
UN Security Council Resolutions on Jammu & Kashmir; Past, Present and Future

Introduction

Prior to the partition of India on 15 August 1947, and the withdrawal of the British colonial rule, the north Indian State of Jammu & Kashmir (J&K), one of the 570 odd big or small Princely States of the British Indian Empire had to decide about its future once the British paramountcy lapsed. The Princely States enjoyed nominal autonomy within the parameters of British suzerainty.

What would be their status after the British had left?

Hindsight shows that the British Government was somewhat vague in defining the post-independence status of the Indian Princely States including J&K. In regard to this issue, Prime Minister Attlee wrote to Lord Mountbatten, the Viceroy in New Delhi, on 18 March 1947. He said, *"It is, of course, important that the Indian States should adjust their relations with the authorities to whom it is intended to hand over power in British India; but as was explicitly stated by the Cabinet Mission, His Majesty's Government do not intend to hand over their powers and obligations under paramountcy to any successor Government. It is not intended to bring paramountcy, as a system, to a conclusion earlier than the date of the final transfer of power, but you are authorized, at such time as you think appropriate, to enter into negotiations with individual States for adjusting their relations with the Crown"*. The letter does not define the scope and parameters of *"negotiations"* which the Viceroy was authorized to conduct with the Princely States.

However, on 3 June 1947, Lord Mountbatten announced the plan for the partition of India and the impending end of British paramountcy. The next day, on 4 June 1947, the Viceroy gave a press conference in which he addressed the question of the Princely States. He said, *"The treaty relations between Britain and the Indian States would come to an end, and on 15 August 1947 the suzerainty of the British Crown was to lapse. They would be free to accede to one or the other of the new dominions or to remain independent"*. It suggests that independence was an option for the Princely States though, in reality, the practicability of this option was a moot question.

In a letter written by Maharaja Hari Singh, the ruler of J&K to Lord Mountbatten in June 1947, the Maharaja appealed Lord Mountbatten to impress upon Nehru, the Prime Minister of India, to postpone his scheduled visit to Srinagar because his government was working on a formula for the future of the State and Nehru's intervention in the court case of Sheikh Abdullah at that point in time would not be helpful. In fact, Mountbatten conveyed the message to Nehru and even advised him to give the Maharaja a chance. This notwithstanding, the Congress dealt a hard blow to the Maharaja's efforts when Gandhi ignored the entreaties of the ruler of J&K, and himself came to Srinagar and held a meeting with Maharaja Hari Singh.

Tribal invasion

The incursion of J&K State by frontier tribesmen under Pakistan's sponsorship on 22 October 1947, resulted in the division of the State into two parts, one controlled by India and the other by Pakistan. Total area of the State of J&K at the time of independence of India was 222,236 sq km. After the declaration of ceasefire at the midnight of 31 December 1948, India was in control of 106,567 sq km of J&K, (48%), Pakistan 78,114 sq km (35%) and China in control of 37,555 sq km (17%). There were strong reasons for the two nascent independent countries of India and Pakistan to agree to a ceasefire. But more importantly, the Anglo-American bloc was very eager to see that a ceasefire was established.

In common usage, Kashmir refers to the entire State of J&K comprising five regions of the Kashmir Valley, Jammu, Ladakh, Pakistan Administered Jammu & Kashmir and Gilgit Baltistan.

Fighting between Indian troops and the tribal *lashkars* with war strategy framed by Pakistani Army Generals began on 26 October 1947, and continued through 1948, with no significant change in respective military positions of the two warring countries. Although, two independent states had emerged on the map of the subcontinent, yet the hangover of British influence and her strategic interests could not be wished away that soon. Both countries were linked to Great Britain through numerous ties; trade, commerce, history, culture and international relations. Evidently, when a critical situation arose in the strategic State of J&K on the eve of British withdrawal from the subcontinent, it was but natural that they would monitor the situation and redraw their policy accordingly.

Given the stalemate in the fighting, paucity of resources and above all the relentless persuasions of the Anglo-American bloc, it became clear to both sides that a decisive victory for any one side was not going to happen in Kashmir. Neither outright expulsion of the invaders, whose place was now taken by Pakistani regular troops, from the entire state, could happen nor could the Pakistani Army and its proxies ever succeed in wresting the part of the state from the control of India. The continued fighting between the two countries caused concern in London and subsequently in Washington as well. Presence of the Soviet Union in close proximity of the northern part of the State of J&K was a more serious concern for them. In post-WWII strategy, the Anglo-American bloc focused on stonewalling the growing ideological and physical thrust of Communist Soviet Union, particularly in this vulnerable part of Asia. As fighting between India and Pakistan over Kashmir protracted, their apprehension was that the Soviets might muddle in the disturbed waters and thus sabotage their strategic interests.

Although WWII had taken away leadership of the world from the hands of Great Britain and placed it in the hands of the United States (US), yet since Great Britain had the knowledge and experience of the affairs of the subcontinent, London managed to lay the roadmap for the Anglo-American bloc as far as their policy matters pertaining to the subcontinent in general but the crisis in Kashmir, in particular, were concerned.

Silent interaction

During the period between the outbreak of hostilities and the signing of the ceasefire agreement between India and Pakistan at the stroke of midnight on 31 December 1948, which fills a period of more than twelve months, Great Britain supported by the US remained busy with silent interactions with New Delhi and Karachi. The main purpose of these unannounced tripartite parleys was to stop the fighting in the first place and then broker an amicable settlement of the dispute. On 1 November 1948, while the war front in Kashmir was alive, Lord Mountbatten, now the Governor-General of India traveled to Karachi where he met with Muhammad Ali Jinnah, Governor-General of Pakistan, and talked about withdrawal of tribal hordes from Kashmir and allowing time to the ruler to decide which of the two countries he would like to accede to. He further argued that withdrawal of the tribal hordes and restoration of the State to pre-22 October position would pave the way for a plebiscite. When Jinnah bluntly rejected the proposal, Lord Mountbatten touched on the suggestion of referring the matter to the United Nations (UN). It is to be noted that reference to the wishes of the people, though not a stipulation in the Instrument of Accession signed by Maharaja Hari Singh, was very much proposed by the Governor-General in his acceptance letter addressed to the Maharaja. This is the reason why the reference to people remained an obsession with Lord Mountbatten.

Before we proceed to discuss various Resolutions passed by the Security Council on the Kashmir-issue since 1948, it is interesting and educative to pass a cursory glance on what was going on in London's Foreign Office in regard to Kashmir's impending decision about accession to one of the two dominions.

In November 1947, when Lord Mountbatten, then Governor-General of Independent India visited London, Winston Churchill told him that it was terrible to think that he, an Englishman and a cousin of the King should have got himself into a position where he was now backing those enemies of Britain - Nehru, Patel and party - against those proven friends of many years - the Muslims (Pakistan).

Two days later, Churchill sent a long note, which charged Attlee and Mountbatten with ignoring Pakistan as a '*bastion*' against communism and not '*turning a hair on Kashmir*'. Churchill who had asked Wavell in 1945 to "*keep a bit of India*", had become concerned at India's emerging international identity after 1946-47. In May 1948 he sent a Memorandum to Mountbatten anticipating the pact politics of the 1950s. It termed Pakistan '*the keystone of the strategic arch of the Indian Ocean*' and identified five bricks in the wall against Soviet expansion in the Middle East and South-Central Asia: Turkey, Iran, Iraq, Afghanistan and Pakistan.

It has to be made clear that the Indian Independence Act did not provide for the independence of a Princely State once partition was made. The choice was between the two dominions. However, there was an advisory by way of guidelines for accession like geographical location, demographic complexion, connectivity, etc.

The position in the State of J&K was peculiar. Although the main connectivity of the State was through the Jhelum Valley Road linking the Valley to Pakistan, and Jammu region had rail

connection with Sialkot, yet the Radcliffe Award did provide Jammu and the rest of the State, a connectivity corridor to East Punjab. On population count, again there was big variance; While the Kashmir Valley was predominantly Sunni Muslim, Jammu region was predominantly Hindu and Ladakh was Buddhist. Consequently, accession to one or the other dominion was nothing less than a dilemma for the ruler. Maharaja Hari Singh could not take any decision in hurry and it was in this background that he had concluded a *Standstill Agreement* with Pakistan. A similar agreement with India was under the consideration of the Government of India. Pakistan had signed the agreement on 15 August 1947, but since things moved very fast and the North-West Frontier Province (NWFP) became overactive in preparing for the tribal invasion of Kashmir, Pakistan unilaterally broke the standstill agreement just a week before Pakistan launched Operation Gulmarg which was a full-scale tribal invasion.

Russian bugbear

Ramachandra Kak, the Kashmiri Pandit Prime Minister of J&K at the time of partition is said to have proposed independence of the State instead of acceding to one or the other dominion as other Princely States of undivided India did. Nehruvian cult historians have castigated him for "*working against the interests of India*" because, in their view, independence for the State meant treating India and Pakistan at par. Ramachandra Kak's wife was a Scottish lady with a family connection to Lord Wavell, the Viceroy of India preceding Lord Mountbatten. Some observers think that Kak was familiar with British perceptions of Kashmir as a strategic region in the subcontinent. Researches into the history of British diplomacy in Asia in the wake of expanding communist ideology show that Great Britain and the US both had apprehensions that Soviets were capable of penetrating the southern underbelly of the Soviet Union to secure access to the warm waters of the Indian Ocean. If that happened, then the sea routes of strategic importance leading to and out of the oil-rich Gulf would be immensely threatened. In the wider strategy of the region, independent Kashmir would become vulnerable to communist influence particularly when it was economically very fragile and the masses of people were illiterate and emotional. British Residents in Srinagar and the governors in NWFP during the last phase of the British Indian rule, one and all, had alerted London time and again of this eventuality. This was also the view of Noel-Baker, the Commonwealth Secretary, who later on was the British representative at the Security Council to deal with the Kashmir-issue when India made reference to it. A cryptic remark by K.V. Novikov, the first Soviet Ambassador in New Delhi (1947-1953) that "*India and the Soviet Union had a common frontier of 16 miles in Northern Kashmir*" had puzzled London.

According to the British Foreign Office, the Middle East would ultimately stretch to Pakistan. In January 1949, within days of the ceasefire in the first Kashmir war, Morgan Philips Price, the Labour Party MP, congratulated Attlee and reminded him that the Kashmir dispute was part of "*the same struggle that our fathers and grandfathers fought (against) the direct territorial expansion of Russia in the great Moslem block lying between the Bosphorus and the Indus*".

The more serious reason for Britain to reject the option of an independent Kashmir was Nehru's passion for Fabian Socialism and his penchant for Moscow. Actually, Nehru was influenced by the Fabians during his days as a student at Harrow, where he interacted briskly with a bunch of socialists, some of them rabid to the extent of making him commit Himalayan blunders as the first Prime Minister of India. The one to be singled out of this group was Krishna Menon who occupied very sensitive positions in the Government of India during Nehru's regimes such as Indian Representative at the UN, Ambassador to Moscow and Defense Minister. Owing to his arrogance and rigid ideological frame of mind, he brought disaster to India, to himself and to Nehru in the aftermath of the Chinese invasion of the North-East in 1962 and the rout of Indian Border Security Forces. The British handled Nehru with extreme diplomatic dexterity and it was no gaffe when Stalin told Dr. Radhakrishnan, the first Indian Ambassador to Moscow in 1950, that he was sceptic about Nehru delivering the goods.

As the Indo-Pak war over Kashmir continued through 1948, British Prime Minister Clement Attlee remained in close contact with Nehru, Lord Mountbatten and the British Commanders in both the countries. Attlee was closely watching lest the Soviet Union attained a vantage point in the Kashmir matrix. Therefore, he was very particular that a ceasefire should be introduced at any cost between the two warring countries as early as possible before Pakistan became economically and militarily worn out and lost the strategically crucial Northern Areas to India. Convinced of the force in Attlee's viewpoint, Washington opted to lend all support to the idea of two countries agreeing to a ceasefire in Kashmir. The Anglo-American efforts for bringing about a ceasefire in Kashmir on the midnight of 31 December 1948, received accolades from knowledgeable circles in London and Phase I of the Anglo-American Kashmir policy was a complete success.

Inside Kashmir

What clinched the success of bringing about a ceasefire in Kashmir was the alarming reports from India that Kashmir's popular leader Sheikh Abdullah was hobnobbing with the leftists and had surrounded himself with a strong battery of leftist ideologues in the party as well as among sections of the people of Kashmir. He received full support from the Indian left including Nehru, whose close friendship with him was destined to become a chequered chapter in the history of relations between Kashmir and New Delhi. Joseph Korb, a member of the UN Commission for India and Pakistan (UNCIP) and a deserter to the US (the father of Madelyn Albright, former US Secretary of State) and Alistair Lamb both have shed light on this aspect of Sheikh Abdullah in their books on Kashmir. It is a different story that after the dismissal of Premier Janak Singh by the ruler of J&K, Sheikh Abdullah assumed power in the last week of October 1947, first as Chief Administrator and then as "*Prime Minister*" of the State. Within months of coming to power, Sheikh sidelined his erstwhile leftist supporters who, after waiting for the right opportunity, ultimately, dumped him on 8-9 August 1953. It is generally believed that after joining the Indian delegation to Lake Success to present India's case on Kashmir to the Security Council, Sheikh Abdullah began to move away from Kashmir's accession to India and started to nurture the idea of independent Kashmir. The grapevine has

it that he came under the influence of some circles in the US that considered Kashmir's accession to India a disadvantage to their broad anti-communism strategy in the region as well as on global level. It also needs to be noted that in 1952-53, Adlai Stevenson, the then unsuccessful Presidential candidate in the US and later on US Ambassador in India had several secret rounds of talk with Sheikh Abdullah in Srinagar. In his book '*Kashmir 1947-1977*' (Urdu), Sanaullah Bhat, the late editor of Kashmir Urdu daily '*Aftab*' has given glimpses of those meetings and also the Abdullah-Abbas formula for the resolution of the Kashmir dispute. Sheikh Abdullah, after assuming power, met thrice with Chowdhury Abbas, his one-time colleague and Muslim Conference heavyweight in Jammu prison in February 1948 and the two leaders had hammered out a formula for resolving the Kashmir dispute and bringing about lasting peace in the region. The formula, in short, was that both countries would pull out their forces from their respective sides, restore Kashmir to pre-1947 position for three years and then hold a referendum to ascertain the wishes of the people. Chowdhury Ghulam Abbas had told Sanaullah Bhat that Pakistani authorities rejected the formula and that Adlai Stevenson told Abbas in a meeting in Lahore that Sheikh Abdullah had talked to him about the formula.

After returning from Lake Success, Sheikh Abdullah changed his tone and tenor about Kashmir's accession to India and began fantasizing about the Sultanate of Kashmir till all this day-dreaming shattered on the night of 8-9 August 1953 when, as a result of a no-confidence motion passed by the majority of J&K Cabinet of Ministers, he was deposed and arrested.

Great Britain, the colonial power that had just withdrawn its occupation of India and had given partition with its horrendous consequences as the parting gift to the people of the sub-continent, maintained its broad colonial interests in the region and did not think that India and Pakistan were absolutely outside the sphere of her influence in Asia.

There is convincing evidence to assert that months before the partition of India, policy planners in London had been debating the possible impact on Great Britain's policy towards the two emergent States, India and Pakistan, of the ruler of J&K joining one or the other State and also keeping the third option of independence in sight. Kashmir was very much in the framework of the Cabinet Mission and Cripps Mission.

[The dilemma of approaching UN](#)

Close scrutiny of official and non-official records shows that in the beginning, Nehru was not interested in taking the Kashmir-issue to the UN. He was aware that the Anglo-American bloc at the UN and the Security Council were not very friendly to India because they took note of Nehru's proclivity to the Soviet Union. Nehru's sister, Vijayalaxmi Pandit, Indian Ambassador in Washington, had been regularly briefing her brother on how international heavyweights behaved at the UN. Moreover, Washington took serious note of Nehru appointing Asif Ali as Ambassador to the US against the wishes of some influential Congress leaders and cabinet colleagues at home as Aruna, the Hindu wife of Asif Ali was a committed leftist and the Americans were not comfortable with Nehru's choice. Moreover, Asif Ali was no match to the Pakistani Ambassador Ispahani, who had successfully vitiated political opinion in the US

against India on Kashmir which made Nehru to withdraw Asif Ali within months. At the same time, British representative Noel-Baker and American representative Warren Austin had come to an explicit agreement that Pakistan's position on Kashmir had not to be diluted at the level of Security Council to which India had made a reference on 1 January 1949.

It is a well-known fact that Sardar Patel, the Deputy Prime Minister and Home Minister of India had strong views of the timely action in Kashmir instead of bringing India's affairs to the vortex of international politics. Sardar Patel had said, *"We should never have gone to the UNO. At the UNO, not only has the dispute been prolonged but the merits of our case have been completely lost in the interaction of power politics"*. Certainly, Patel did not see eye to eye with Nehru on latter's Kashmir policy. He had opposed the appointment of N. Gopalaswami Ayyangar as Minister without a portfolio to assist Nehru in handling the Kashmir-issue. Moreover, Nehru had taken Kashmir out of dispensation by the Indian Home Ministry and handled it personally arguing that handling Kashmir meant handling Sheikh Abdullah and the Home Minister would not be able to do so.

Many Indian historians and commentators have criticized Nehru for taking the Kashmir-issue to the Security Council despite knowing that the Big-5 cared more for their political interests than for administering justice on the merits of a case. On the prompting of Lord Mountbatten, Nehru entered into correspondence with Pakistani Prime Minister Liaquat Ali Khan proposing that the two countries make joint efforts to bring about the cessation of hostilities. Nehru even personally handed over a protest letter to the Prime Minister of Pakistan on 22 December 1947 at Delhi, when he had come for a meeting of the Joint Defence Council. Nehru even proposed to Liaquat in a telegram that UN team could be asked to visit Kashmir and advise the two countries how plebiscite could be held in J&K. Liaquat opposed it and replied that Nehru should avoid such legal disputations and questioned, *"How Pakistan was a party of the dispute of Jammu and Kashmir and how the United Nations observers can be brought in this dispute"*. Disappointed by Pakistan's negative response to Nehru's overtures for bilateral talks including UN mediation to resolve the issue instead of exercising the option of war - something that Nehru despised and Lord Mountbatten was eager not to let happen, Lord Mountbatten, at last, persuaded Nehru to make a reference to the Security Council. He even persuaded Mahatma Gandhi to invoke the assistance of the UN and subsequently India decided to approach the United Nations Security Council (UNSC).

Two months prior to India referring the Kashmir-issue to the UN, the attitude of the Arab States vis-à-vis the Indo-Pak conflict on Kashmir had become important. Jinnah's envoy, Firoz Khan Noon had returned from a visit of the Arab States with a *'gloomy report'* about the partition of Palestine and Jinnah himself vis-à-vis the more popular Nehru and the stronger India. The Arab League was a crying necessity paralleling their respective positions on Palestine. Despite this, Mountbatten wrote to Attlee about the feeling in New Delhi that as Britain and America regretted the bitterness created over the partition of Palestine they were anxiously looking for a means to placate Arabs in regard to Kashmir.

Indian Complaint to the UNSC

P.P. Pillai, Indian representative to the UN filed an official complaint to the President of the UNSC against Pakistan by invoking Article 35 of the UN Charter which permits a member of the UN to draw the attention of the Secretary-General, to the fact that the situation in J&K was likely to lead to international friction. The Government of India requested the UNSC to prevent Pakistan Government's personnel, military and civil officers and other nationals from participating or assisting invasion of the J&K State. Moreover, India demanded Pakistan deny any use of its territory or any other kind of aid which would prolong the present conflict. Evidently, the referred matter did not entail a solution of the dispute over Kashmir; it demanded expulsion from J&K State of the tribal *lashkars* and Pakistani regulars deployed as proxies to fight the Indian security forces.

Pakistan's Foreign Minister, Zafarullah Khan in his reply to the Indian complaint emphatically denied all charges and asserted that Pakistan neither provided bases for military operations nor supplied military or other facilities to the invaders. This notwithstanding, Document I. Para 3 of the UN Commission's First Interim Report (S/100) said that Pakistan was unofficially involved in aiding the raiders.

On 15 January 1948, the UNSC met at Lake Success and opened discussions on India's complaint. Indian delegation comprised N. Gopaldaswamy Ayyangar, Minister in the Indian Government, M.C. Setalvad, Indian Attorney General and Sheikh Muhammad Abdullah. After tracing the history and background of the case briefly, Ayyangar pleaded that a neighbouring state could not interfere in its country's internal or external relations and India had the full responsibility of the defense of the State of J&K which had acceded to the Dominion of India. He said that India had made it clear that once the invaders were cleared and normal conditions restored, a plebiscite would be held to ascertain the wishes of the people of the State; The crux of his petition was the urgent withdrawal of raiders.

On 16 January, Pakistan's Foreign Minister replied by producing three documents. Document 1 dealt with the Indian complaint, Document 2 with Pakistan's counter-complaint, and Document 3, a fairly lengthy one with the details of the case. He refuted India's charges though admitting some members of '*independent*' tribesmen or Pakistani citizens might be helping the '*Azad Kashmir Government*' in their liberation struggle. In its counter-complaint document, Pakistan raised the issue that India had embarked on '*genocide*' of the Muslim population ahead of the partition of India. He said that Pakistan was of the view that security and the well-being of Indian Muslims was in serious danger. In its third document, Pakistan's Foreign Minister complained that India had obtained an accession of J&K State through fraud and atrocities perpetrated on the Muslims of the State. In conclusion, Zafarullah demanded that the UN appoints a Commission to investigate all the accusations against India, arrange a cessation of hostilities in J&K, enforce withdrawal of all outsiders, facilitate return and rehabilitation of refugees, establish an impartial administration in J&K and hold a free and fair plebiscite.

It must be noted that in its reply, Pakistan not only summarily denied military or logistic support to the raiders, something which she confessed later on when the UN Commission for

India and Pakistan (UNCIP) landed at Karachi, but also spoke of extraneous issues which had no relevance to the subject matter before the Security Council like India supposedly committing genocide of the Muslim population before partition.

UNSC Resolution 17 January 1948

Zafarullah's defence of Pakistan's stand was considered brilliant in the sense that he was able to convince most of the members of the UNSC that the Kashmir-issue was directly related to the partition of the Indian subcontinent on the basis of the two-nation theory, and also in attracting sympathy as the smaller and weaker party. The Indian side weakened its case by not clearly stating that Pakistan had committed an act of aggression on India by allowing and helping the raiders to invade J&K and that Pakistan was irrevocably hostile towards India.

After hearing the two sides, the UNSC President, Van Langenhove of Belgium passed a Resolution calling on both sides to refrain from making any statement and from committing any act or permitting any acts which might aggravate the situation. He also directed them to inform the UNSC immediately of any material change in the situation. Contrary to the call of the President of the Security Council, Pakistan did not refrain from raising extraneous issues nor did she inform the Security Council that she was reinforcing her troops in the part of the State under her control.

However, away from the institution of the Security Council, American representative to the UN, Warren Austin suggested that the two delegations meet under the Chairmanship of the President of the UNSC to seek his guidance in finding common ground on which the structure of a settlement may be built. India and Pakistan both agreed with the American representative and initial talks went off well.

UNSC Resolution 20 January 1948

In its meeting of 20 January 1948, UNSC adopted by majority vote (with abstention by USSR and Ukraine) another resolution for the appointment of a three-member Commission (later on known as UNCIP) to investigate the facts and to examine mediatory influences. The Commission was to comprise one each selected from India and Pakistan and the third to be designated by the two selected. Clause C in the Resolution laid down the terms of reference of the Commission, namely examining the situation in the light of Indian and Pakistani presentations.

Two observations demand consideration at this point. One, if the two countries had agreed to the proposal of the American representative to discuss the matter jointly with the President of the UNSC, why that decision was set aside overnight and a fresh resolution was brought in? Second, how come the contemplated Commission was to consider the case of Pakistan without Pakistan having made reference to the Security Council?

The issue at hand was the expulsion of raiders from Kashmir and the Security Council brought in extraneous issues for the proposed Commission to consider. The simple inference is that

the Anglo-American block had changed its mind and brought in a new resolution markedly different from the suggestion of the American representative.

However, Gopalaswamy Ayyangar made a minor concession in agreeing to the suggestion that if, after disposing of India's complaint, the UNSC decided to consider Pakistan's counter-complaint it could do so. But the Pakistani delegation insisted on the UNSC to discuss the entire gamut of partition. The resolution was put to vote; nine members voted in favour and Russia and Ukraine abstained. Pakistan succeeded in diverting the attention of the UNSC from tribal invasion of Kashmir to the whole range of partition and the aftermath.

Immediately after the day's proceedings were over, Zafarullah wrote a letter to the President of the Security Council threatening military action against India in the issue of Junagarh and requesting an early meeting of the UNSC to consider the situation other than that of J&K. This was to offset India's objection that Pakistan had not made any reference to the UNSC on any issue. Pakistan argued that war might start up on any of the other issues other than J&K and hence urgent action by the UNSC was required. As a result of this letter, the UNSC gave a new name to the agenda item: *India-Pakistan Question*.

Based on a report of *New York Times* of 22 January 1948, Ayyangar wrote to the UNSC President taking exception to a change in the description of the item before he had replied to Pakistan's statement of 17 January. British and Russian delegates supported India's procedural objections to the change of the title. So did the US delegation but ended up with the view that it hardly made any difference if instead of *Jammu & Kashmir Question*, the item was called *India-Pakistan Question*. Nevertheless, it did mean a big difference; Pakistan wanted a status of equality and succeeded in widening the scope of the discussions. At the same time, Pakistan excluded J&K State and its people as stakeholders.

The complexion of the Indian complaint changed before she had exercised the right of reply to Pakistan. On 23 January 1948, Indian representative Setalvad replied in detail to Zafarullah's statement refuting all charges and calling his accusations false. Exercising the right to reply, Zafarullah concluded that under a neutral administration or under UN observation, whatever was preferred for a plebiscite to be held to decide which country J&K would accede. "*It was the only guarantees which would stop fighting*", he stated. British representative Noel-Baker brushed aside Zafarullah's many charges like genocide and killing as arising out of history and suggested that the conflict needed to be contained by facilitating negotiations between the two countries through the Security Council. US delegate Warren Austin said India's acceptance of accession was conditional and the two parties will seek solution under the aegis of the UNSC.

This response of the Security Council clearly showed that it intentionally moved away from the core of India's complaint and successfully diluted it by deciding to revisit the entire gamut of the partition of India and what followed it subsequently.

Two proposals

On 27 January 1948, India submitted two draft proposals: (a) Pakistan should withdraw tribesmen and other invaders and stop their passage through its territory. It proposed retention of a small Indian military presence in Kashmir and conversion of Sheikh Abdullah's Emergency Administration into a Council of Ministers functioning as a responsible ministry. (b) Holding of a plebiscite with Sheikh Abdullah as the head of the government under the supervision of the UN Commission. Concentrating on two points, ending hostilities and conducting of a plebiscite, the President of UNSC proposed two resolutions. (1) Plebiscite organized, held and supervised under UNSC's authority, (2) Duties of the Commission in bringing about the cessation of hostilities in J&K. Canada, China and Syria supported the Resolutions but Sheikh Abdullah said that the Resolutions were confusing the issue of liberation of Kashmir. India rejected both resolutions saying they did not deal with the urgent problem of stopping the fighting.

Resolution of 21 April 1948

Belgium, Canada, China, Columbia, United Kingdom (UK) and the US-sponsored another resolution in the next meeting. Part I of that Resolution spoke of plebiscite under the UNSC's supervision and Part II dealt with duties of the Commission in bringing about the cessation of hostilities. Indian delegation called a cessation of fighting as *"harmless in the extreme - an illustration of trying to fiddle here while India was burning"*. He reminded the delegates of their condemnation of Yugoslavia, Albania and Bulgaria for giving assistance to the rebels for fighting with the Government forces in Greece. He demanded to stop the fighting first and then compelling Pakistan to withdraw tribesmen from J&K. Two members, Dr. T.E. Tsiang of China and Lopez of Columbia showed greater appreciation of the Indian viewpoint.

In the debate on the draft Resolution, India stuck to three points. (a) The accession of the State with Indian Union was complete. However, if the people did not vote for India in the plebiscite then Kashmir would be released from accession. (b) Defence of J&K against internal disorder and external aggression was a function of the Indian Army. (c) The form of government in Kashmir was a matter for the people of the State to decide. On the other hand, Pakistan's contention was (a) Concern over impartiality and neutrality of Sheikh Abdullah-led administration (b) Assuring people of the State of their honour, safety, self-determination for the people of the State (c) Satisfying Pakistan that plebiscite would be impartial.

India said that the draft resolution did not meet the proposal she had made in her previous intervention and also asked for an adjournment of the meeting allowing Indian delegation time to return home for consultation with the home government. Many members of the Council including the UK severely criticized this move of India.

In India, public opinion went against the way the Security Council handled her Kashmir complaint. In a public rally in Jammu on 15 February, Nehru said that instead of discussing and deciding in a straightforward manner, the nations of the world sitting on the Security Council got lost in power politics. Addressing the Constituent Assembly on 5 March 1948, he

confessed that he was surprised and at the same time distressed that the *"Indian reference had not even been properly considered and other matters were given precedence"*. The Hindu wrote in an editorial, *"The difficulty from the beginning has been that the Anglo-American powers and their satellites in the UNSC had identified themselves completely with the Pakistani cause"*.

UNSC Resolution 21 April 1948

The Indian delegation returned to the UNSC on 10 March 1948, and with that discussions in the Security Council on Kashmir were resumed. For about a month, UNSC President Dr. Tsiang of China and A. Lopez of Colombia had further discussions with the two parties and then a very significant resolution was jointly sponsored by the US, UK, France, Canada, China and Colombia known as UNSC Resolution of 21 April 1948. The Resolution called upon Pakistan to use its best endeavours to secure the withdrawal of tribesmen and Pakistani nationals to prevent any further intrusion into the State of J&K, and to refrain from aiding fighters, and stop fighting in the State. India was permitted a minimum force to aid the Government of Kashmir in the maintenance of law and order. India's withdrawal of its forces was not to begin until after the Commission (not Pakistan) was satisfied that the tribesmen were withdrawing and that the arrangement for the cessation of fighting has become effective.

This Resolution comprises three parts. Part I begins with imposing obligations on Pakistan that (a) Pakistan undertakes to secure withdrawal of tribesmen and Pakistani nationals from J&K (b) Prevents/stops any intrusion into the State and (c) Scheme of settlement provided full freedom to the citizens of the State to express their views and vote on the question of accession. Obligations imposed on India were (a) Withdrawal of troops conditional to the Commission' satisfaction that Pakistani nationals and tribesmen were withdrawn and cease-fire made effective (b) Plan progressive reduction of forces till only minimum strength needed for enforcement of law and order was retained.

Part II relates to Plebiscite and certain obligations imposed on India. These are (a) To ensure State government invited representatives of major political parties to share equally the conduct of administration at the ministerial level while carrying out plebiscite (b) To ensure that State government delegated all powers to the Plebiscite Administrator as were necessary (c) A nominee of the Secretary General of the UN would be appointed as assistant to the Plebiscite Administrator (d) Plebiscite Administrator had the right to communicate directly with the Security Council through the Commission and also with the governments of two countries. (e) To undertake prevention of bribery, corruption, coercion or intimidation or undue influence on the voters.

Part III called for (a) Appointment of a representative of both the governments attached to the Commission (b) Authorized the Commission to appoint UN Observers in J&K.

India's reaction was that the resolution sidetracked the main objective by dealing with other problems. Pakistan had proposed that the State government should include representatives of the so-called 'Azad Kashmir' and the Muslim Conference which were rejected by the UNSC.

Its demand for sending troops and police into Kashmir to ensure withdrawal of tribesmen was also rejected. Pakistan said the resolution was not acceptable to her and that she would not call upon the raiders to withdraw from Kashmir and rejected the Resolution of 21 April 1948. J&K Government was critical of the resolution saying that the Plebiscite Administrator was conceived as a super-ruler with unlimited and unprecedented authority. India also rejected the resolution for a cold holding of the main issue of continued bloodshed in Kashmir. *The Hindu* wrote in an editorial that this cut at the very roots of the UN Resolution because the first step was that Pakistan would call upon raiders to withdraw.

Ever since the adoption of this resolution, Pakistan has been accusing India of not implementing it and not willing to work towards a plebiscite. Even some Kashmiris running a 'separatist' movement speak in the same strain thus laying bare their total ignorance of the precise clauses of the resolution. People unaware of what precisely the resolution says and the step by step process to be undertaken by the stakeholders, begin to believe that India is not willing to hold a plebiscite in Kashmir and resolve the issue.

A couple of things become very clear by examining why Pakistan initially rejected the resolutions. These are (a) Earlier Pakistan had tabled a resolution proposing a change in the title of the case as India-Pakistan dispute over Kashmir, but now she wanted the inclusion of the representatives of so-called '*Azad Kashmir*' and the Muslim Conference, which, however, was rejected by the UNSC. This shows that Pakistan had no clear and sustainable policy on Kashmir and wanted the people of the State to be or not to be among the stakeholders as and when it suited her; (b) The first and foremost step was that "*Pakistan undertakes to secure withdrawal of tribesmen and Pakistani nationals from J&K to prevent any further intrusion into the State, and to refrain from aiding and stop fighting in the State*"; and lastly, (c) The case came to be called as *India-Pakistan Question* as was demanded by the Pakistani delegation. This leaves no doubt about Pakistan's intention of ignoring the people of the State and their views and aspirations on the future of the State.

Pakistan's confession

When the UN Commission (UNCIP) arrived in Karachi on 7 July 1948, Pakistani Foreign Minister informed it that the Pakistani Army had at that time three Brigades of regular troops in Kashmir that were sent to the State during the first half of May 1948. Joseph Korb, a member of the Commission said that this disclosure of Pakistan had changed the entire complexion of the Kashmir case. On 5 June 1948, Nehru wrote to the UNSC President that there could be no question of the Commission proceeding to implement the resolution until objections raised by the Government of India had been satisfactorily met. With this ended the Kashmir case at the UNSC and the scene now shifted to India-Pakistan.

UNCIP

Czechoslovakia, Argentina, Belgium, Colombia and the US comprised the five-member UN Commission on India and Pakistan on the basis of the Resolution of 21 April. India nominated

Czechoslovakia while Pakistan nominated Argentina to be their respective representatives. Belgium and Colombia were nominated by the Security Council.

The first shock for the UNSC-designated President of UNCIP was the confession by Pakistan's Foreign Minister that three Brigades of the Pakistani Army had moved into Kashmir in May. India gave proof of Pakistan Army's involvement in Kashmir fighting and on 13 August the Commission passed a resolution in three parts dealing with (a) *Ceasefire* (b) *Truce agreement* and (c) *Plebiscite*. For the first time, the UNCIP recorded a violation of international law by Pakistan by sending troops into Kashmir. Pakistan agreed to withdraw tribesmen and others fighting there and on 20 August 1948, India accepted the August 13 Resolution with some clarifications like (a) Recognizing J&K Government's sovereignty over parts vacated by Pakistan or Pakistan Administered Jammu & Kashmir forces (b) No participation of Pakistan in the Kashmir plebiscite.

On 6 September 1948, Pakistan conditionally accepted the UNCIP's 13 August Resolution. On 7 September, Nehru declared in the Indian Parliament that in view of Pakistan's confession that her troops were present in J&K it was proved that her whole case before the UNSC had been built upon falsehood and deceit. Next day, Pakistan Foreign Minister Zafarullah said in a press conference in Karachi that Pakistan was under no obligation, international or otherwise, which prevented her from sending her troops to Kashmir.

In its first report dated 23 November 1948 from Geneva, the UNCIP highlighted (a) Regular Pakistani forces were in J&K and were taking part in fighting (b) It was an entirely new situation on the ground in Kashmir (c) Ceasefire was not possible owing to Pakistan's reservations about truce resolution (d) Forces fighting in '*Azad Kashmir*' were under command and control of Pakistan.

After Dr. Lozano made some clarifications about a plebiscite, the two sides accepted the ceasefire which came about on 1 January 1949. Assurance had been given to India that the plebiscite proposal shall not be binding upon India if Pakistan does not implement Part I and Part II of the Resolution of 13 April 1948.

On 13 March 1948, the US designated Fleet-Admiral Chester N. Nimitz as Plebiscite Administrator for J&K. In a memorandum, the President of UNSC asked India and Pakistan on 29 and 30 August whether they would agree to the appointment of Admiral Nimitz, the Plebiscite Administrator as arbitrator regarding the implementation of Part II of 13 April Resolution. The Memorandum stated that arbitration would terminate once truce terms were decided. Pakistan accepted the resolution but India rejected it outright arguing that the Arbitrator was given a free hand in determining the question over which he was to arbitrate. Moreover, Pakistan had not withdrawn her troops and the second step could not be taken until the withdrawal of Pakistani troops was complete.

[UNCIP Resolution 5 January 1949](#)

On 5 January 1949, UNCIP came up with a new Resolution which reiterated the earlier position of the UNSC's Resolution of 21 April. In fact, the 5 January Resolution was in

continuation of the 21 April Resolution. Briefly stated, the highlights of this resolution are, (a) Impartial plebiscite (b) Plebiscite to be held when ceasefire and truce arrangements set forth in Part I and II of 13 August 1948 Resolution have been carried out (c) Defining how plebiscite will be carried out.

Sometimes observers give undue importance to this Resolution producing it as a strong argument for holding plebiscite without ensuring whether the pre-conditions have been met or not. However, Clause 2 of the Resolution makes the entire exercise of plebiscite subject to the implementation of Article 2 above according to which withdrawal of all tribesmen and other Pakistanis fighting in Kashmir precedes the holding of the Plebiscite.

The reason why Pakistan was unwilling to implement the two Resolutions in conjunction are clear. (a) Pakistan was not confident she would win a plebiscite as long as Sheikh Abdullah continued to be accepted by Kashmiris as the unchallenged leader in Kashmir and that he was not at all in favour of his people voting for Pakistan (b) Pakistan had reservations that a plebiscite, even under the aegis of the UN, would not be free and fair in Kashmir and that it would seal its fate in Kashmir forever (c) By now Pakistan had understood that the Anglo-American bloc did not really have a soft corner either for the people of Kashmir or for Pakistan; they catered to their own larger interests.

It may be said that after 5 January 1949, impact and practicability of the resolutions fizzled out. The Kashmir question lost its earlier priority with the UNSC. The Anglo-American bloc got deeply involved in countering Soviet menace on a global level and frantically looked for military alliances like Baghdad Pact, CENTO, SEATO, etc. India's role in the Non-Aligned Movement was at least a respite if not total relief. Moreover, Indo-China and Indo-Pakistan wars of the 60s and 70s altogether changed the political landscape of the subcontinent. A long pause in UN's deliberations over Kashmir was inevitable.

[UN Resolutions-present status](#)

The Resolutions of the Security Council about the Kashmir-issue have become redundant and hence un-implementable. This was stated by at least two former Secretary Generals of the UN, Boutros Gali and Kofi Anan. Both have officially said that the UNSC Resolutions on Kashmir have lost their sanctity and are no more valid for implementation. Kofi Anan said so in an interview with the reporter of Pakistan's widely circulated *Dawn* newspaper which splashed the banner news on its front page. The main argument was that India and Pakistan had concluded the Shimla Agreement in 1972 in which the two sides agreed to resolve the Kashmir-issue through bilateral talks and made a commitment of eschewing violence. According to the rules of the UN, once two disputing parties sign a mutually acceptable agreement, the UN steps out of the scene. A bilateral agreement supersedes UN or UNSC Resolutions when the same is ratified by the respective parliaments. This is the stand of the UN Secretary-General even today.

In recent years, and particularly after Pakistan unleashed a proxy war in Kashmir, (in total violation of the UN Resolution of 13 April 1948 as well as the Shimla agreement of 1972)

Pakistan's Government and pro-Pakistani NGOs in and out of Pakistan propagate implementation of two Security Council Resolutions on Kashmir, namely 13 April 1948 and 5 January 1949. Alongside this demand, Pakistan has been spreading propaganda that India has backed out of a plebiscite and thus is depriving the people of Kashmir of their right of self-determination. Supported by a strong propaganda machine, Pakistan succeeded to some extent in misleading its own people and many NGOs as well as some foreign agencies that India is the villain of the piece for she scuttles plebiscite in Kashmir.

Unfortunately, these unsuspecting people have failed to do some serious study so that they would understand what the reality is. The Resolution of the Security Council dated 13 April 1948 clearly and unambiguously states that Pakistan will withdraw its soldiers and fighting men from Kashmir and the administration of the State will remain in the hands of the Srinagar Government. Thereafter, India will also pull out and leave only a small fraction of her troops in Kashmir. When such circumstances prevail, it is possible that a UN representative will be nominated to arrange for an impartial plebiscite in Kashmir. Pakistan has not fulfilled these conditions. Contrarily, she has inducted regular Pakistani troops and heavy armament into the fray and wants others to play her game. Clearly, she is the violator of the UNSC's resolutions.

Again in violation of the UNSC Resolutions, Pakistan has ceded more than 5,000 sq km of the original territory of J&K State to China which belongs to the original State of J&K. How did Pakistan give away a part of the territory which she asserts is disputed? What is more, she gave her consent to China to build the Karakorum Highway, and now the China Pakistan Economic Corridor (CPEC) is also being constructed across the disputed territory of Kashmir. She has allowed China to station thousands of troops of the Chinese People's Liberation Army (PLA) in Gilgit Baltistan area for exploiting the mineral wealth of the region. The CPEC which connects China's western province of Xinjiang with the Pakistani port of Gwadar passes through the disputed territory of Gilgit Baltistan, which remains an elemental part of J&K.

Lastly, Pakistan has changed the entire complexion of the Kashmir-issue by unleashing a proxy war since 1990. She has declared umpteen times that she will provide political, diplomatic and moral support to Kashmiri separatists and their movement for separation of Kashmir from the Indian Union and accession to Pakistan. In doing so, Pakistan has violated the ceasefire agreement of 2003 signed between the two sides along the Line of Control (LoC) in J&K. Firing and shelling from Pakistan has forced thousands of civilians living along the ceasefire line to leave their homes and find a safer place.

Conclusion

The way the UNSC handled the Kashmir question is partly partisan and partly hegemonic and exposes its much-trumpeted neutrality and impartiality. It dealt with global issues along the paradigms of great power politics and the way the Kashmir question fizzled out shows how circumspect and toothless the Council can be.

Equitable justice at this international body is improbable and therefore, no solution of the Kashmir-question can be called viable and sustainable unless hammered by the two countries without the interference of a third party. The Kashmir-issue has become the catalyst to new issues on the subcontinent of identities and ethnicities and the resurgence of fundamentalist Islam in the Islamic world has added another dimension to it, much to the satisfaction of Pakistan and the Organisation of Islamic Cooperation (OIC).

Internationalization of the Kashmir-question is a phenomenon that cannot be overlooked in the context of contemporary world history. Kashmir is very much sucked deep into the vortex of international diplomacy and regional security.

Breaking the status-quo recklessly is fraught with extreme danger and disaster.



November 2018. © European Foundation for South Asian Studies (EFSAS), Amsterdam