proposed plebiscite.
6. The administration of the evacuated areas in northern Kashmir shall revert to the government of the state of Jammu and Kashmir its defence to the government of India who will, if necessary, maintain garrisons for preventing the incursion of tribesmen and for guarding the main trade routes of India.¹⁷

D UNCIP Resolution of 5 January 1949

In pursuance of Commission's resolution of 13 August 1948 and in anticipation of certain proposals for the holding of a plebiscite by the UNCIP, a ceasefire in Kashmir, mutually ordered by the government of India and Pakistan, came into effect at midnight of 31 December 1948-1 January 1949. Later, a resolution embodying certain principles for the holding of plebiscite in Kashmir, after normal conditions had been restored, and a supplement to the resolution of 13 August 1948 was adopted by the Commission on 5 January 1949.¹⁸

E UNCIP Assurances Pertaining to the Resolution of 5 January 1949

Both the governments accepted the resolution. It may be pointed out that Pakistan, as stated earlier, had rejected the UNCIP resolution of 13 August 1948, though India accepted the same. But as the 5 January 1949 resolution was supplementary to the resolution of 13 August 1948, acceptance by Pakistan of the former resolution automatically amounted to acceptance of the latter.¹⁹ Even with regard to this resolution, the government of India sought certain assurances from the Commission. These assurances are contained in the aides memories submitted to the commission and these are, in fact, the substance of the discussion between the Commission and the prime minister of India.²⁰ Two of these assurances are:

¹⁵ These assurances and clarifications were set out in a letter that was sent by the prime minister of India to the chairman to the Commission. For the text of the prime minister's letter. see Appendix XV and XVI.

¹⁶ The conclusion that the Commission gave certain assurances to the government of India flows the letters addressed by their to the government of India. For the text of the letters, see Appendices VII and XVIII.

¹⁷ See Appendix X

¹⁸ See Appendix XV to XVIII

¹⁹ H S GururajaRao 'Legal Aspects of The Kashmir Problem' pp. 102.

²⁰ For the text of the aides-memories, see Appendix XIX and XX

- i. Plebiscite shall not be binding upon India if Pakistan does not implement parts I and II of the resolution of 13 August 1948.
- ii. The Commission will first explore the possibility of a plebiscite. If a plebiscite is found impossible 'for technical or practical reasons', the Commission could then recommend 'alternative solution'.²¹

4 Role of Mediation

After the adoption of the resolutions of 13 August 1948 and 5 January 1949, it was hoped that the Commission would give effect to these resolutions. But the hopes were soon frustrated by Pakistan's failure to carry out her obligation under the resolution. The Commission's mediatory efforts were mainly devoted towards inducing India and Pakistan to conclude a truce agreement on the basis of the proposals accepted by them. However, its efforts did not meet with much success. The non-conclusion of the truce agreement was mainly due to the differences of opinion which arose between India and Pakistan concerning the defense and administration of northern Kashmir, the large-scale disarmament and disbandment of Azad Kashmir forces. Thus, when the difference of opinion arose between India and Pakistan concerning these two issues, it was the duty of explain the circumstances under which assurances were given to India by it. This is exactly what the Commission failed to do. Further, it altogether failed to take note of the spirit with which the resolutions of 13 August 1948 and 5 January 1949 were drafted. It got entangled in big power politics, as is evident from the minority report submitted by the Czechoslovak member of the UNCIP.²²

A Deadlock

The UNCIP, in its Third Interim Report to the Security Council on 12 December 1948, reported back the dispute to the Security Council Stating that although the ceasefire order has been made effective on 1 January 1949.²³ And the demarcation line has been established as a result of the military talks held in Karachi in July 1949, it was unable to report any substantial progress in the implementation of the succeeding parts of the resolutions of 13 August 1948 and 5 January 1949, and insofar as they related to demilitarization and fulfillment of conditions necessary for the holding of plebiscite.²⁴ The Commission was of the opinion that, within the framework of its terms of reference, it had exhausted the possibilities of mediation and it was convinced that the framework of the resolution of 13 August 1948 had become inadequate in the light of factual conditions in the State. The commission also expressed doubt as to whether a five-member body was the most flexible and desirable instrument to continue the task. It, therefore, suggested the designation of a single person, 'with authority and undivided responsibility', to endeavor to bring the two governments together on all unresolved issues.

B General Observation on the Recommendations of Mediators

After the UNCIP referred the matter back to the Security Council, the latter appointed mediator after mediator in quick succession with a view to securing the consent of the governments of India and Pakistan for the formulation of the truce agreement on the basis of the principles enunciated in the resolution of 13 August 1948 and 5 January 1949 and agreed to by the parties. But the mediators, while making proposals for the formulation of a truce agreement, completely neglected the obligations which the parties had assumed under the resolution of 13 August 1949, thereby keeping the resolutions in cold storage, and fresh proposals were made by the mediators which were neither consistent with the spirit of the said resolutions nor in keeping with the factual conditions existing in the state, at that time²⁵

²¹ See Appendix XX

²² For the text of the Minority Report see S/1430.

²³ H S Gururaja Rao 'Legal Aspects of The Kashmir Problem' pp. 103.

²⁴ See S/1430 for the text of the Third Interim Report submitted by the UNCIP.

²⁵ The followings are a few illustrations in support of view that the mediators made proposals contrary to the agreed resolutions and various assurances given to the Govt. of India. The UNCIP resolution of 13 August 1948 recognised that Pakistan had no locus standi in the state and had created a material change in the situation by invading Jammu and Kashmir government as the lawful government of the state, it also

further, the various opinions expressed by them made a veritable cacophony.²⁶ It was, therefore, the duty of the mediators to suggest such changes in the resolutions as would enable them to cope with the actual conditions in the state, keeping in view the assurances given to the government of India and without sacrificing the spirit of the resolutions. This was all the more necessary because the UNCIP resolutions had become inadequate to cope with the conditions existing in the state. But, instead, they made proposals which were both against the agreed UNCIP resolution, law and equity. Further, their proposals had the effect of widening the differences between the parties.

C **Mediation Effort by the President of the Council, General McNaughton**

General A G L McNaughton of Canada, President of the Security Council for the Month of December (1949), was the first mediator appointed by the

His proposals for an agreed programme of demilitarisation, to take place prior to the holding of a plebiscite in the state, were as under:

- i. The withdrawal of regular forces of Pakistan and the withdrawal of regular forces of India not required for the maintenance of Security and of law and order on the Indian side of the ceasefire line.²⁷
- ii. Reduction of local forces including, on the one side, the armed forces and militia of the state and, on the other side, the Azad Kashmir forces.
- iii. The northern area, which is also included in the programme of demilitarisation, and its administration to be carried on by existing local authorities, subject to UN supervision.²⁸

D **Objections to McNaughton's proposals**

The above proposals, as enunciated by General McNaughton for the formation of a truce agreement, were inconsistent with and against the spirit of the resolution of 13 August 1948. They were also, in direct conflict, with various assurances given by the UNCIP to the Government of India. It is true, as would be pointed out later, that the Commission did contemplate the total withdrawal of Pakistani troops from the Pakistan side of the ceasefire line,²⁹ and withdrawal of only the Bulk of the India forces from the India side of the ceasefire line. But it has nowhere been provided that the withdrawal of Pakistani troops was to synchronise with that of Indian troops. In fact, the withdrawal of Pakistani troops was to synchronise withdrawal of Pakistan forces and the bulk of Indian troops were conditional.³⁰ Therefore, the proposals made by General McNaughton for the simultaneous withdrawal of Pakistan forces and the bulk of Indian troops was a deviation from what was agreed to by the parties, in this aspect of the matter, further, acceptance of such a proposal would have amounted to recognizing the equality of the aggressor and the lawful defender, and would have given the that both India and Pakistan were in illegal occupation.

McNaughton's recommendation that the administration of northern Kashmir should be carried on the existing local authorities under UN suppression was also contrary to the UNCIP's assurances to the government of India. It is true that the Commission had failed to provide for the administration and defence of the northern area, but subsequent assurances to the government of India covered these problems. Further, the Commission had also assured the government of India that it would consider the question of administration of the

recognized govt. of the state; it also recognized government of India's responsibility for its defence. It was for these reasons that the resolution of India and Pakistan troops, nationals and tribesmen, to be withdrawn from the state including the security of the state.

Security Council on 17 December 1949 to mediate on the Kashmir situation.

²⁶ H S GururajaRao 'Legal Aspects of The Kashmir Problem' pp. 105.

²⁷ H S GururajaRao 'Legal Aspects of The Kashmir Problem' pp. 106.

²⁸ UN Background Paper, no.72, p.16. For detailed recommendations made by General A G L Mc Naughton, See Appendix XXI

²⁹ See Chapter XII

³⁰ See Chapter XII

northern area by the Kashmir government while implementing its resolution. But the proposals submitted by McNaughton, if accepted, would have reverred assurances to the government of India. It is, thus, clear from the above detailed discussion that almost all the proposals made by General McNaughton either frustrated the assurances given to the government of India at the time of its accepting the UNCIP resolutions, or were in conflict with the agreed proposals enunciated by the UNCIP. Therefore, India without any hesitation declined to accept these proposals and, while doing so, she stated that the proposals eliminated the sovereignty of the state of Jammu and Kashmir form the area on the other side of the ceasefire line.³¹

Under these circumstances, the mediation of General McNaughton came to an end after he had submitted a final report to the Security Council on 13 February 1950.

E Appointment and Report of Sir Owen Dixon

The Security Council adopted a resolution³² on 14 March 1950 which inter alia, provided for the appointment of a new UN representative, and accordingly Sir Owen Dixon of Australia was appointed on 12 April 1950 as the UN representative. The proposals for demilitarization submitted by the Sir Owen Dixon were as under:

- i. Withdrawal of the Pakistani army to begin on a specified date as the first step towards demilitarization.³³
- ii. Commencement of the Indian regular army after 'a significant number of days' had elapsed. Withdrawal or disarmament and disbandment of the Jammu and Kashmir state forces.
- iii. Disarming and disbanding of the Azad Kashmir forces and the Northern Scouts.
- iv. The Forces that either party might need after demilitarization and pending plebiscite, to be determined, according to the chiefs of staff, in consultation with the United Nations Military Adviser.³⁴

F Reasons for Rejecting Sir Owen Dixon's Proposals

If the proposals for the demilitarisation of the state are examined very closely. One would come to the conclusion that most of them were not only inconsistent with the letter and spirits of the 13 August 1948 and 5 January 1949 resolutions, but also in clear violation of the assurances given to India by the Commission. However, Sir Owen Dixon did recognize the importance of the total withdrawal of Pakistani troops. This is clear from the phrase 'after a significant number of days' used by him in connection with the commencement of the withdraw of India troops which meant that it was to start only after the withdrawal of Pakistani troops had begun as the first step towards securing demilitarization. In other words, Pakistani troops' withdrawal was to be prior the withdrawal of Indian troops, under his proposal.

Conclusion

The topic raised a question regarding the part of international community in solving Kashmir problem but here another question arises i.e. where can we find this "international community." The simple and logical answer would be that as there is only one international organization, which represents the international community and it, is United Nations organization so the UN's point of view should be considered the view of international community. This study discussed what role International community has played so far and what roles can they play in the future to resolve the Kashmir dispute. As far as the role played by the International community & organizations is concerned it has not played any significant role so far. The only role played by them is a bit of media coverage of the dispute.

³¹. Sir B.N.Rau, Security council official records, 463rd meeting

³² For the text of the resolution, see Appendix XXII.

³³ H S GururajaRao 'Legal Aspects of The Kashmir Problem' pp. 108.

³⁴. UN Background paper, no. 72, 129n, pp. 18-9.

References

- H S GururajaRao 'Legal Aspects of The Kashmir Problem' pp.68
- India's complaint lodged with the Security Council specifically refers, in two places, to 'an act of aggression against India' and 'active aggression against India'. See Appendix VIII, paragraphs 11 and 13.
- For the text of the resolution, see Appendix XI
- H S GururajaRao 'Legal Aspects of The Kashmir Problem' pp. 101.
- This was first Resolution adopted by the UNCIP on 13 August 1948. These assurances and clarifications were set out in a letter that was sent by the prime minister of India to the chairman to the Commission. For the text of the prime minister's letter. see Appendix XV and XVI.
- H S GururajaRao 'Legal Aspects of The Kashmir Problem' pp.68
- A third fragment in Ptolemy (VII,42) gives Kaspeiria as one of two provinces in Menander's home kindom east of the Jhelum, Chenab and Ravi which would correspond to Southern Kashmir. See Tarn , *The Geeks in India and Bactria* p. 238
- W.R. Lawrence, *The valley of Kashmir*, pp. 42-43.
- Kalhana, *Rajatarangini*, i-104
- Dr. Rajkumar Singh, *Past, Present And Future Of Kashmir*. pp. 23.
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