

THE KASHMIR DISPUTE: A CASE STUDY OF  
UNITED NATIONS ACTION IN HANDLING  
AN INTERNATIONAL DISPUTE

By

MAHMUD AHMAD FAKSH

Bachelor of Arts

American University of Beirut

Beirut, Lebanon

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## PREFACE

The maintenance of international peace and security is the United Nations' most important function and the success or failure of the organization will be judged by the degree of success achieved in this endeavor. The United Nations has dealt with a number of international disputes and an analysis of its record should throw some light on both the operations and the value of the United Nations. In this thesis I will limit myself to the study of United Nations' actions in the Kashmir dispute to discuss an international action in the field of peaceful settlement.

Indebtedness is acknowledged first to Dr. Raymond Habiby, my thesis adviser, who has worked tirelessly and unceasingly, to assist me in this study. I owe an incalculable debt to Dr. Clifford A. L. Rich, who was the first to arouse and guide my interest in the political and legal affairs of men and nations. I am grateful to Professor Harold Sare for the valuable time he dedicated to the shaping and crystalization of my viewpoints. Finally I am indebted to the Department of Political Science at Oklahoma State University which, by appointing me as a graduate assistant, made it possible for me to pursue my studies.

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## CHAPTER I

### INTRODUCTION

On January 1, 1948, the Government of India took action to place the Kashmir question before the Security Council. In a note submitted to the United Nations it invoked Article 35 of the Charter, which authorizes any member to bring to the attention of the Security Council a situation the continuance of which would likely endanger the maintenance of peace and security.<sup>1</sup> India claimed that the situation existing between itself and Pakistan was the result of nationals of Pakistan and of tribesmen from the territory of the Northwest Frontiers immediately adjoining India, and operating from Pakistan, having commenced operations against the State of Jammu and Kashmir,<sup>2</sup> which had acceded to India on October 27, 1947, and was as such a part of India.

The Government of Pakistan, in a lengthy communication sent to the Security Council on January 15, 1948<sup>3</sup>, emphatically rejected the Indian Government's charges and denied the claim that it was giving aid and

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<sup>1</sup>United Nations, Security Council Official Records (Security Council Document 628, January 2, 1948), pp. 139-144. All references to the United Nations documents in this thesis will be designated by the letter system used by the United Nations itself. Thus Security Council Documents will be indicated by S/ and Verbatim Records of the Security Council (meetings) by S/PV.

<sup>2</sup>Jammu and Kashmir is the officially recognized name of the State. Throughout this study it will also be referred to as Kashmir.

<sup>3</sup>(S/646, January 15, 1948), pp. 67-87.

assistance to the invaders. Pakistan conceded that a number of independent tribesmen and persons from Pakistan were, as volunteers, helping the Kashmir people in their struggle for liberty. Pakistan went further to bring to the attention of the Security Council, also under Article 35 of the Charter, its own charges against India, the most important being:

1. India was making a persistent attempt to undo the partition scheme of the Indian sub-continent.
2. A campaign of "genocide" was being carried against Muslims in East Punjab and the Punjab Princely states.
3. The Indian forces had forcibly and unlawfully occupied Junagadh and a number of other states.
4. The accession of the State of Kashmir was obtained by "fraud and violence".
5. India had failed to meet its obligations arising from the partition.
6. Indian action was designed to "destroy the State of Pakistan".

Thus early in the life of the United Nations, it had to deal with another international dispute the continuance of which could endanger international peace and security in that part of the world. In one form or another, this problem has occupied the attention of the United Nations to this day. The fact that the problem is important can readily be gathered from statements which a number of leading statesmen have made.

Philip Noel Baker, the British representative in the Security Council, told the Council in 1948: "I believe...that the Kashmir dispute is the greatest and the gravest single issue in international

affairs."<sup>4</sup> De La Tournelle, the representative of France, reiterated the same belief by telling the Council in 1948 that "in view of the immense size of the states involved, if the opposing forces were let loose the consequences might be incalculable."<sup>5</sup> Richard Symonds, the author of The Making of Pakistan, 1950, wrote: "...it is the Kashmir dispute which has imprisoned every aspect of Indo-Pakistan relations."<sup>6</sup>

The record of the Security Council in this matter shows that the Council has limited itself to offering its good offices, mediation and conciliation under the pacific settlement provisions of the Charter, and that at no stage has the Council directly sought to resolve the issues between the parties. The Council has only worked out methods and plans and recommended them to the parties to use in resolving their dispute. It is clear that the Security Council, having ruled out a military decision, wanted the parties to arrive at their own solution by way of a peaceful agreement. Austin, United States representative in the Security Council, clearly expressed this when he said: "The Security Council does not have to pass judgment upon any issue of fact in this dispute beyond the one on which both parties were agreed, and when they passed earnestly."<sup>7</sup>

Noel Baker put it this way: "...these measures depend on the cooperation of both parties...and without cooperation...no plan can work."<sup>8</sup>

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<sup>4</sup>(S/PV 284, April 17, 1948), p. 11.

<sup>5</sup>Ibid., p. 23.

<sup>6</sup>Richard Symonds, The Making of Pakistan (London, 1949), p. 154.

<sup>7</sup>(S/PV 284), p. 18.

<sup>8</sup>Ibid., p. 13.

It is true that while the Security Council is authorized to impose final solutions, yet because of the failure to develop its Charter powers, it has been limiting itself to proposing recommendations hoping that they would generate a reasonable and impartial settlement accepted by both parties to the dispute.

With this factual and positivist assessment of the United Nations' actions, and with the Kashmir question serving as a case-study, this study will attempt an analytical examination of the different proposals of the Security Council for resolving the Kashmir dispute in order to prove the following hypothesis: Whatever action or lack of action the United Nations Security Council has taken was motivated by a desire to maintain a peaceful stalemate between India and Pakistan, a form of status-quo, until the issues, whether of fact or law, are settled by direct negotiations between the two parties to the dispute. The United Nations' action was a result of the conviction that it could not in the circumstances resolve the issues, partly because of the diametrically opposed stands and interests of the parties in the Kashmir dispute, and partly because of the shortcomings of the United Nations system.

This study should provide an analytical understanding of United Nations' action in handling an international dispute from a positivist point of view. It should help to clarify common misconceptions of the role of the United Nations, which to me are the result of too optimistic or too pessimistic an evaluation of the United Nations and its ability, and the belief that it has a will of its own, to impose a solution in a specific situation. In the concluding chapter of this thesis, I will try to show why I believe the United Nations is of a great value to world peace even in the context of its handling of the Kashmir dispute.



I am aware of the fact that Indian as well as Pakistani scholars and politicians might, with all probability, contest my basic hypothesis. This would be understandable because their strong involvement in the problem can easily blind them to the role of the United Nations. It is no surprise that both have accused the United Nations of lack of "fairness and impartiality". They have, in effect, rejected most, if not all, of the United Nations proposals because it has not satisfied their demands.

The Kashmir problem did not start with the so-called "invasion" of Kashmir nor with India's complaint to the Security Council. It started way back in the history of the Indian sub-continent; in its partition and in the nature of its people. Chapter II will examine the background to the problem. Chapter III will deal with the positions and arguments put forth by India and Pakistan within the framework of their national interests in Kashmir. Chapter IV is an account of the events which precipitate the dispute. It was at this stage that the United Nations became an element in the dispute and Chapters V, VI, and VII relate what actions the United Nations has taken and attempt to explain why they were taken. Chapter VIII will analyze and appraise the United Nations' actions and relate them to the hypothesis of the thesis.

Given our international system as it is, can we expect the United Nations to have a will of its own regardless of what its members and the parties want? This is a problem which is aggravated by the nations' interpretation of the role of the United Nations, the importance and power of the parties involved in any dispute and whether they are committed to any of the world forces in this divided world. The Kashmir problem does not seem to be an exception. Whatever action the United Nations has taken seems to have been the only possible and feasible action in the

over-all situation.

As to methodology, I will pursue a critical analysis of the literature in the field. Particularly, I am going to study, in depth, the Security Council Documents on the Kashmir dispute, the literature written about the United Nations in its efforts to handle the dispute, Indian and Pakistani official documents, and the leading newspapers and periodicals that deal with the problem.

## CHAPTER II

### GENERAL BACKGROUND

An assessment of the political, cultural, and religious history of the Indian sub-continent is essential to the understanding of Pakistani-Indian relations, as this helps to explain the basic, deep-rooted issues that gave rise to the Kashmir dispute. One can say that this complicated problem goes way back to the early history of the sub-continent and its social milieu.

The arrival of the British in the Indian sub-continent in the middle of the seventeenth century brought about a round about turn in Indian history. Why and how the British succeeded in exercising complete supremacy will not be discussed in this thesis as this lies beyond the scope of my study. Yet one can say that British supremacy over India would have proved much more difficult had it not been for the internal decay of the Mogul Empire<sup>1</sup> brought about by the intensification of the conflict between Hindus, Muslims, and Sikhs.

From a factory in Bengal established by the East India Company in 1650, British control steadily increased so that by 1833, the Crown took over and became the effective ruler of India with the Company serving as the local managing agency of the Crown. In the year 1858, the

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<sup>1</sup>1526-1707 A.D. The Moguls were a Turco-Mongol race from Central Asia. The word Mogul, Mugul, Moghal, or Mughul refers to the Arabic and Persian form of the word Mongol.

Government of India Act deprived the Company of its role in the Indian Government.<sup>2</sup>

The Indian sub-continent under the British rule differed greatly from the India of Akbar<sup>3</sup> or Aurungzeb.<sup>4</sup> Not only had the former unifying authority collapsed but the successors had in turn split the country into a number of rival factions.

The British dominions in India were now more extensive than Akbar's in 1600, for if his empire reached to Kandhar, Kabul, and Badakhsham it had stopped short at the Narbada. All India to the Sutly and Rayput deserts was now under British control;....<sup>5</sup>

V. P. Menon, Secretary of the State Department, Government of India, in his book, The Integration of The Indian States, considers the British unification of the sub-continent as an unprecedented act in the history of India. He said that "no greater achievement can be credited to the British than that they brought India's enduring political consolidation."<sup>6</sup>

The British divided the Indian sub-continent into two kinds of political units; the Provinces or British India, and the Indian States or Princely India. British India, which was governed directly by the British through the Governor-General of British India, was divided into

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<sup>2</sup>The Company itself was formally dissolved on January 1, 1874 by Act of Parliament.

<sup>3</sup>The greatest and most enlightened of the Moguls, he subdued the whole sub-continent except for the extreme south and ruled it from 1556-1605 A.D.

<sup>4</sup>The last of the great Moguls (1658-1707 A.D.). His death was followed by the disintegration of the Empire.

<sup>5</sup>Vincent A. Smith, The Oxford History of India (London, 1958), p. 578.

<sup>6</sup>V. P. Menon, The Integration of The Indian States (New York, 1956), p. 3.

eleven Governors' Provinces (Bombay, Madras, Bengal, United Provinces, Punjab, Central Provinces, Bihar, Orissa, Assam, Sind, and North-west Frontier Provinces), and some centrally administered areas like Delhi, Ajmer, and Baluchistan.

Princely India<sup>7</sup> with its some five hundred and sixty-five states was governed indirectly through treaties which established Great Britain as the Paramount Power and deprived the states of full sovereignty. These states were under hereditary rulers who were bound to Great Britain by a treaty or some other form of agreement and owed allegiance to the Crown. The Government of India Act, 1935, defined an 'Indian State' as including

any territory, whether described as a state, an Estate, a Jigar or otherwise, belonging to or under the Suzerainty of a ruler who is under the suzerainty of His Majesty and not being a part of British India.<sup>8</sup>

On their part, the Princes acknowledged the Paramount Power of the British over India; "in return they were guaranteed internal autonomy and full protection against insurrection."<sup>9</sup> In the year 1858, Queen Victoria, in a proclamation, assured that the Crown "shall respect the rights, dignity and honour of native Princes".<sup>10</sup> The Paramount Power reserved to itself control over such central questions as defense, communications, and foreign policy. "The States had no international life...

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<sup>7</sup> Comprised roughly a third of pre-partition India's territory and a quarter of the population.

<sup>8</sup> Government of India, White Paper On Indian States (New Delhi, 1950), p. 17.

<sup>9</sup> Alice Thorner, "The Issues In Kashmir," Far Eastern Survey, XVII (1948), p. 174.

<sup>10</sup> White Paper On Indian States, op. cit., p. 12.

the Paramount Power had the exclusive authority of making peace or war or negotiating or communicating with foreign states."<sup>11</sup> While the sovereignty of the states had passed to the British, no British or British Indian authority could make laws for any of the states. The territories of the states had not become British territory, nor were their inhabitants British subjects.

This political division of the sub-continent was to have its ramifications during the period that preceded Independence Day, and later cast its long shadow on the Kashmir dispute. How this happened will be discussed later in this chapter; however, before I go into that, it is necessary at this stage of my thesis to deal with the Muslims in India and the part they played in the country's partition. They represented basic ideological differences which, from the start, clouded the Kashmir dispute, and hardened the positions of the two parties.

It is true to say that the people who now inhabit India and Pakistan have lived together on the sub-continent for the past twelve centuries; however, this was not the result of mutual consent nor the product of a shared heritage. On the contrary, the Hindus and the Muslims have different traditions and historical backgrounds. Mohammed Ali Jinnah<sup>12</sup> was referring to this when he said that "Hinduism and Islam...were more than two different religions; rather they were two different civilizations...."<sup>13</sup> Both have their independent histories of which they are

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<sup>11</sup>Ibid., p. 22.

<sup>12</sup>The great leader of the All-India Muslim League Party in India who later became the founder of Pakistan. He will be referred to in this thesis as Jinnah.

<sup>13</sup>Phillips Talbot, "Kashmir and Hyderabad," World Politics, I (1949), p. 130.

proud, and each people has its own heroes who are honoured.

The Muslims came to India as invaders in the first decade of the eighth century and their formal rule lasted till 1857, when the Muslims joined the Hindus and the Sikhs in common subjection to British rule. The Hindus never accepted Muslim rule as Indian rule, and the Hindus under Muslim rule never enjoyed the status of equal citizens. The principles of Islamic jurisprudence Sharia, gave them only the status of a subject nation, that of Zhimmis. In fact, the Jizia tax imposed on non-Muslim subjects symbolized the inferior status of the Hindus. This Muslim attitude provoked a Hindu nationalist spirit, which on several occasions came to the surface in the form of revolts against Muslim rule.

The Muslim ruling class did not fully comprehend the far-reaching impact of resurgent Hindu nationalism, so by 1832 the Hindus were in occupation of Delhi, while the Sikhs had by 1800 established their rule in the Punjab. From then on the Muslim's role in India became a secondary role.

The British did not originate the Hindu-Muslim conflict. The dividing lines between the Hindus, Sikhs, and Muslims in India were already in existence when the British came on the scene. Jinnah referring to this said that India "was also a case of we divide and you rule".<sup>14</sup> To Nehru, on the other hand, "it was the British who were responsible for all the difficulties between these two people, playing one against the other throughout the history of their occupation".<sup>15</sup> The same view was held by Mahatma Gandhi, Father of the Nation, when he said that "it

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<sup>14</sup>P. Kodanda Rao, "Communalism in India," Current History, XXX (1956), p. 84.

<sup>15</sup>Joseph Korb, Danger In Kashmir (Princeton, 1954), p. 41.

was the British statesmen who are responsible for the division in India's ranks and the divisions will continue so long the British sword holds India under bondage."<sup>16</sup> Hindu leaders were specifically critical of the system of separate electorates and the weighted representation of minorities which was imposed by the British in their constitutional reforms of British India. Those British enacted constitutional reforms

...enfranchised the citizens not as Indian nationals, but as a member of a community. Each community, which secured recognition...had a separate electoral role; it had its quota of representation fixed in advance; it could be represented only by its own members.<sup>17</sup>

The British had their own explanation: "...the undeniable facts of the case, the social milieu of India, the cleavages between Hindus and Muslims,...made a national democratic approach impossible...."<sup>18</sup>

The truth of the matter is that the separate electorates were the legal acknowledgement of the existence of the Muslim community and the Hindu-Muslim conflict, which started with the arrival of the Muslims on the sub-continent, was never forgotten by either side. For while the Muslims could go back to memories of ten centuries of Muslim rule in India and the heroes connected with this rule, the Hindus could not forget this period either.

Was the consolidation of the Hindus and Muslims into one state at any time possible in the light of the preceeding twelve hundred years of history? The Muslims have said no, but Hindu political leaders, including Nehru and Gandhi, believed that the "melting pot" of India had

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<sup>16</sup>V. P. Menon, The Transfer of Power In India (Princeton, 1957), p. 108.

<sup>17</sup>Kodanda Rao, op. cit., p. 79.

<sup>18</sup>Ibid., pp. 82-83.



"Indianized" the Muslims just as the pre-Muslim invaders of India, i.e., Persians, Greeks, and White Huns had been assimilated into the Hindu social structure. The Hindu leaders believed that Muslims had lost the cultural distinctiveness which might have at one time entitled them to be a separate nation. Muslim political leaders have admitted that throughout Indian history all foreign-race invaders eventually disappeared as a separate entity, but quickly pointed out that the Muslims remained an exception to this rule. In this they are joined by such disinterested scholars, as Mr. K. P. Karunakaran, a research associate in the Indian Council of World Affairs, when he argued that

India has been invaded by many races, including Greeks, the Sakas, and the Huns, they all merged with the original inhabitants of the country....But this did not happen in the case of Muslims. They brought with them definite social and religious institutions, which were in sharp contrast with those of the Hindus.<sup>19</sup>

With the passage of time and particularly during the decade preceding independence, this communal conflict reached its climax "marked by a growing animosity between the two political movements - the All-Indian National Congress and the All-India Muslim League".<sup>20</sup> By the end of March 1940, at the Lahore Annual Conference of the Muslim League, Jinnah said that

Islam and Hinduism are not religions in the strict sense of the word, but are in fact different and distinct social orders, and it is only a dream that the Hindus and the Muslims can ever evolve a common nationality.<sup>21</sup>

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<sup>19</sup>K. P. Karunakaran, "India In World Affairs," Indian Council of World Affairs (London, 1952), p. 113.

<sup>20</sup>Korbel, op. cit., p. 28.

<sup>21</sup>Menon, The Transfer of Power In India, op. cit., p. 82.

In view of this, the Conference resolved that

...geographically contiguous...regions in which the Muslims are numerically in a majority...should be grouped to constitute 'Independent States', in which the constituent units should be autonomous and sovereign.<sup>22</sup>

This came to be known as the "Pakistan Resolution", the first formal, overt demand made by the Muslim League to partition the sub-continent into two major, independent states that would separate the contiguous Muslim-majority areas (Pakistan) from Hindu-majority areas (India).

The Muslim League committed itself to the "two-nation" theory of Jinnah to the point of no return. On February 1941, the Working Committee of the Muslim League met and passed a resolution reaffirming the principles laid down in the Lahore Resolution of 1940.

The Congress leaders finally conceded to this demand. On June 14, 1947, the All-India Congress Committee met in Delhi and passed a resolution accepting partition. The resolution nevertheless has this to say about the unity of India:

Geography and the mountains and the seas fashioned India as she is, and no human agency can change that shape...Economic circumstances and the insistent demands of international affairs make the unity of India still more necessary. The picture of India we have learnt to cherish will remain in our minds and our hearts. The A.I.C.C. earnestly trusts that ...India's problems will be viewed in their proper perspective and the false doctrine of two nations in India will be discredited and discarded by all.<sup>23</sup>

On July 18, 1947, the Indian Independence Act as passed by the British Parliament stated that on August 15, His Majesty's Government would relinquish power to two independent countries; India and Pakistan. The division was to take place according to communal lines; the Hindu-

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<sup>22</sup>Ibid., p. 83.

<sup>23</sup>Ibid., p. 384.

majority Provinces were to form the Union of India, and the Muslim-majority Provinces were to form Pakistan.

The Kashmir conflict is more than one aspect of the ideological clash of the two parties at the time of partition or a mere extension of it. To the Muslim League, the partition was an "inevitable" development based upon the "two-nation" theory of Jinnah. It had to come because the Indian sub-continent is inhabited by two peoples with two major cultures and two different ways of life. In contrast, the Congress' attitude toward partition was that it is a political concession on the part of Indian leaders to avoid future communal troubles which had for so long bedevilled Indian politics but "did not imply the acceptance of the validity of the two-nation theory nor the belief that partition was the right solution".<sup>24</sup> India does not seem to have at any time changed this attitude. During the disturbances that proceeded partition, Nehru, India's Prime Minister, reaffirmed India's faith in a secular state, for on October 12, 1947, he said:

So far as India is concerned we have very clearly stated... that we can not think of any state which might be called a communal or religious state. We can only think of a secular, non-communal democratic state in which every individual... has equal rights and opportunities.<sup>25</sup>

These two opposing attitudes toward partition seem to have been carried over to the Kashmir problem: India trying to prove that Kashmiris, though predominantly Muslim, can live with Indians in peace in a "secular" state, while Pakistanis see it as the repudiation of the whole "two-nation" theory, and in effect, the whole existence of Pakistan and

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<sup>24</sup>Keith B. Callard, Pakistan's Foreign Policy: An Interpretation (New York, 1957), p. 6.

<sup>25</sup>Karunakaran, "India In World Affairs," op. cit., p. 120.

and the essence of the State of Pakistan.

Typical of India's attitude is a statement made by Nehru in 1949 at a press conference following his return from a visit to the United States. Referring to American's lack of understanding of the Kashmir problem, Nehru said:

One...misunderstanding, not only in the U.S. but also in other parts of the world was that the partition of India was viewed as if the Moslems and non-Moslems of India had been completely separated on a religious basis, that is to say, as an outcome of the old Moslem League's or Jinnah's theory of two-nations. So far as we are concerned, we never accepted that theory; we repudiated it throughout.<sup>26</sup>

In contrast, Pakistan, loyal to its "two-nation" theory, kept pointing out the predominantly Muslim population of Kashmir, and insisting that as such it had to be part of Pakistan. "For Pakistan anything less than such an admission casts doubts upon the legitimacy and permanence of the national homeland."<sup>27</sup> Pakistan is convinced that India's action was a clear attempt to destroy the integrity of Pakistan, and the departition of the sub-continent, and that India was seeking to extend its boundaries in utter disregard of the principles of partition as conceived by Pakistan. "For Pakistan the very act of partitioning the sub-continent represented a de jure recognition of the validity of Mr. Jinnah's two-nation theory."<sup>28</sup> Liaquat Ali Khan, one time Prime Minister of Pakistan, repeatedly "asserted that Pakistan was surrounded by forces which were out to destroy her; and Jinnah more than once spoke of her as the

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<sup>26</sup>Michael Brecher, The Struggle for Kashmir (New York, 1953), pp. 52-53. Quoted in: Indiagram (daily bulletin of the Indian High Commission to the United Kingdom), Number 17, 1949.

<sup>27</sup>Callard, op. cit., p. 6.

<sup>28</sup>Brecher, op. cit., p. 51.

victim of a deep-laid, well-planned conspiracy."<sup>29</sup>

With this in mind, the Pakistan Government told the Security Council in 1948 not to limit itself to the Kashmir question, but also to discuss all the different issues between India and Pakistan in order to show that Pakistan was facing a serious threat amounting to possible extinction.

The Kashmir dispute is not only the result of ideological, religious and cultural conflicts between India and Pakistan, it is also the product of the British system of government in India--British India and the Princely States. India and Pakistan are the successors of British India but Kashmir is one of the Princely States.

While British ruled India the status of Princely India posed no problem because Paramountcy provided the necessary elastic relationship between the British authorities and the Rulers of the States. With the advent of independence, the status of Princely India raised the most crucial problem Indian politicians were to grapple with. "The effect of partition on the constitutional status of Princely India was near-disastrous uncertainty."<sup>30</sup>

British spokesmen had as early as May 12, 1946, declared, in the Cabinet Mission<sup>31</sup> Memorandum on States Treaties and Paramountcy, that:

...His Majesty's Government will cease to exercise the powers of paramountcy. This means that the rights of the states which flow from their relationship to the Crown will no longer exist and that all the rights surrendered by the States to the Paramount Power will return to the states....The void will

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<sup>29</sup>E. W. R. Lumby, The Transfer of Power In India (New York, 1954), p. 196.

<sup>30</sup>Brecher, op. cit., p. 18.

<sup>31</sup>Was ordered in 1946 to plan the transfer of power in India.

have to be filled either by the states entering into a federal relationship with the successor Government or Governments, or failing this, entering into particular political arrangements with them.<sup>32</sup>

The same theme was reiterated in the Indian Independence Act of July 18, 1947. It declared that:

The suzerainty of His Majesty over the Indian States lapses, and with it, all treaties and agreements in force at the date of the passing of this Act between His Majesty and the Rulers of Indian States,....<sup>33</sup>

These statements make it appear that the British had no intention of handing over to a third party their contractual relationships with the Rulers of the States without their consent. They made it clear that Paramountcy over the states would just lapse with the transfer of power. "They would simply drop it. Whether the gravitation of power would enable anyone else to pick it up was another matter."<sup>34</sup>

From a strictly legal point of view these statements made by the British authorities granted full freedom of action to the Princely States to accede to either Dominion or, if they so wished, to remain independent entities. Lord Mountbatten,<sup>35</sup> addressing the Chamber of Princes<sup>36</sup> on the 25th of July 1947, said that "now,....The states have complete freedom; technically and legally they are independent."<sup>37</sup>

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<sup>32</sup>White Paper On Indian States, op. cit., p. 153.

<sup>33</sup>Ibid., p. 156.

<sup>34</sup>Lumby, op. cit., p. 219.

<sup>35</sup>The last Governor-General of British India; served from March 22 to August 14, 1947. First Governor-General of the Dominion of India (August 15, 1947 to June 21, 1948).

<sup>36</sup>A deliberative, consultative and advisory body which was brought into being by Royal Proclamation of February 8, 1921.

<sup>37</sup>White Paper On Indian States, op. cit., p. 161.

The independent status which the British granted to the Princely States led leading Congressmen to accuse the British of the "Balkanization" of the Indian sub-continent. The All-India Congress Committee met on 14 June 1947, and passed a resolution "declaring that the Congress did not agree with the theory of paramountcy as enunciated and interpreted by the British Government."<sup>38</sup> In effect, the Congressmen argued that Paramountcy should revert to the successor authorities in British India in order to avoid the "Balkanization" of the country. In the Congress press, the treaty rights were dismissed as "fictitious" or "imaginary",<sup>39</sup> for they claimed it was the people rather than the Rulers who were to be consulted as to the future of the States.

Indian legal advisers developed a different legal theory. They claimed that:

- (1) None of the states had sovereign rights in the full sense of the term; nor did they have individually the necessary resources to claim or enjoy the attributes of a sovereign independent power.
- (2) The paramountcy relationship between the Crown and the states was essentially an extra-constitutional relationship; it is a political relationship.<sup>40</sup>
- (3) /Therefore/ the real basis of Paramountcy was not treaties, pledges or promises, but the fact of British supremacy throughout India.<sup>41</sup>

To those jurists, the lapse of Paramountcy did not mean an end of all the arrangements with the British that existed within the realm of practical politics. "The essential defense and security requirements of the country and the compulsions of geography did not cease to be operative

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<sup>38</sup>Menon, The Integration of Power In India, op. cit., pp. 90-91.

<sup>39</sup>Lumby, op. cit., p. 219.

<sup>40</sup>White Paper On Indian States, op. cit., pp. 144-145.

<sup>41</sup>Lumby, op. cit., p. 217.

with the end of British rule in India."<sup>42</sup> In actuality, "...all the factors which established the paramountcy of the British Government over the states operated to assign a similar position to the Government of India."<sup>43</sup>

The Muslim League leaders held a completely different attitude. They approved the British interpretation of Paramountcy and its effects on the constitutional status of the Princely States. They even held the view that the states were fully entitled to join neither Dominion and if they so decided could become independent, sovereign states. In support of this Jinnah said that "the Cabinet Mission had never laid down that every state was bound to come into one or the other Constituent Assembly."<sup>44</sup>

These two conflicting attitudes toward Paramountcy and its effect on the constitutional status of Princely India were to have their ramifications on the Kashmir dispute. India kept reiterating her original attitude in an attempt to give legitimacy to her action in sending troops to Kashmir, for to Indian leaders it was within India's legal rights, being the successor of British India, to protect and defend Kashmir, which had asked for help against outside invaders. Taraknath Das, in an article in the Political Science Quarterly, put it this way:

The Government of India, under the then existing treaties between Kashmir and the British Government of India, was obliged - as the legal heir of the British Government - to defend Kashmir against any invasion....

India, in order to meet its treaty obligations..., accepted the request for military aid and accession of

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<sup>42</sup>White Paper On Indian States, op. cit., p. 143.

<sup>43</sup>Ibid.

<sup>44</sup>Menon, The Integration of The Indian States, op. cit., p. 87.



Kashmir.<sup>45</sup>

Pakistan, on the other hand, strongly rejected the Indian claim, and stood firm on its attitude toward Paramountcy and its effects on the legal status of Princely India. Pakistani leaders maintained that India had no right to send troops to Kashmir against the will of the majority of the Kashmiri people and as such the Indian army in Kashmir was an "occupation army".

Do the principles of international law on states succession, as interpreted by the United Nations Secretariat, help us to clarify this crucial issue between India and Pakistan? The Indian Independence Act of July 18, 1947, did present the Secretariat of the United Nations with the problem of the membership of "India" in the Organization. Secretary-General Trygve Lie had to decide whether the partition had brought into being two new states; India and Pakistan, and ask both to apply for membership or treat one of the two as the successor state and ask the other to apply. On August 8, 1947, Dr. Ivan Kerno, the Assistant Secretary-General for Legal Affairs of the United Nations, gave the following legal opinion:

From the viewpoint of International Law, the situation is one in which part of an existing state breaks off and becomes a new state. On this analysis there is no change in the international status of India; it continues as a State with all treaty rights and obligations. The territory which breaks off - Pakistan - will be a new state. It will not have the treaty rights and obligations of the old state and will not of course have membership in the United Nations. In International Law the situation is analogous to the separation of the Irish Free State from Britain, and of Belgium from the Netherlands. In these cases the portion which separated was considered a new state, and the remaining portion continued as an

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<sup>45</sup>Taraknath Das, "The Kashmir Issue and The United Nations," Political Science Quarterly, LXV (1950), p. 268.

existing state with all the rights and duties it had before.<sup>46</sup>

Pizada, the representative of Pakistan in the General Assembly, "pointed to the division as being a disintegration rather than a secession",<sup>47</sup> and, in effect, did not accept the legal opinion that the personality of British India had been sustained in the new India. Arce, the representative of Argentina, supported the Pakistani representative in criticizing the opinion of the Secretariat, and held that "the two new states should receive identical treatment, and they should either become Members of the U.N. automatically or both have to ask for admission."<sup>48</sup>

The opinion of the Secretariat was also criticized by D. P. O'Connell as presenting an improper interpretation of the Irish Free State and Belgium cases, as in these two cases.

...the old sovereign actively participated in the act which created the new states. The creation of Pakistan...was not the act of India, nor did India directly participate in it. It was a division enacted by a constitutional superior, and in no sense of the word...could it be considered that there was any secession on the part of Pakistan. Both Dominions were in the position of new states.<sup>49</sup>

However, the Security Council and the General Assembly accepted the Secretary-General's ruling and put Pakistan alone through the prescribed formalities of membership. Whatever the merits of each opinion may have been, the partition of British India presented a controversial case

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<sup>46</sup>United Nations, Department of Public Information, Press Release (PM/473, August 12, 1947), p. 42.

<sup>47</sup>United Nations, General Assembly, Sixth Committee, Summary Records, 43rd Meeting (October 7, 1947), p. 42.

<sup>48</sup>Ibid., 42nd Meeting (October 6, 1947), p. 38.

<sup>49</sup>D. P. O'Connell, The Law of State Succession (Cambridge, 1956), p. 6.

which, while it started as a problem of membership, was later projected into the Kashmir case with India claiming itself the successor of Britain vis-a-vis the Princely States, and Pakistan strongly contesting this.

### CHAPTER III

#### THE IMPORTANCE OF KASHMIR TO BOTH INDIA'S AND PAKISTAN'S NATIONAL INTERESTS

In the previous Chapter I discussed the attitudes of the Pakistani Muslim League and the Indian National Congress on the question of partition and the doctrine of freedom of action of the Princely States, and pointed out how Jinnah of the Muslim League accepted the full implications of this doctrine as interpreted by the British, while the Congress Party first rejected the basis of the doctrine and then reluctantly accepted it.<sup>1</sup>

When the Kashmir problem came to the fore, the Muslim League which had acknowledged the right of the rulers of the Princely States to full freedom of decision, considered the issues in Kashmir so vital to Pakistan that it refused to concede to the Maharajah (Ruler of the State) the right to determine Kashmir's future according to his own free will. India, on the other hand, clothed its interests with a mantle of legality by first accepting the accession of the State and then proceeding to send troops to help stop the invasion. India acted in this way because it considered it has vital interests in Kashmir's fate.

To understand and appreciate the magnitude of the issues involved and the consequences of the conflicting attitudes of India and Pakistan,

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<sup>1</sup>For a fuller explanation see Brecher, op. cit., pp. 18-22.

a study of the national interests of the two parties, how they have affected their Kashmir politics, and the real motives of the two parties is necessary. I will discuss both the economic and the strategic considerations, which are so inextricably interrelated. The ideological considerations have already been dealt with in the previous chapter.

The economic factors stand so pronounced. There is no doubt that partition had a disruptive effect on the economies of both India and Pakistan. Under British rule, and during the sixty years preceding partition, the British authorities developed a scheme for the irrigation of the Indus basin,<sup>2</sup> "which would irrigate lands belonging to the Crown, so that the Government of British India could earn revenues not only from the water rates, but also from the sale of Crown lands."<sup>3</sup> The plan as prepared by British engineers did not take into consideration the political delimitations which had no existence at that time.

With the partition of the Punjab Province along communal and not economic lines, a massive agricultural problem came into being. Pakistan was left with the major part of the irrigated lands of the Punjab and Sind, while the upper reaches of the rivers supplying much of the water was left within India or Kashmir. This situation was well illustrated by a leading Indian newspaper, The Statesman, which said:

Partition has placed West Pakistan, and especially Punjab Pakistani section and the Bahawalpur State, in a vulnerable position as three of the rivers of the Indus basin flow through Punjab Indian section into Punjab

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<sup>2</sup>The Indus system of rivers consists of the main river Indus, five tributaries from the east, the Jhelum, Chenab, Ravi, Sutly and the Beas, and a few tributaries from the west, the most important of which is the river of Kabul.

<sup>3</sup>L. Rushbrook Williams, "The Indus Canals Waters Problem," Asian Review, LI (April, 1955), p. 140.

/Pakistani section/.<sup>4</sup>

The Pakistani leaders were aware of this delicate economic situation for on April 1, 1948, the Indian East Punjab Government cut off the water flowing into the canals in Pakistan and Pakistan immediately felt the consequences. Pakistan so vividly learned that the State of Kashmir with its water resources is the life-line of its agricultural economy. So long as "two thirds of the entire water supply originates in Kashmir, where the snow-fed Indus rises,"<sup>5</sup> Pakistan can not let the State be controlled by a hostile power.

The leaders of Pakistan have made frequent references to Kashmir's economic importance to show how vital Kashmir is for the existence and welfare of Pakistan. One time Pakistan Foreign Minister, Zafrullah Khan, on February 8, 1950, stressed the importance of these economic factors while arguing his country's case before the Security Council. He referred to the volume of trade between Kashmir and Pakistan to prove the commercial interdependence of the State of Kashmir and Pakistan. As to the real economic factor - the canal waters - he had this to say:

The three rivers - beginning at the top of the map, the Indus, the Jehelum and the Chenab - which flow from Kashmir into Pakistan, control a very large extent the agricultural economy of Pakistan itself. The economy of the whole of West Pakistan is based almost entirely upon its irrigation system, that is to say, upon the application of scientific methods to make the waters of these rivers available for purposes of agriculture through irrigation works and irrigation channels. As much as 19 million acres of land is irrigated in West Pakistan from the waters of these rivers....

If Kashmir were to accede to India, this supply would be cut off altogether. This is not an idle apprehension on the part of West Pakistan.

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<sup>4</sup>The Statesman (Calcutta), March 28, 1950, p. 1.

<sup>5</sup>David E. Lilienthal, "Another 'Korea' In The Making?" Colliers (New York), August 4, 1951, p. 58.

He then referred to India's action in cutting off the water supply to West Pakistan in April 1948 and declared that:

Assume for one moment, that Kashmir were to accede to India. The same would apply to the other three rivers,...which flow from Kashmir into Pakistan, would also be denied to Pakistan, ...Nineteen million acres would be turned into a waste, and millions of people would be faced with starvation and extinction. That is an economic factor the like of which can not be produced in a comparable case anywhere else.<sup>6</sup>

Liaquat Ali Khan, who was Prime Minister of Pakistan at that time, stressed the same points. In an interview with David E. Lilienthal, he said:

Kashmir is very important, is vital to Pakistan; to India it is what you might call a luxury; with us it is a vital necessity of our survival....If I allow India to have.../Kashmir<sup>7</sup>, then I am always at the mercy of India. Then the sacrifices of millions will have been in vain.

Using the same logic Pakistani leaders pointed out the strategic importance of Kashmir to the security of Pakistan. Zafrullah Khan asked the Security Council to pay attention to these strategic factors. To him

...India's security would not be affected one ounce by the accession of Kashmir to Pakistan. There is nothing that would be placed in jeopardy if that should happen. The barrier between Kashmir and India, except for those twenty miles, is all mountainous, and...would make no difference to the security of India, to its strategy or to its defense arrangements  
....

On the other hand, look at the question from the point of view of Pakistan.../the two main strategic road and railway systems of West Pakistan running parallel throughout Kashmir/. The whole of the defense of that area,...is based upon the fact that this line would not be threatened from the flank. If Kashmir acceded to India, the whole of that flank would be threatened and broken...India would obtain direct access to the tribal and, through the tribal areas, on to Afghanistan. Pakistan's position would become absolutely untenable....

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<sup>6</sup>(S/PV 464, February 8, 1950), pp. 5-6.

<sup>7</sup>Lilienthal, op. cit., pp. 56-57.

Again from the point of view of defense, quite as many as 10,000 Pakistani soldiers are drawn from certain areas of the Kashmir State, mainly Poonch....<sup>8</sup>

A similar theme, the strategic value of Kashmir to the security of Pakistan, was echoed by Liaquat Ali Khan in 1951. During the above mentioned interview with Lillienthal, he stated that:

The very position - the strategic position of Kashmir - is such that without it Pakistan can not defend herself against an unscrupulous government that might come to India

....

We might as well fight in Kashmir - that is my conclusion. Otherwise the next time it will be east Bengal and so on to the dissolution of Pakistan.<sup>9</sup>

General Sir Frank Messervy, in an article in the Asian Review, commented on the strategic importance of Kashmir to Pakistan by saying:

Pakistan is only interested in Kashmir defensively,... she can not possibly allow any hostile or potentially hostile country to hold Kashmir. An enemy force in Kashmir would threaten at close range the main vital rail and road communications from Lahore to Peshawar.<sup>10</sup>

Working from these two considerations, the economic and the strategic, the Pakistani leaders came to the general conclusion, which they have never tired of repeating, that Kashmir must belong to Pakistan for ethnological, economic, and strategic reasons. Liaquat Ali Khan, speaking at a luncheon given in his honour by the Commonwealth Club of California in San Francisco during his 1950 visit to the United States, said that "geographically, economically, strategically and culturally Kashmir was an integral part of Kaistan."<sup>11</sup>

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<sup>8</sup>(S/PV 464), pp. 6-8.

<sup>9</sup>Lillienthal, op. cit., p. 56-57.

<sup>10</sup>General Sir Frank Messervy, "Kashmir," Asian Review, XLV (January, 1949), p. 475.

<sup>11</sup>The Statesman, May 18, 1950, p. 5.



Although it is difficult to determine the extent to which any of these factors have influenced Pakistan's policies toward Kashmir, the fact remains that these considerations put together had a great deal of influence on the shaping of Pakistan's attitudes. Richard Symonds seems to have acknowledged this when he wrote: "so vital is its possession for economic and political security to Pakistan that her whole foreign and defense policy has largely revolved round the Kashmir dispute."<sup>12</sup>

The Indian leaders were also aware of the economic and the strategic value of Kashmir to India's national power. Indian spokesmen have on the whole refrained from placing great stress on the economic aspects of the Kashmir dispute. Yet at least on one occasion they mentioned its economic importance within the context of India's geographical position as a Central Asian State. Thus during the initial presentation of the Indian case before the Security Council, Gopalswami Ayyangar, the representative of India, said that "economically also, Kashmir is intimately associated with India. The caravan trade routes from Central Asia to India pass through Kashmir State."<sup>13</sup>

Whatever the reasons behind this soft peddling of the economic factor by India may be, it still operates in shaping India's policies toward Kashmir, and, in effect, making the possession of Kashmir a vital necessity for the national economy of India. "From the economic point of view Kashmir ranked third among the Indian States in wealth. Its... great reserves of unexploited mineral deposits added to its value."<sup>14</sup>

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<sup>12</sup>Symonds, op. cit., p. 87.

<sup>13</sup>(S/PV 227, January 15, 1948), p. 13.

<sup>14</sup>Thorner, "The Issues In Kashmir," op. cit., p. 173.

Though it is the least developed of the regions in the sub-continent, there is evidence that

Kashmir...contains considerable forest and mineral resources which are valuable to a sub-continent confronted with the necessity of greater industrialization. The extent of its mineral wealth was revealed by an exhaustive inquiry made in 1923 which indicated the existence of bauxite and coal in considerable quantity and of a rather high quality, as well as iron, copper, lead, zinc, etc.<sup>15</sup>

Kashmir fits so nicely into India's industrial development plans and would greatly add to the economic potential of the State for setting up industries on a large scale. India would undoubtedly benefit from the possession of Kashmir by exploiting its raw materials.

As to the strategic location of Kashmir, Indian statesmen indicated an interest in the geographical position of Kashmir, and pointed out its tremendous strategic significance for the defense of the country. Evidence of India's interest in Kashmir's strategic location can be found in Ayyamgar's initial presentation of the Indian case before the Security Council. He said:

Kashmir because of its geographical position, with its frontiers contiguous with those of countries like the Union of Soviet Socialist Republics and China, is of vital importance to the security and international contacts of India.<sup>16</sup>

The same view was expressed as early as October 25, 1947, by Nehru in a cable sent to Attlee, the British Prime Minister. Nehru said:

Kashmir northern frontiers,...run in common with three countries, Afghanistan, the U.S.S.R. and China. Security of Kashmir...is vital to security of India especially since part of southern boundary of Kashmir and India are common. Helping Kashmir, therefore, is an

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<sup>15</sup>Brecher, op. cit., pp. 2-3.

<sup>16</sup>(S/PV 227), p. 13.

obligation of national interest to India.<sup>17</sup>

It requires little knowledge of political or military strategy to comprehend the geographical importance of this peculiar location of Kashmir to India's position as a Central Asian power. The Indian leaders, aspiring to build a major "Central Asian Power" that would play a powerful role among the Asian nations, "were by no means reconciled to the prospect of Kashmir's inclusion in Pakistan. Since...Kashmir was conceived of as both a gateway to greater influence in Central Asia and a bastion of defense."<sup>18</sup>

These considerations have undoubtedly shaped and determined the policies of India toward the Kashmir dispute. The Indian leaders, motivated by factors impinging so closely on to their national interest, showed no willingness to accept any change in their expressed attitudes toward the different issues of the problem.

It is clear that, in addition to the ideological considerations which I have dealt with in the preceding chapter, all of the considerations discussed in this chapter have contributed to the rigidity of both parties toward the Kashmir dispute. Both parties stressed their ideological concepts and did their best to defend the legitimacy of their national interests, and in so doing deadlocked the Kashmir problem. These were major considerations to both parties in their struggle for Kashmir, so much so, that neither felt able to yield any of its ideological beliefs or national interests, and no doubt the United Nations was fully

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<sup>17</sup>Government of India, White Paper On Jammu and Kashmir (New Delhi, 1948), pp. 45-46.

<sup>18</sup>Alice Thorner, "The Kashmir Conflict," Middle East Journal, III (January, 1949), p. 18.

aware of this in its deliberations.

## CHAPTER IV

### THE ACTUAL DISPUTE OVER KASHMIR

Independence Day came on August 15, 1947 and brought with it the partition of British India and the question of whether the Princely States would accede to India or to Pakistan. Maharajah Hari Singh, Hindu ruler of Kashmir, decided not to accede to either Dominion. He disliked the idea of becoming a part of India, which was being democratized, or of Pakistan, which was Muslim.

He knew that accession to India would eventually have meant the substitution of responsible government for his absolute autocracy...and...accession to Pakistan would probably have involved the loss of his throne.<sup>1</sup>

Had the Maharajah acceded to either Dominion before August 15, 1947 the Kashmir dispute might not have risen. "The Maharajah's chronic indecision must be accounted a big factor in the present crisis. Almost any course of action taken quickly would have saved his State from this turmoil."<sup>2</sup> Lord Mountbatten was concerned with this attitude of the Maharajah. Here was a state with an area of 84,471 square miles, about the size of Minnesota, and a population of about four millions, of whom about 75 per cent were Muslims, ruled over by a Hindu Maharajah. To encourage the Maharajah to take a decision, Lord Mountbatten visited Kashmir

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<sup>1</sup>Brecher, op. cit., p. 24.

<sup>2</sup>Alan Campbell-Johnson, Mission With Mountbatten (New York, 1953), p. 223.

in July 1947, and spent four days convincing the Maharajah to "ascertain the will of.../the/ people by any means and join whichever Dominion... /the/ people wish.../him/ to join by August 14 this year."<sup>3</sup> The Maharajah did not heed Mountbatten's advice and for some time seemed to think that he could remain independent. This was implicitly pointed out in his letter accompanying the Instrument of Accession, dated 26 October 1947,<sup>4</sup> but the realities of the situation, however, made such a status absolutely impossible.

With the passage of time, the Maharajah realized the necessity of coming to some kind of agreement with the successors of British India. Thus on August 11, 1947 he announced his willingness to enter into a Standstill Agreement with both India and Pakistan. The Government of Pakistan negotiated and signed such an agreement effective August 15 "providing for the continuance of economic and administrative relations between the State and Pakistan on the same basis as before the creation of the Dominion."<sup>5</sup> That is to say, the State authorized Pakistan to run the postal and telegraphic arrangements of the State as they were run by the Government of British India, and in return Pakistan was obliged to supply the State with food and other necessities.

The Maharajah also approached the Government of India for a similar agreement, but India neither accepted nor rejected the offer. He was informed that further discussion of the problem would be required before any action could be taken. Indeed the Indian officials did not seem to

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<sup>3</sup>Mountbatten of Burma, Time Only To Look Forward (London, 1949), p. 268.

<sup>4</sup>See Appendix A.

<sup>5</sup>Thorner, "The Kashmir Conflict," op. cit., p. 19.

be after an action that would lead to another conflict with Pakistan.

Whatever the reason behind the Indian attitude toward the Standstill Agreement may have been, the Pakistani officials interpreted the lack of a formal agreement with India to mean that Kashmir was part and parcel of Pakistan. Thus Zafrullah Khan told the Security Council on January 16, 1948, that

having regard to his geographical position and the distribution of population in his State, /the Maharajah/ knew that it was as much as his throne was worth if he made any movement in the direction of accession to India, so long as his people were there to protect and to desire accession to Pakistan.<sup>6</sup>

Soon a number of developments occurred which were to lead to a rapid deterioration in the relations between the Maharajah's Government and Pakistan. During the weeks that followed the partition of the Punjab, Kashmir became the main passage for the movement of Muslim refugees to West Punjab (Pakistan) and the reverse movement of Hindus and Sikhs to East Punjab (India). Those refugees, "economically and socially uprooted and full of bitterness", came into conflict with each other, and, in effect, "neighborhood clashes ensued, as well as smash-and-grab raids... both by Muslims...and by Dogras and /Hindu/ refugees...."<sup>7</sup>

Amidst this confusion, the Poonch revolt broke out by the end of August against the authority of the Maharajah and the Raja (governor) of Poonch. But, essentially, it was "a widespread popular demand for redress of grievances against the Poonch administration"<sup>8</sup> and "against

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<sup>6</sup>(S/PV 228, January 16, 1948), p. 67.

<sup>7</sup>Thorner, "The Kashmir Conflict," op. cit., p. 20.

<sup>8</sup>Thorner, "The Issues In Kashmir," op. cit., p. 176.

taxation."<sup>9</sup> In reply, the State's troops who were mostly Hindus resorted to harsh punitive measures in order to suppress the Poonch villagers who were predominantly Muslims, and "the conflict soon assumed a communal character."<sup>10</sup> The Poonchis who were ex-servicemen of the old army of India, with the help of arms and ammunitions from their comrades in Pakistan, fought bitterly against the State's troops.

This tragic event was followed by charges and counter-charges between the Government of Pakistan and the Maharajah. Pakistan alleged that the Maharajah's soldiers were engaged in a terrible mass persecution of Muslims in Poonch, which Pakistan described as a ruthless policy of "extermination" of Muslims. In reply, the Government of Kashmir emphatically rejected the Pakistani Government's charges and claimed that armed raiders of Muslims from Pakistan had infiltrated the State and committed acts of horror on non-Muslims.

Difficulties also developed over the economic supplies which the State of Kashmir was to have received under the Standstill Agreement with Pakistan. Early in September 1947, several essential commodities, which Pakistan was required to provide the State with, were cut off. Consequently, the Kashmir Government claimed that the Pakistani action was in effect an "economic blockade to Kashmir to coerce her into accession."<sup>11</sup> Pakistan denied the Kashmir charges and blamed special circumstances beyond the control of Pakistan. Thus, in a cable sent in October 2, 1947, Zafrullah Khan told the Prime Minister of Kashmir the following:

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<sup>9</sup>Lord Birdwood, "Kashmir," International Affairs, XXXVIII (1952), p. 302.

<sup>10</sup>Thorner, "The Issues In Kashmir," op. cit., p. 176.

<sup>11</sup>Korbel, op. cit., p. 65.



We are willing to see that Kashmir is supplied with essential commodities of which it is in need. It must however be appreciated that certain difficulties stand in our way. Drivers of lorries, for instance, are reluctant to carry supplies between Rawalpindi and Kohala.<sup>12</sup>

In the process of exchanging charges and counter-charges, the Prime Minister of Kashmir ended his telegram of October 18 with the significant intimation that unless the Government of Pakistan put an end to these "inequities", the Government of Kashmir would have no choice but to ask for "friendly assistance". On October 20, 1947, in a sharp reply to this telegram, the Pakistani Prime Minister, Liaquat Ali Khan, warned him against accession to India without the declared will of his people who are predominantly Muslims. On the following day, October 21, 1947, the large-scale tribal invasion began.

The tribesmen came from the North-west Frontier Province. "They were a restless people. Every man carried a rifle and recognized only one authority - his tribal chief."<sup>13</sup> They followed the Muslim faith with a great degree of fanaticism. The holy Koran was the revealed law and to uphold and defend it was a sacred duty. Now that their Muslim brothers in Kashmir were in danger, it was their ultimate duty to cross the border to defend them against oppression. Certainly boundaries, in the sense of international law, were no obstacle to them.

On October 21, 1947, some two thousand tribesmen crossed the State's borders; on October 22 they sacked the town of Muzaffarabad, and proceeded along the Jhelum Valley road toward Srinagar, the summer Capital of Kashmir. On the fourth day the pro-Pakistani "Azad" (Free) Kashmir

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<sup>12</sup>For the complete text of these charges and counter-charges see: White Paper On Jammu and Kashmir, op. cit., pp. 6-13.

<sup>13</sup>Korbel, op. cit., p. 73.

Government was formed. Various interpretations have been given for the tribal invasion, and I will elaborate on this later in this chapter, but it is worth mentioning here that according to Symonds, the tribesmen "saw an opportunity of gaining both religious merit and rich booty...."<sup>14</sup> Politically, however, the tribal invasion had the outstanding achievement of making up the Maharajah's mind to accede to India. Campbell-Johnson, an eye-witness of the actual events, wrote in his book, Mission With Mountbatten, that "it is probable that nothing short of a full-scale invasion to the gates of his capital would have induced the hesitating Maharajah to accede at all."<sup>15</sup>

On the evening of 24 October the Government of India received a desperate appeal for help from the Maharajah. Lord Mountbatten urged Nehru and the other Indian Ministers that "it would be dangerous to send in any troops unless Kashmir had first offered to accede."<sup>16</sup> Lord Mountbatten explained to Campbell-Johnson his line of thinking on accession by saying that:

He considered that it would be the height of folly to send troops into a neutral state, where we had no right to send them, since Pakistan could do exactly the same thing, which could only result in a clash of armed forces and in war.<sup>17</sup>

On October 25 the accession offer was made by the Maharajah.<sup>18</sup> At an emergency meeting of the Indian Defense Council on the 26th, it was decided that accession of the State of Jammu and Kashmir should be accepted

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<sup>14</sup>Symonds, op. cit., p. 158.

<sup>15</sup>Campbell-Johnson, op. cit., p. 240.

<sup>16</sup>Ibid., p. 225.

<sup>17</sup>Ibid., p. 225.

<sup>18</sup>See Appendix A.

immediately and that troops should be sent at once to rescue the State. The next day, October 27, Lord Mountbatten in a letter to the Maharajah, accepted the accession of the State,<sup>19</sup> but made it provisional to the wishes of the people which were to be consulted in a plebiscite as soon as "law and order" were restored. Legally and according to the procedure prescribed in the Indian Independence Act, the Instrument of Accession made India free to send troops. India immediately dispatched troops to Srinagar by air, barely saving it from the tribesmen. They gradually cleared the Valley of Kashmir by pushing the tribesmen back.

In response to the Indian military action in Kashmir, Jinnah, Governor-General of Pakistan, ordered General Gracey, the British Acting Commander-in-Chief of the Pakistan Army, to dispatch troops to Kashmir. General Gracey thereupon sought approval of the British Supreme Commander, Field-Marshal Auchinleck. Campbell-Johnson tells us that Auchinleck flew to Lahore and warned Jinnah that an act of invasion would lead to an immediate withdrawal of all British officers serving with the Pakistan Army. Jinnah cancelled the order.<sup>20</sup>

Pakistan refused to recognize the accession, and instead assisted the "Azad" Kashmir Government, which comprised the pro-Pakistan political movement, the Muslim Conference of Jammu and Kashmir, which controlled part of Kashmir. The other part of the state was under the control of the pro-India political movement, the National Conference of Jammu and Kashmir, the leader of which Sheikh Mohammed Abdullah, on October 31 became the Head of Emergency Administration. Later on he was

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<sup>19</sup>See Appendix B.

<sup>20</sup>Campbell-Johnson, op. cit., p. 226.

to become the Prime Minister of the Government of Kashmir.

The tribal invasion and accession of Kashmir to India have been during the past two decades the subject of unresolved controversy between India and Pakistan. Both parties have taken diametrically opposed stands on the causes of the tribal invasion and the accession offer. The Indian Government says that ever since the Maharajah of Kashmir decided not to accede to either Dominion, the Government of Pakistan kept trying to coerce him into accession to Pakistan. It accused Pakistan of inciting communal hatred among the Muslims and giving aid to raiders and terrorists in Kashmir. Nehru expressed this Indian position when in an address before the Indian National Assembly on November 25 he said that the raids had been "carefully planned and well organized by the Pakistani authorities with the deliberate object of seizing the State by force, and then declaring its accession to Pakistan."<sup>21</sup> Pakistani denials were received by Indian officials with utmost skepticism, for

To contend that the tribal invasion of Kashmir was wholly a spontaneous affair would be too huge a strain on human credulity. That it was a pre-planned and well-organized affair can today admit no doubt.<sup>22</sup>

India has insisted that Pakistan was an aggressor state and that India sent its troops to Kashmir under the act of accession which made Kashmir a part of India. Taraknath Das put it this way:

This act of aggression by Pakistan abrogated the Standstill Agreement....Futhermore, the Maharajah sent a formal request to India to allow Kashmir to accede to...India. This appeal...was supported by the National Conference....<sup>23</sup>

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<sup>21</sup>Lumby, op. cit., pp. 254-255.

<sup>22</sup>Menon, The Integration of The Indian States, op. cit., p. 414.

<sup>23</sup>Das, op. cit., p. 268.

Accordingly, to India the act of accession is legal, that Kashmir is now Indian territory and that it is up to India to decide when peaceful conditions are created to consult the people.

Pakistani officials have repeatedly denied the Indian contentions that Pakistan helped the raiders, and claimed that the tribal invasion was a spontaneous action on the part of the tribesmen to rescue their Muslim brothers in Kashmir from extinction at the hands of the Maharajah's troops. On December 30, 1947, Liaquat Ali Khan, in a letter sent to Nehru, presented Pakistan's attitude toward the tribal invasion. He wrote:

The sole responsibility for the disturbances in that State must squarely lie on the Maharajah and his Government, who... persisted in their policy of repression of Muslims. Repression was followed by resistance, particularly in the area of Poonch which is inhabited by a large number of ex-soldiers. The resistance in its turn met with more repression.... This state of affairs aroused strong feelings of sympathy throughout Pakistan, particularly among the Muslims living in the contiguous areas who had numerous ties of relationship with the persecuted people of the state. Some of these people went across to assist their kinsmen in their struggle for freedom and indeed for existence itself.

The letter went on to refute the Indian charges. It stated that:

As regards the charges of aid and assistance to the "invaders" by the Pakistan Government we emphatically repudiate them. On the contrary...the Pakistan Government have continued to do all in their power to discourage the tribal movements by all means short of war.<sup>24</sup>

The Pakistani officials saw in India's action in accepting the accession offer and in coming to the aid of the Maharajah an act of violence against the Muslim majority of Kashmir. They detected a plot between the Maharajah, the Indian Government, and Sheikh Abdullah, who had

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<sup>24</sup>White Paper On Jammu and Kashmir, op. cit., pp. 80-81.

been released from prison at the end of September 1947, against the people of Kashmir. As such, to them, the accession was not legal since it rested on violence and fraud, and would never be accepted by Pakistan. On November 4, 1947, Liaquat Ali Khan, in an address to the nation, had this to say:

We do not recognize this accession. The accession of Kashmir to India is a fraud, perpetuated on the people of Kashmir by its cowardly Ruler with the aggressive help of the Indian Government. The release of Sheikh Abdullah who had been convicted of high treason and the continued imprisonment of Muslim Conference leaders who had been convicted of mere technical offenses is only a part of the conspiracy....<sup>25</sup>

In support of this conspiracy thesis, "the Pakistanis insist that the dispatch with which aid was sent to Srinagar only further indicates that such aid had been planned for weeks."<sup>26</sup> Thus at a press conference in Karachi on January 3, 1948, the Pakistani Prime Minister, Liaquat Ali Khan, told the newsmen that "it is rather significant that the very day the Government of India signed the Instrument of Accession, Indian troops had landed in Srinagar, by 9 AM on October 27."<sup>27</sup> The Pakistani spokesmen have insisted that the Indian claim that Kashmir is a part of India's territory is wholly wrong, untenable and utterly opposed to the principles of accession as reference should be made to the wishes of the people whenever there is a religious cleavage between the people and the Ruler.

From these different interpretations of the legality of accession flow the sharply conflicting attitudes of the two parties on how the Kashmir dispute should be resolved. This was revealed in the course of

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<sup>25</sup>Brecher, op. cit., p. 33. Quoted in: Dawn, November 5, 1947.

<sup>26</sup>Korbel, op. cit., p. 85.

<sup>27</sup>Brecher, op. cit., pp. 33-34.

the United Nations Security Council discussions. Pakistan tried to convince the Council that accession was illegal, and, in effect, India had no right to send troops to Kashmir, but since India had already sent troops, Pakistan wanted these troops withdrawn, a plebiscite held as soon as possible under the United Nations auspices to be conducted by an impartial administration in the State. India, on the other hand, kept reiterating the view that Kashmir was legally a part of India; and that Pakistan became an aggressor by helping the "invaders". Moreover, India maintained the view that the withdrawal of the "invaders" from the State was a precondition for a plebiscite which the administration in the State would conduct under the United Nations supervision. This is a precondition which has not been fulfilled to the present day.

Before I discuss the United Nations entry as a third party in the dispute, it is necessary to cover that period of diplomatic negotiations between the two disputants that preceded the tribal invasion and accession because their failure was followed by United Nations intervention.

On the very day the accession offer was accepted and Indian troops were dispatched to Srinagar, Jinnah, Governor-General of Pakistan, took the initiative and invited both Lord Mountbatten, Governor-General of India, and Nehru, the Indian Prime Minister, to a conference with the Pakistani side in Lahore. Lord Mountbatten pressed strongly for the Lahore meeting, "but he understands at the Cabinet meeting this afternoon...that pressure on Nehru not to go was very heavy, and that on reaching his house he Nehru practically collapsed...."<sup>28</sup> It was nevertheless agreed to send Lord Mountbatten alone to Lahore.

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<sup>28</sup>Campbell-Johnson, op. cit., p. 226.

The Jinnah-Mountbatten talks at Lahore, which opened on November 1, 1947 revealed the diametrically opposite stands of the two parties on the main issues of the dispute. Jinnah began by complaining that the Government of India had not informed the Pakistani Government of its intentions to accept the accession and to send troops to Kashmir. He reiterated the common Pakistani view that since the accession was based on "fraud and violence" it could not be recognized by the Pakistani Government. Lord Mountbatten replied by saying that the accession had indeed been brought about by violence, but the violence came from the tribes, for whom Pakistan, and not India, was responsible. Thus the discussion got into a vicious circle.

Jinnah nevertheless came out with the first general proposal to the effect that both sides should withdraw at once and simultaneously and then demilitarize the area. Lord Mountbatten asked how the tribesmen would be made to withdraw, and Jinnah quickly replied: "If you do this I will call the whole matter off."<sup>29</sup> As to the plebiscite, Jinnah proposed that the two Governor-Generals should themselves step in and conduct it, but Lord Mountbatten felt that his constitutional powers did not permit him to carry out such responsibilities, and instead proposed a plebiscite under United Nations auspices. Jinnah did not agree. Thus the conference failed to achieve a common approach to the dispute over Kashmir.<sup>30</sup>

During the following month the two Prime Ministers, Nehru and Liaquat Ali Khan, failed to reach a common ground agreement after a

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<sup>29</sup>Ibid., p. 229.

<sup>30</sup>Ibid., pp. 229-230.



fruitless exchange of accusations. However, Lord Mountbatten succeeded in bringing both Prime Ministers together for the first time since the accession of Kashmir. Early in December, a conference was held in Delhi during which the two Governments put their proposals into a more formal shape. Briefly the proposals presented by both parties provided for the following three issues:

- (1) Pakistan should use her influence to persuade the tribal invaders to withdraw from Kashmir territory and that the rebel "Azad" Kashmir forces stop fighting.
- (2) India should withdraw the "bulk" of her forces, leaving few detachments to maintain order.
- (3) The United Nations should be asked to send a commission to conduct a plebiscite in Kashmir.

The meeting broke up without a final decision being reached.

Matters worsened when the Indian Prime Minister was informed that as soon as Liaquat Ali Khan left Delhi reports of large concentrations of invaders were confirmed, and that atrocities against non-Muslims in Kashmir had increased. This hardened the Indian position so that at the Lahore meeting of the Joint Defense Council, which was held during the same month and attended by the two Prime Ministers, both parties found that complete deadlock had been reached. At this point, Lord Mountbatten suggested that the United Nations might be introduced to play the role of a third party and this was welcomed by both sides.<sup>31</sup>

That was the state of the Kashmir problem at the beginning of 1948 when India placed the dispute before the United Nations Security Council.

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<sup>31</sup>Ibid., pp. 250-252.

## CHAPTER V

### THE DISPUTE GOES BEFORE THE UNITED NATIONS

Resort to war over a dispute may, under modern conditions of interdependence of nations and the involved interests of states, precipitate a major war. No matter how much destruction war might cause, nations would never refrain from using force, as a last resort, if they feel that a "vital" interest or national "honour" was at stake and that there was no other way to safeguard it. In modern times, the maintenance of peace and security has become the concern of the entire international community, which has developed the necessary international procedures and machinery that provide the disputants with a forum for talking out their differences. Its efforts should be employed to reach a peaceful settlement on terms sufficiently tolerable to both parties so that the high price of war might be avoided. "The development of international organizations, with specific and continuing responsibilities for conciliation on either a regional or global scale, has been the most vital factor in promoting a peaceful settlement of disputes."<sup>1</sup>

On the global level, the most important development has been the United Nations. It has developed the appropriate machinery and skills to be employed in any situation that might arise between states to the point where they can be instrumental in avoiding war. The Security

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<sup>1</sup>Philip E. Jacob and Alexine L. Atherton, The Dynamics of International Organizations (Illinois, 1965), p. 282.

Council is designed to be the principal organ for achieving a peaceful settlement of international disputes. Under Chapter VI of the Charter, the approach of "Pacific Settlement of Disputes" by mutual agreement between the disputants is prescribed with its techniques of conciliation, mediation, or good offices. "The aim of these methods has been to harmonize rather than to judge the opposing claims, and to achieve an agreement mutually acceptable to all the disputants."<sup>2</sup> In particular, Article 35 states that any member of the United Nations may refer to the Security Council a dispute "the continuance of which is likely to endanger the maintenance of international peace and security" should it fail a direct settlement between the two parties.

On January 1, 1948, India, invoking Article 35 of the Charter of the United Nations, went to the Security Council claiming that Pakistan had by her invasion of Kashmir committed an act of aggression. India told the Council that:

- (a) Pakistan allowed the "invaders" to transit its territory;
- (b) Pakistan allowed the "invaders" to use its territory as a base of operations;
- (c) The "invaders" included Pakistani nationals;
- (d) They drew much of their military equipment, transportation and supplies, including petrol, from Pakistan;
- (e) Pakistani officers were training, guiding and otherwise actively helping them.<sup>3</sup>

The Government of India requested the Council to ask the Government of

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<sup>2</sup>Ibid., p. 281

<sup>3</sup>(S/628, January 2, 1948), p. 4.

## Pakistan

- (1) To prevent...Government personnel, military and civil, from participating or assisting in the invasion of the Jammu and Kashmir State;
- (2) To call upon other Pakistani nationals to desist from taking any part in the fighting in the Jammu and Kashmir State;
- (3) To deny the invaders: (a) access to and use of its territory for operations against Kashmir, (b) military and other supplies, (c) all other...aid that might...prolong the present struggle.<sup>4</sup>

India's hope to obtain a quick Security Council condemnation of Pakistan proved too optimistic. Pakistan sent its newly appointed Foreign Minister, Zafrullah Khan, to Lake Success to present Pakistan's case and India sent a delegation headed by Gopalswami Ayyangar, a cabinet Minister in the Government of India who, a decade previously, had been employed by the Maharajah of Kashmir as Prime Minister of the State.

Pakistan's reply to the Indian charges came in a letter addressed to the Secretary-General on January 15, 1948, in which Pakistan invoked Article 35 of the Charter and formally charged India with a breach of international agreements, an "extensive campaign of genocide" and "numerous attacks on Pakistan territory," the object of which "is the destruction of the State of Pakistan."<sup>5</sup> Pakistan requested the Council to

- (1) Call upon India to desist from acts of aggression against Pakistan and to implement all the agreements related to partition;

- (2) Appoint a commission to investigate all the Pakistani accusations against India, arrange the stoppage of the fighting, enforce the withdrawal of outsiders whether from India or Pakistan, and, finally, hold an impartial plebiscite to determine the question of the accession

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<sup>4</sup>Ibid., p. 5.

<sup>5</sup>(S/646, January 15, 1948), pp. 7-8.

of the State.<sup>6</sup>

As a full and fair hearing of both sides is essential for whatever action the United Nations may wish to take, both parties were allowed to present the issue to the Council. The sharply different views of the two nations, not only on the cause and nature of the dispute but also on the ways of solving it, soon became clear to the Council. To India, the source of all troubles is the tribal invasion and Pakistan's participation in it. Therefore, it limited the case before the Security Council to these two acts. To Pakistan, the source of all hostilities is to be found in the unhappy Indo-Pakistani relations, and therefore its presentation of the case was an exhaustive account of all problems dividing India and Pakistan.

Ayyangar concluded his country's case by declaring:

We have referred to the Security Council a simple and straightforward issue....

.....  
The withdrawal and expulsion of the raiders and the invaders from the soil of Kashmir and the immediate stoppage of the fight are thus the first and the only tasks to which we have to address ourselves.<sup>7</sup>

Compared to Ayyangar's statement, Zafrullah Khan traced the origins of the Kashmir dispute not to the tribal invasion as such, but to the unsettled conditions on the sub-continent that led to partition, to the communal strife, and to the political struggle of Kashmiris for self-determination and freedom of action against the Maharajah's autocratic rule and that the tribal invasion itself was a by-product of these tragic conditions.

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<sup>6</sup>Ibid., pp. 8-9.

<sup>7</sup>(S/PV 227, January 15, 1948), pp. 21-22.

To Zafrullah Khan:

The issue does not appear to us to be either simple or as straightforward as the representative of India has tried to make out.

...it will be necessary to set out before the Security Council the whole background of this Kashmir problem.<sup>8</sup>

Explaining what he meant by the whole background of the Kashmir problem, Zafrullah Khan, on January 17, 1948, said: "What is happening in Kashmir is a continuance of the process which has reached its culmination in the State of East Punjab [the communal strife] and cannot be divorced from it."<sup>9</sup> Zafrullah Khan admitted that several vehicles with Pakistani license plates might indeed have been seen in Kashmir, "but surely there is a wide gulf between a vehicle or several vehicles bearing Pakistani number plates being in Kashmir,...and the Pakistani Government being responsible for...them..."<sup>10</sup> To him also it was not surprising to see Poonchis serving in the Pakistan Army take part in the fighting while on home leave, "these officers...find that their people are massacred...and if some of them take a hand in whatever is going on, it is...not a case of allowing them to go...to take part in the fighting."<sup>11</sup> He finally agreed that as a matter of course every Pakistani, including the members of the Government, sympathized with the rebels, for "In these circumstances...to expect,...that because he is a minister a Muslim should not give expression to his sympathy...is to expect either what would be more than

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<sup>8</sup>Ibid., p. 24.

<sup>9</sup>(S/PV 229, January 17, 1948), p. 29.

<sup>10</sup>Ibid., p. 17.

<sup>11</sup>Ibid., p. 21.

human or...less than human."<sup>12</sup>

Zafrullah Khan's proposed solution was the military and administrative neutralization of the State until a plebiscite could be held:

Everyone who has gone into Kashmir should go out: Sikh bands, Rashtriya, Sewak Sangh volunteers, other people who have gone in, tribesmen, and any other people who may have gone in from the Muslim side, and men from Pakistan, Muslims who are Indian nationals and who were refugees in Pakistan - everybody. They must go out, including Indian troops....

.....  
 ...Kashmir must be cleared. Fighting must stop....Normal administration must be restored. There should be no kind of pressure, either from the Muslim Conference being in power and holding the administration or the National Conference being in power and holding the reins of administration. No kind of pressure should be brought upon the people. The people should then be invited to express the way in which they want to go, and whatever they decide, they should be welcome to do it.<sup>13</sup>

With the dispute being lifted out of the context of a purely bilateral confrontation and exposed to multilateral, outside influence, debate and negotiation became the means by which the positions of governments can be explained, opposing views modified, public opinion influenced, and agreement reached where agreement is possible. The United Nations is a deliberative body in which nations talk through their representatives. What is common to all cases is that the parties are stubborn, the debates boring, and the negotiations protracted. Yet it is through this pragmatic approach that the United Nations actively tries to seek a basis of a common agreement, exploring with the disputants the nature of their differences, pointing out where they are not far apart, and making positive proposals for settlement.

Acting in the spirit of Chapter VI of the Charter, the United

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<sup>12</sup>Ibid., p. 22.

<sup>13</sup>Ibid., pp. 31-32.

Nations entered prolonged negotiations in an effort to find whatever approach would be most effective in dissuading India and Pakistan from aggravating the situation in Kashmir, and in encouraging them to compromise their differences in order to reach a common-ground agreement. To that end, the Security Council can recommend to both parties procedures of adjustment and terms of settlement it considers appropriate. Assuming the role of a mediator and so long as it is acting under Chapter VI, the Council can only recommend steps to the disputants in an effort of finding a peaceful settlement in contrast to undertaking enforcement actions to meet a breach of the peace or an act of aggression as provided under Chapter VII of the Charter. Therefore, the United Nations' role as a peace-maker depends on obtaining the assent and full co-operation of both parties to the dispute.

The first action taken by the Security Council came in the form of a request sent on January 6, 1948 by the President of the Security Council to both Foreign Ministers of India and Pakistan that their countries refrain from any action that might aggravate the situation (S/636). Then on January 17, 1948, following Zafrullah Khan's opening statement, the Security Council adopted a resolution presented by Belgium calling on both parties, India and Pakistan, to take all measures within their power to improve the situation and stop any action that would aggravate conditions. It further requested them to inform the Council of all substantial changes in the situation while the matter was being discussed by the Security Council (S/651).

Informal conversations were then begun to reach a compromise settlement. As some measure of agreement was reached, on January 20, 1948, Langenhove, the Belgian President of the Security Council, presented a



resolution "on behalf of both...parties, who have signified their approval."<sup>14</sup> As adopted by the Security Council, the resolution established a commission of three members; one to be selected by India, one by Pakistan, and the third by the first two. The Commission was to proceed to the sub-continent with the dual function of (1) investigating the facts, and (2) exercising "mediatory influence" that would likely ease tensions on both sides (S/654). The resolution creating the Commission is significant because, in addition to the situation in Jammu and Kashmir State, the Commission was invested with the power to investigate other matters contained in Zafrullah Khan's letter of complaint, dated 15 January 1948. When the resolution was debated, the Pakistani representative insisted that the Kashmir question should not be dealt with on a piecemeal basis, but that the issue as a whole including Pakistan's charges against India must be considered. With the support of the British representative, Noel-Baker, and other members of the Council, the views of the Pakistani representative prevailed.

The Pakistani objective of a wider scope of United Nations action became more evident on January 22, 1948, when the Security Council agreed to change the agenda from the "Jammu and Kashmir Question" to "India-Pakistan Question". This was a major victory for Pakistan because it was adopted against strong Indian objections. Pakistan was highly encouraged by the British inclination toward its own view and supported by the Americans who followed the line of the British. In the bitter wrangling that ensued, the conciliatory spirit of the resolution of January 20 was forgotten.

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<sup>14</sup>(S/PV 230, January 20, 1948), p. 1.

On January 27, 1948 both parties presented their proposals. A study of the proposals shows that they centered around four basic issues which from then on have plagued all the efforts of the United Nations to secure a compromise settlement. These issues are:

- (1) The cessation of hostilities.
- (2) The withdrawal of armed forces (demilitarization).
- (3) The interim Government in the State of Jammu and Kashmir.
- (4) The plebiscite and the role of United Nations in it.

India pressed for:

(1) A stoppage of the fighting in Kashmir and the withdrawal of the "invaders" whether they were tribesmen or Pakistani nationals.

(2) The return of the refugees after normal conditions had been restored.

(3) The defense of the state and the maintenance of law and order, so essential for a free plebiscite, were the responsibility of the Indian Government so long as the State had acceded to India. However, with the passage of time, the Indian forces were to be progressively reduced to that strength that would still ensure external security and internal order.

(4) A Commission to proceed to India to mediate and supervise the stoppage of the fighting and the cessation of military operations.

(5) The interim Government under Abdullah's administration was to have an elected National Assembly which, in turn, would appoint a National Government.

(6) The National Government was to prepare for a plebiscite to be

held under the "advice and observation" of United Nations personnel.<sup>15</sup>

On the other hand, Pakistan, in essence, proposed that:

(1) An end to hostilities could only be achieved by providing reasonable guarantees to the tribesmen and to the "Azad" Kashmir Government that all maltreatment of Muslims would end, and that a free, internationally-controlled plebiscite would be held.

(2) To that end, the United Nations Commission should arrange for the establishment of an impartial administration in the State.

(3) The withdrawal of all forces - Indian and tribesmen.

(4) The holding of a plebiscite, organized and fully controlled by the United Nations.<sup>16</sup>

Thus it would appear that the main cleavage between India and Pakistan at this stage of United Nations' deliberations was this: India insisted that a stoppage of the fighting should be dealt with first; Pakistan asserted that the fighting could not be stopped unless an agreement on a plebiscite was reached to guarantee the people that a fair plebiscite was forthcoming. In fact, Pakistan revealed some fears that once the fighting stopped, there might ensue a de facto political stabilization of the fronts that would end in a partition of the country with India possessing the Valley of Kashmir, which is the most important section in the State.

It is clear that India and Pakistan stood at the two ends of the pole, and it is of a great importance to keep in mind the basic points of difference if we are to pass judgment on the exhaustive efforts of

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<sup>15</sup>(S/PV 236, January 28, 1948), pp. 3-4.

<sup>16</sup>Ibid., pp. 5-6.

the United Nations to reach a settlement acceptable to both parties to the dispute. Every mediation effort on the part of the United Nations had to face the basic irreconcilable attitudes of the parties toward the withdrawal of troops, the interim Government in Kashmir, and the role of United Nations in holding a plebiscite.

The Canadian, Belgian, and Colombian representatives at the Security Council introduced several draft resolutions, suggestions, amendments, or memoranda in an effort to reconcile the views of India and Pakistan. By and large, they were more inclined to accept the Pakistani point of view on the internationally-controlled plebiscite and the simultaneous withdrawal of both forces in order to demilitarize the State. On January 29, 1948 the Belgian representative, in a new effort to reconcile the views of India and Pakistan, suggested that:

The measures to end acts of hostility and violence on the one hand, and the plebiscite on the other, are two aspects of the same problem, namely the restoration of order and tranquility in Jammu and Kashmir.<sup>17</sup>

Then he proceeded to propose two resolutions to be considered simultaneously by the Security Council. One called for a plebiscite "organized, held and supervised under the Council's authority."<sup>18</sup> The other for the stoppage of acts of hostility and violence with instructions to the Commission "to take into consideration that, among the duties incumbent upon it, are included those which would tend towards promoting the cessation of acts of hostility and violence,..."<sup>19</sup>

All of the members of the Security Council, except the U.S.S.R.,

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<sup>17</sup>(S/PV 237, January 29, 1948), p. 2.

<sup>18</sup>Ibid.

<sup>19</sup>Ibid., pp. 2-3.

expressed their approval. General McNaughton, of Canada, was of the opinion that "these draft resolutions, taken together...will establish a basis to end the fighting...."<sup>20</sup> Noel-Baker, of Great Britain, agreed with the representative of the United States, Austin, that "one cannot have a cessation of violence unless one has an agreement that satisfies everybody that a plebiscite will be free and fair," and in working toward that agreement "the organization of the plebiscite will involve considerations of administration, of the maintenance of law and order, and so on."<sup>21</sup>

Pakistan was in favour of the Belgian draft resolution, but Ayyan-gar, the representative of India, expressed shock and disappointment. He described the Belgian draft resolution as "innocuous in the extreme", and added: "Is this not an illustration of our trying to fiddle here while India is burning?"<sup>22</sup> A few days later, on February 8, 1948, the Government of India, bewildered by the United Nations' delay in accept-ing India's basic complaint that an act of aggression had taken place in Kashmir, asked the Indian delegate to return at once to Delhi for fur-ther consultation. At that time, the Indian Government felt that the debate on Kashmir at Lake Success was bogged down into side issues by larger maneuvers. They believed that the Americans were following the British, more or less blindly, and that the British took a pro-Pakistani side. Nobody even tried to pay attention to the fact that there had been an armed aggression.

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<sup>20</sup>Ibid., p. 4.

<sup>21</sup>Ibid., pp. 8-9.

<sup>22</sup>Ibid., pp. 12-13.

The Security Council reconvened on March 8, 1948, following the return of the Indian delegation to Lake Success, and was told by Ayyangar that "our stand on fundamentals would continue to be the same as before my departure for India."<sup>23</sup> Tsiang, the Chinese President of the Council, following informal discussions with the two parties, submitted on March 18, 1948 a draft resolution proposing that "The Government of Pakistan undertakes...to secure the withdrawal...of intruding tribesmen and Pakistani nationals;" and that "the Government of India shall arrange for the progressive withdrawal...of such of its troops as are not required for the purpose of defense and security."<sup>24</sup> India was to be given full control over the administration of the State while the United Nations personnel were to be assigned a very modest and obscure role.

Unlike the Belgian draft resolutions of January 29, Tsiang's proposals were favourable to India. Ayyangar, commenting on the Chinese draft resolution, had this to say:

...Mr. Tsiang's draft resolution of 18 March was a valiant attempt at a just compromise,...It broke away courageously from the January-February ruts of argument and opinion....I straightaway accepted it since it did not commit us to any departure from our fundamentals.<sup>25</sup>

Pakistan strongly rejected the Chinese draft resolution, and three days later, on March 21, 1948, Dawn, the leading Pakistani newspaper ventured to hope that:

The Security Council will show the same sense of realism as it did before and in that light view the Chinese attempt at 'compromise' by granting one party /India/ almost

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<sup>23</sup>(S/PV 285, April 19, 1948), p. 3.

<sup>24</sup>(S/699, March 18, 1948), pp. 1-3.

<sup>25</sup>(S/PV 285), pp. 3-4.

everything and the other party "/Pakistan/" nothing.<sup>26</sup>

Finally, after several recesses and much fruitless negotiations, the Security Council passed on April 21, 1948 the most significant resolution in the Kashmir question. Jointly sponsored by six delegations, Belgium, Canada, China, Colombia, the United Kingdom, and the United States, it attempted an over-all solution of the Kashmir dispute by focussing attention on the basic issues of the dispute; the withdrawal of forces (demilitarization), the plebiscite, and the interim Government. Austin, the representative of the United States and one of the sponsors, admitted that "this plan is not a final solution. It does not pretend to be more than a recommendation...to help these parties in accordance with their request."<sup>27</sup>

In essence, the resolution<sup>28</sup> provided for the following: (1) A five-man Commission instead of the original three be created with instructions to proceed immediately to the sub-continent and offer its good offices to terminate the hostilities and hold a plebiscite. It was to have its military observers and was to report to the Council on whether the plebiscite once held was free and impartial. (2) Recommend that the Government of Pakistan secure the withdrawal of the tribesmen and Pakistani nationals from the State of Kashmir; and that the Government of India should, in consultation with the Commission, when it was

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<sup>26</sup>Campbell-Johnson, op. cit., p. 309.

<sup>27</sup>(S/PV 284), p. 20.

<sup>28</sup>The resolution was voted upon paragraph by paragraph. In almost every case there were eight votes in favour (Argentina, Belgium, Canada, China, France, United Kingdom, and the United States), none against, and two absentions (the U.S.S.R. and the Ukraine). Syria voted for those provisions favoured by Pakistan.

shown that tribesmen were withdrawing, plan for a progressive withdrawal of its forces to the minimum strength required for the maintenance of law and order. (3) An interim coalition Government be formed in the State from representatives of all the major political parties (i.e., the Muslim Conference as well as the National Conference). (4) A plebiscite Administrator be nominated by the United Nations Secretary-General, with adequate powers to insure the freedom and impartiality of the plebiscite.<sup>29</sup>

Both India and Pakistan objected to the Security Council's resolution. India specifically disputed the following provisions:

Those portions of the resolution which provided for the removal of Indian forces from strategic areas in Kashmir;  
 . . . . .  
 The addition of representatives of the Azad Kashmir group to Abdullah's cabinet;  
 The sweeping powers of the Plebiscite Administrator.<sup>30</sup>

India was also critical of the Council for not having condemned Pakistan as an aggressor. Nehru, in a public meeting at Srinagar, described the resolution as a "strange decision on Kashmir, and had failed to take up the main issue."<sup>31</sup> Ayyangar was more critical. He said:

...India's complaint was placed in cold storage for nearly two months, four months of continued bloodshed and economic ruin. And at the end of it all we are exhorted, ...to agree to a resolution niggardly in its recognition of the merits of the matter, vague and indefinite in the wording of the action to be taken by Pakistan. And in the interpretation of that language the Security Council has gone even further and been apologetic to Pakistan for reminding it of its duty.

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<sup>29</sup>(S/726, April 21, 1948), pp. 8-12.

<sup>30</sup>Thorner, "The Kashmir Conflict," op. cit., p. 176. Quoted In: Times of India (Bombay), May 27, 1948.

<sup>31</sup>Ibid.



India cannot,...agree to this treatment of its kind.<sup>32</sup>

Yet, one month later, the representative of India, in a somewhat more conciliatory tone, told the Council that: "If,...the Commission is still sent out to India...the Government of India have already stated that they would be glad to confer with it."<sup>33</sup>

Pakistan also was not wholly satisfied with the resolution, for to Pakistan it did not provide enough conditions guaranteeing the people of Kashmir a free and impartial plebiscite. Zafrullah Khan, expressing his Government's rejection of the resolution, said that "the continued presence of the armed forces of India in the State...would affect the freedom of the plebiscite,"<sup>34</sup> and the "continuation of Sheikh Abadullah at the head of the Kashmir Government is,...bound to influence heavily the fairness and impartiality of the plebiscite."<sup>35</sup> Yet at the same time the Government of Pakistan declared that should the Council still decide to send out the Commission it would be willing to confer with it.

The more or less outright rejection of the resolution by India and Pakistan disappointed the sponsors of the resolution. This was reflected in the strong criticism of both parties by the Colombian and the United States representatives. Austin, of the United States, put it this way:

We have noticed that there is apparently no sense of obligation on the part of the parties to the case....The parties come here and engage the very expensive machinery of the U. N. and the time of distinguished men from all over the world,

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<sup>32</sup>(S/PV 285), p. 12.

<sup>33</sup>(S/PV 304, May 26, 1948), pp. 6-7.

<sup>34</sup>(S/PV 285), p. 29-30.

<sup>35</sup>Ibid., p. 30.

and there does not seem to be much sense of obligation to give respect and due regard to the judgment arrived at.<sup>36</sup>

The resolution marked the end of the first phase of United Nations' action in the Kashmir dispute. In essence, the main purpose of the resolution was to stop the fighting and to establish normal conditions in the State that would make it possible for the people to express their wishes to accede to either country without any coercion or restraint. Acting under Chapter VI of the Charter, the Security Council could not impose a final settlement on the parties to the dispute but could only pass recommendations with the hope that both sides would agree to them. They are permissive rather than mandatory. They could bound the parties on a moral basis without any juridical consequences in case of disagreement. The Security Council has no authority to apply sanctions to these recommendations. Essentially, "international peace-making has had to emphasize persuasion far more than decision in the development of a third-party functions."<sup>37</sup>

Within this framework, all conciliation efforts undertaken by the Council have followed a pragmatic approach. The Security Council assured both parties of full and fair hearing. Having come to a better understanding of the nature of the problem and the issues separating both parties, the Council actively tried to discover a basis upon which the two protagonists would be willing to negotiate in regard to the issues in the dispute. Thus the Council presented the disputants with a series of recommendations. If the initial recommendations were unacceptable by one or both of the parties, the Security Council would reconsider the

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<sup>36</sup>(S/PV 304, May 26, 1948), p. 20.

<sup>37</sup>Jacob and Atherton, op. cit., p. 270.

issues and seek to devise another and more positive approach for settlement. For the most part, the Council favoured exploring all possible alternatives that would be most effective in preventing the parties from aggravating the situation, and in encouraging them to compromise their differences.

To that end, the Security Council avoided taking sides in the dispute. Lopez, the Colombian President of the Security Council, told the Council: "It is a matter of great disappointment to the Security Council to find that, ...both parties seem to think very definitely that the Council has not leaned enough to either side in trying to meet their wishes."<sup>38</sup> The Council did not yield to India's persistent request to condemn Pakistan an aggressor, nor did it consider the basic Indian contention of the legality of accession.

In fact, the Security Council is not a juridical body. It has no saying on who is wrong in regard to the legal aspect of the dispute. Lopez reminded both parties that "We did not think that the Security Council has been invited, or could be invited, to give an opinion on the legal merits to this dispute."<sup>39</sup> Such a consideration would fit into the machinery and procedure of the International Court of Justice as provided under Article 96 of the Charter of the United Nations. Although this procedure would seem to assure greater certainty of settlement, as well as impartial objectivity by determining the merits of the case according to objective standards of law or fact, neither party invoked the "advisory opinion" of the Court on any legal question. Why they did not

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<sup>38</sup>(S/PV 286, April 21, 1948), p. 7.

<sup>39</sup>Ibid., p. 6.

is a matter of speculation. But it would seem to me that India took the legality of accession for granted. To India the Instrument of Accession is the embodiment of its legality, which no one could deny or disprove. Pakistan on the other hand, was uncertain about a decision in its favour. It could not afford taking chances on this big question where its national "honour" and its "vital interests" were at stake, especially at this early stage of nationhood.

But why is it that the Security Council did not ask the Court for such a decision? There is perhaps one explanation; that is, the Security Council is a political body and it felt that open diplomacy and mediation might provide a common-ground basis for agreement, whereas to obtain a juridical verdict against either party would have put one of the disputants in the position of being wrong. This is not a promising way to follow for more cooperation between the two parties to seek a settlement. On the contrary, it might be responsible for a breakdown of all conciliation efforts. The Security Council focused on both India and Pakistan the political and moral prestige of the United Nations by demanding that a settlement must be reached by peaceful means. Accordingly, it passed its mild, non-committal resolution of April 21, 1948.

## CHAPTER VI

### THE UNITED NATIONS AT WORK, 1948-1950

As stated in the previous chapter, the Security Council, in dealing with the Kashmir situation on its merits, created a five-man Commission<sup>1</sup> and, by resolutions of 20 January and 21 April 1948, authorized it to serve as a Commission of inquiry, good offices, mediation, and conciliation. This has been the regular practice of the United Nations in most of the major crises it has been called upon to handle and, as will be shown later, is a practice that has both benefits as well as drawbacks. Also its success or failure depends so much on the good will of the disputants.

The success of an international commission offering its good offices and seeking conciliation requires the full support of both parties. As created, the United Nations Kashmir Commission was composed of members chosen by their governments rather than individuals chosen directly by the Security Council as private experts or technicians. This placed the Commission in a very delicate position as it had to demonstrate to the disputants and, in this case the Governments of India and Pakistan, its complete impartiality and integrity, and its proposals had to be well

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<sup>1</sup>The Commission, as finally composed, consisted of five members. On February 10 India selected Czechoslovakia to serve on the Commission. On April 23 the Security Council nominated Belgium and Colombia, and on May 7 Pakistan selected Argentina. On the same day the President of the Security Council nominated the United States to serve as the fifth member of the Commission.

balanced and practically perfect. Yet the parties had occasion to claim that the governments represented on the Commission had a say in its work. No wonder that most governments prefer not to serve on such Commissions. The Commission heard all the sides involved in the dispute, tried to take in all the contingencies of the situation, kept each side informed of the views of the other, and pleaded moderation hoping by this to make the position of one side acceptable to the other.

Upon its arrival in Karachi, on July 7, 1948, the Commission found the situation politically and militarily quite different from what the Security Council had thought it to be when it passed its resolution in April. Pakistan's Foreign Minister, Zafrullah Khan, informed the Commission that the "Pakistan Army had at the time three brigades of regular troops in Kashmir and that troops had been sent into the State during the first half of May."<sup>2</sup> He attributed this Pakistani action to the need to protect "the territory of Pakistan from possible aggression by India; the prevention of a fait accompli in Kashmir by the Government of India; and the prevention of the influx of refugees into Pakistan."<sup>3</sup>

Following a pattern common to Commissions engaged in the pacific settlement of international disputes, the Commission decided that it should first move to stop hostilities and then undertake a settlement of the fundamental issues. A truce was an essential first step to prevent a major escalation of hostilities and to provide the atmosphere necessary for determining the facts, which the Commission considered must first be determined if it was to work out a reasonable settlement. Furthermore,

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<sup>2</sup>(S/1100, November 9, 1948), Paragraph 40.

<sup>3</sup>Ibid., Paragraph 51.

the continuance of hostilities in Kashmir would have produced additional issues to resolve, such as the rehabilitation of more devastated areas. The Commission therefore devoted all its initial efforts to arranging a cease-fire to be followed by a truce. In this it succeeded, but it made little headway in its efforts at mediation and conciliation.

The Commission as a first step informally investigated the possibilities of an unconditional cease-fire. Indian officials expressed readiness to order a cease-fire provided that Pakistani units were withdrawn and that Indian forces advanced to occupy strategic places then under Pakistani control. Pakistan again insisted on the simultaneous withdrawal of Pakistani and Indian troops.

This lack of common ground did not stop the Commission from exploring all possibilities for an agreement through a series of proposals in the hope that by the process of trial and error it, as a third party, could explore and suggest terms which would satisfy both governments. On August 13, 1948 the Commission decided it was ready to put some of its proposals in writing. It formulated a plan calling for a truce agreement to be worked out immediately following a cease-fire order. To satisfy the basic Pakistani demand, the Commission linked the cease-fire with preparations for a final settlement of the dispute (the plebiscite), and provided for the withdrawal of Pakistani troops and tribesmen to satisfy the Indian demands. It also required India to withdraw the "bulk" of its forces, leaving behind Indian troops required for the maintenance of law and order.

While India accepted the Commission's plan, Pakistan made its acceptance subject to several reservations, qualifications, and assumptions, and the Commission had to consider them as amounting to a refusal.

Bitterly disappointed with the results of its first attempts, the Commission left the sub-continent for Geneva and there prepared its first findings report to the Security Council. The Commission reported that both countries were suspicious of each other's moves and motives, as India was afraid Pakistan would violate the truce, while Pakistan was afraid that with a cease-fire India would stabilize her position and so in time produce a de facto division of Kashmir with the Valley of Kashmir left in her possession.

It is difficult to criticize the Commission's work because "If the usefulness of international mediatorial agencies depends upon the disposition of the States to use them it depends also upon their willingness to be used."<sup>4</sup> Good faith and good will are prerequisites for a fruitful mediation effort, especially here where the Commission had no power to impose anything upon either party. In renewed efforts to break the impasse, the Commission held a number of meetings with the representatives of India and Pakistan who were then in Paris attending the Paris session of the United Nations General Assembly. Both sides complained of increased military activities, so the Commission secured the approval of both countries to the appointment of a military adviser who would immediately proceed to the sub-continent. This was a great advance in the Commission's mediatory efforts as it marked the beginnings of the United Nations military observers corps which ultimately brought about the cessation of hostilities.

Sensing a more favourable atmosphere, the Commission, on December 11, 1948, submitted to the parties a supplement to the August 13 plan in

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<sup>4</sup>Inis L. Claude, Swords Into Plowshares (New York, 1966), p. 213.



which it specifically proposed a plebiscite hoping this would satisfy Pakistan's demand for a free and impartial plebiscite. Both governments accepted the Commission's proposals of December 11. A cease-fire agreement along the then stabilized military front was made effective on January 1, 1949, and the Commission's proposals were formally accepted by the parties on January 5, 1949. Military observers were sent to assist in an on the spot determination and final demarcation of the cease-fire line, and to supervise and investigate its violation. On March 24, 1949, the Secretary-General selected United States Admiral Chester Nimitz as a Plebiscite Administrator, but he was unable to begin work because of a subsequent deadlock over demilitarization questions, and he soon resigned. The tribesmen started withdrawing early in 1949.<sup>5</sup>

Before long the Commission found that the days of compromise were practically over. Both parties began to give different interpretations to the January agreement. To India the "local authorities" who were to administer the Northern area of Kashmir meant the State Government of Sheikh Abdullah, so India insisted that the "Azad" Kashmir Government had ceased to exist; whereas to Pakistan the "local authorities" were the "Azad" Kashmir forces and insisted that the Maharajah's Government had no authority over the territory of the "Azad" Kashmir Government. Disagreement also arose over the old problem of demilitarization.

Having exhausted all possible avenues of mediation, the Commission, on August 26, 1949, asked the parties to submit their differences on important issues to arbitration. This move was supported by President

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<sup>5</sup>This period of the Commission's activities from the date of its return to Geneva on 25 September 1948, to the date of its adoption of the January 5 plan, is covered in the Commission's Second Interim Report (S/1196) submitted to the Security Council on January 10, 1949.

Truman of the United States and Prime Minister Attlee of Britain, who in formal notes to India and Pakistan suggested that "the Kashmir issue should be settled by arbitration by a high and impartial personage appointed by the United Nations - Admiral Nimitz."<sup>6</sup> Pakistan accepted the Commission's arbitration proposal; India rejected it.

Once more the situation was deadlocked. The Commission had labored for months to prepare its August 13, 1948 and January 5, 1949 plans to serve as a basis for a final settlement, and arbitration of the differences seems to have become the only possible suggestion. The Commission, realizing the limits of its powers, and in the very act of confessing its inability to proceed any further, made the two parties realize that the time had come for them to assume responsibility for the consequences of their actions. The Commission had by now played the role of a mediator and a conciliator and had offered its good offices to both parties in a determined attempt to bring about a political settlement acceptable to both sides. It is clear that the Commission was not motivated by a sense of abstract justice nor guided by legal formulas of what is just and what is unjust. It was motivated by the ideals of fairness and decency and political realism which it felt were more appropriate in creative political processes. Yet the Commission failed because political wisdom and decency are only meaningful if the parties themselves are ready to go along. The Commission's two plans could not be implemented due to the lack of mutual trust between the two governments, their totally different outlooks on the nature and meaning of the dispute, and the lack of good will and cooperation. Neither party found it possible to make

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<sup>6</sup>Das, op. cit., p. 277.

concessions and both were dogmatic in their over-all evaluation of the situation. In its Third Interim Report, submitted to the Council on December 9, 1949, the Commission had this to tell the Council:

The roots of the Kashmir dispute are deep; strong under-currents - political, economic, religious - in both Dominions have acted, and do act, against an easy and prompt solution of this outstanding dispute between India and Pakistan. These currents, which at this early stage of national formation are often antagonistic, account to a considerable degree for the misgivings, reluctance, and hesitancy which the Commission felt were often present in the negotiations and which restricted both Governments in the concessions which they might otherwise have been prepared to make to facilitate agreement.<sup>7</sup>

The Commission recommended to the Council that the entire problem be put in the hands of a single United Nations mediator with broad powers to solve all the unresolved basic issues. The Commission was not sure this would work out, so it recommended that in the event the mediator fails the case be submitted to compulsory arbitration.

The Commission does not seem to have come out with clean hands. Its whole approach to the problem was over-cautious and highly non-committal. It is true that it handled the problem impartially, that its recommendations were just and fair, and that it showed high devotion to duty in its efforts to reach a settlement. This is exemplified in the feelings of the American delegate who, speaking with tears in his eyes, "pledged all his efforts to the noble and honorable task with which he had been entrusted."<sup>8</sup> On the whole, the Commission does not seem to have handled the situation adequately, for instead of simplifying certain matters it complicated them. The Commission resorted to vague and ambiguous generalities that were hard to define, such as the "bulk" of

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<sup>7</sup>(S/1430, December 9, 1949), Paragraph 278.

<sup>8</sup>Korbel, op. cit., p. 119.

forces, the "surveillance" of the Commission, and the "local authorities." The Commission did not only produce lack of understanding and faulty communication, but also triggered a chain of unnecessary and endless controversies that were among the principal reasons for the complete impasse over the question of demilitarization. Nehru himself was so much disturbed that he kept demanding additional clarifications and explanations. Every now and then, both India and Pakistan asked for a precise definition of terms.

However, in defense of the Commission, one might say that the Commission was cautious, non-committal, and timid because it wanted to prove its impartiality and gain for itself the label of trustworthiness which would have been highly beneficial in pursuing its mediatory functions. Things did not seem to have worked out as the Commission wanted them to be. The Communist delegate from Czechoslovakia presented a minority (one member) report criticizing the whole work of the Commission for exceeding its mediatory powers when it proposed arbitration, for to him the move was Anglo-American inspired.

Along the same lines, Nehru attacked the Anglo-American initiative in pressing for arbitration. At a public meeting on September 4, 1949, Nehru said that "no attempt had been made by the Foreign Powers to understand and solve the fundamental issues involved in the Kashmir question."<sup>9</sup> He even questioned the applicability of arbitration as an approach for the settlement of a "great" political question like the Kashmir dispute. Nehru's attitude provides students of international politics with another example of a basic phenomenon of power politics in the

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<sup>9</sup>Karunakaran, "India In World Affairs," op. cit., p. 144.

relations of nations, that crucial political issues affecting the overall balance of power between two nations can hardly ever be solved by judicial means, and that states are reluctant to submit questions affecting their national interests to arbitration because they want to retain full control over the ultimate terms of settlement which they can not exercise in the arbitration process. "For this reason, most states have carefully excluded 'vital interests' as arbitral issues, and have insisted on complete discretion on deciding whether a dispute concerned vital interests."<sup>10</sup> No one would have expected Nehru to take a step which might have lessened his chances of winning the case, for there was too much pressure on the domestic level against taking any step in that direction, and no one would have expected Nehru to take chances in the issue so long as India was in possession of the most important part of Kashmir, the Valley of Kashmir.

To India, the decisions of the Security Council taken with the full support of the Great Powers were a serious departure from the fundamental issue in the dispute, which to India was the aggression against Kashmir. That is why there was a growing feeling in India that the whole issue suffered from Great Power politics, especially America's struggle to contain Communism in South East Asia. This produced wide-spread suspicion and loss of faith in the United Nations even in governmental circles in India, and explains why India later disregarded the Council's resolution and officially annexed that part of the State under its occupation. The Commission, having informed the Security Council of its failure, was dissolved and its functions were transferred to a single

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<sup>10</sup>Jacob and Atherton, op. cit., p. 273.

mediator. The Security Council, burdened with other explosive situations in Palestine, Indonesia, and Czechoslovakia, was content with the cease-fire and showed reluctance to take any further action that would risk deterioration in the situation. The Council, accordingly, did not go beyond the two plans of the Commission which India and Pakistan had accepted. Its subsequent efforts were centered mainly on demilitarization to be followed by a plebiscite in the State of Kashmir. On December 17, 1949, the Council instructed General McNaughton of Canada to act in his capacity as President of the Council to hold informal talks with the parties, to examine the possibilities of finding a mutually satisfactory basis for a settlement, and then report to the Council. This was the first time the Security Council had used this procedure in its efforts to bring about a peaceful settlement of an international dispute. The use of the President as a go-between, mediator, and a rapporteur, was a distinguishing new feature of the way the Kashmir question was being handled by the Security Council.

At the request of both parties, the President of the Security Council prepared proposals for demilitarization of the disputed area prior to the holding of a plebiscite. Essentially, General McNaughton's proposals provided for the withdrawal of all the Pakistani and Indian forces not required for the maintenance of law and order on the Indian side of the cease-fire line, the disbanding of the local forces of the State Government as well as those of the "Azad" Kashmir Government, and the inclusion of the Northern area in this programme of demilitarization with the administration continuing under the local authorities with United Nations' supervision. Pakistan accepted the proposals, but India again strongly reiterated its critical attitude and rejected them.

Benegal N. Ran, the Indian delegate, put it this way to the Security Council:

General McNaughton's proposals completely ignore the legal and moral aspects of the question. The Indian Army went into the State at the request of the lawful Government of the State in order to repel an actual admitted invasion by tribesmen and Pakistani nationals....Is it a matter of surprise that India has been unable to accept them as they stand?<sup>11</sup>

A week later, Sheikh Abdullah attacked the United Nations attitude toward the Kashmir problem. He said:

After my return from the U.S.A., I have been more than ever convinced that the solution of the Kashmir problem does not lie in Lake Success,...I have been reassured in my belief that the strength and unity of our people alone can defeat the intrigues against our freedom.<sup>12</sup>

Bakshi Ghulam Mohamed, the Acting Prime Minister of Kashmir, was even more bitter in his attack. He described McNaughton's proposals as "a subtle and sinister method of throwing the entire State at the mercy of Pakistan raiders," and added:

Our faith in the United Nations has been shaken. Sir Alexander Cadogan, the British delegate to the Security Council, is endorsing the views of Pakistan....They want that Kashmir should go to Pakistan. But so long as a single Kashmiri is alive, McNaughton's formula will not be accepted.<sup>13</sup>

Pakistan strongly reacted to this outright Indian rejection. The Working Committee of the Punjab Muslim League in a resolution urged the Pakistani Government to have the Security Council immediately set a definite date for holding an impartial plebiscite. The resolution attributed "the inordinate delay in settling the Kashmir question...to

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<sup>11</sup>(S/PV 463, February 7, 1950), pp. 10, 17.

<sup>12</sup>The Statesman, February 12, 1950, p. 7.

<sup>13</sup>The Hindustan Times, March 1, 1950, p. 1.

the Indian leaders" and warned that "If the Security Council fails to accomplish its duty, Pakistan should reconsider its decision to remain a member of the United Nations or take an independent step for the solution of the tangle."<sup>14</sup> Thus Zafrullah Khan, at a press conference on February 14, 1950, declared that his Government was finding it "very difficult to deal with the delicate situation in Pakistan resulting from the Kashmir deadlock and the people's feeling that no plebiscite would be held for sometime."<sup>15</sup>

Another United Nations mediatory effort had failed, and General McNaughton asked the Council to end his mission and recommended that a United Nations Representative be appointed with wide powers to carry out the Council's decision. On March 14, 1950 the Security Council appointed a United Nations Representative to replace both the President and the Commission. The principal duties of the Representative were to assist in the preparation of and to supervise the implementation of a plan for progressive demilitarization as provided for in McNaughton's proposals; to be at the disposal of the two governments for consultation and suggestion; to exercise all the powers and responsibilities formerly vested in the Commission; and to arrange at the appropriate stage of demilitarization for the Plebiscite Administrator to start his assigned functions. Pakistan accepted the resolution; India reluctantly accepted it subject to the reservations it had already made with regard to the McNaughton proposals.

This reluctant acceptance of the resolution by India needs an

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<sup>14</sup>The Statesman, February 12, 1950, p. 7.

<sup>15</sup>Ibid., February 15, 1950, p. 4.



explanation. The records of the Security Council debate show that India felt it was time to start making certain concessions as most, if not all, of the speeches were inclined more toward the Pakistani viewpoint than toward the Indian viewpoint. Not only were the permanent members of the Council (Great Britain, China, United States, France, with the Soviet Union neutral so far) favourable to Pakistan's attitude, but also the elected members were closer to Pakistan's viewpoint than to India. Some supported Pakistan's position on demilitarization and the plebiscite, and some, like the Middle Eastern Muslim countries, even committed themselves to supporting the Pakistani case. The Pakistani case was more convincing to these members as it appeared more reasonable to demilitarize the area prior to holding a plebiscite under United Nations auspices. India had to change its delegate and so dispatched Sir Bengal N. Rau to replace Ayyangar. Basically, India's position was not different from that of Pakistan, for India had admitted to the Council that the accession of the State was conditional on a free and impartial plebiscite to be held when law and order were restored. Pakistan kept insisting on a free and impartial plebiscite to determine the final accession of the State, and in this Pakistan had an advantage. India's reluctant acceptance of the resolution was mainly a recognition on her part of the strength of world opinion and the pressure of the world organization as backed by the Great Powers in the Council.

On April 12, 1950 the Security Council appointed Sir Owen Dixon, a prominent Australian jurist, as a United Nations Representative for India and Pakistan. Resort to direct mediation by an individual mediator is a procedure which the United Nations has followed in most major crises. The classic procedure is for the mediator to explore and seek

to understand the basis of the controversy through direct, face-to-face negotiations with the parties, propose procedures for further fruitful negotiations, and in certain cases propose possible terms of settlement based on his evaluation of the issues and within the context of the Security Council resolutions. The effectiveness of this approach has depended basically on the nature of the question, the kind of people associated with it, and an assortment of other factors. If a nation felt that a "vital interest" was involved and was so vital that no concessions or compromises could be considered, and the other nation felt the same thing, direct mediation naturally was of questionable value. Equally important was the personality of the mediator and the nature of responsibility assigned to him, for "A most vital asset in the task of conciliation is the initial trust of the disputants in the mediator. If he can start with such trust, ...he can act with much greater speed and effect."<sup>16</sup> This is well illustrated in the case of two successive United Nations mediators in Kashmir: Sir Owen Dixon and Dr. Frank Graham who followed him.

The first Indian reaction to the appointment of Sir Owen was one of deep pessimism. Shiekh Abdullah, on March 19, 1950, told a press conference in Calcutta that the replacement of the Commission by a single mediator "would not at all change the position we have all along been taking with regard to the dispute," and added: "If the U.N. Representative tries to base his proposals on the McNaughton's formula, failure is certain."<sup>17</sup> In Pakistan the reaction was one of marked optimism

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<sup>16</sup>Jacob and Atherton, op. cit., p. 316.

<sup>17</sup>The Statesman, March 20, 1950, p. 1.

coupled with a feeling of impatience. Liaquat Ali Khan, while on a visit to the United States in 1950, said:

More than two years have elapsed, but the free, impartial plebiscite that we are all waiting for is not just quite within sight. We trust that the recent appointment of Sir Owen Dixon...to prepare the ground for a plebiscite will expedite matters.<sup>18</sup>

Unfortunately, events showed that Sir Owen was not in a position to make Liaquat Ali Khan's wishes come true due to the continuing disagreement between India and Pakistan over the questions of demilitarization and the plebiscite. He wasted three months trying to make the two parties agree to a plan for an over-all demilitarization of the State of Kashmir, but without success. He finally proposed the partition of the State<sup>19</sup> with the plebiscite restricted to the Kashmir Valley. India was willing to consider the plan subject to additional territorial demands which Sir Owen said "appeared to me to go much beyond what, according to my conception of the situation, was reasonable...."<sup>20</sup> Pakistan agreed to consider the suggested settlement, "provided that it [Pakistan] took the Kashmir Valley."<sup>21</sup> Nehru would not agree to this. Sir Owen thereupon left the sub-continent on August 23, 1950, and in the concluding part of his report to the Security Council he reiterated his belief in partition as the best possible solution in the circumstances, pointing to the deep-rooted geographical, ethnical, religious, and economic heterogeneity of the State. Having given up all hopes for mediating the

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<sup>18</sup>Ibid., May 9, 1950, p. 1.

<sup>19</sup>He proposed that contiguous Muslim-majority areas would go to Pakistan, and that contiguous Hindu-majority areas would go to India.

<sup>20</sup>(S/1791), p. 15.

<sup>21</sup>Ibid., p. 16.

issue, he suggested that it would be better to have the parties themselves seek agreement by direct negotiations:

The whole question has now been thoroughly discussed by the parties with the Security Council, the Commission and myself, and the possible methods of settlement have been exhaustively investigated. It is perhaps best that the initiative should now pass back to the parties.<sup>22</sup>

Sir Owen was also very critical of the attitude of both parties:

So far the attitude of the parties had been to throw the whole responsibility upon the Security Council or its representatives of settling the dispute, notwithstanding that, except by agreement between them, there was no means of settling it.<sup>23</sup>

By and large, Sir Owen should not be criticized for his concluding remarks. He was logical in his approach to the whole question with its unresolved complications. He showed a sense of realism in appraising the United Nations' ability to reach a compromise settlement to the dispute. The Government of India, with the marked advantage of being in possession of the Valley, did not agree to these restrictions on its powers which the United Nations' Representative felt were essential to an independent and free expression of the wishes of the people concerned. The United Nations was at no time given the means to force a final settlement, so realistically all that the United Nations could do was to accept the temporary division of the State along the cease-fire line and leave the issues to the parties themselves to settle by agreement. Sir Owen presented a convincing case for partition and a limited plebiscite in the Kashmir Valley, as he felt that an over-all plebiscite would result in another refugee problem and in increasing tension on both sides.

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<sup>22</sup>Ibid., p. 23.

<sup>23</sup>Ibid.

To Sir Owen the real issue was not the plebiscite, but how to prevent another war between India and Pakistan and how best to promote and ensure peace and security on the Indian sub-continent. With the passage of time, the cease-fire line became stabilized, and with the United Nations military observers checking incidents along the line to prevent the resumption of hostilities, the line became for all practical purposes the frontier between the two countries.

Sir Owen tried hard to deal with the situation in an impartial and fair way. Although he considered the presence of Pakistani forces in Kashmir a violation of international law and demanded their withdrawal as an essential step for the over-all demilitarization of Kashmir, yet he did not go all the way in support of the Indian basic contention that Pakistan was an aggressor. Obviously, Sir Owen could not have done so if he was seeking a peaceful settlement through a compromise agreement. Had he accepted the Indian point of view his action would, with all probability, have led to a chain of reactions that would have hindered any possible future settlement.

Finally, to be fair and just to Sir Owen, one should not forget the world situation under which he was operating. The Korean war which broke out in the summer of 1950 no doubt affected his peace mission to a great extent. The deterioration in the situation in the Far East contributed to a general feeling of insecurity in Central Asia, and made the chances of success of his mission very meagre. It also appears that the way the Security Council handled the Korean war contributed to a stiffening in India's critical attitude toward the United Nations' actions in Kashmir. From then on Indian officials began to make elaborate comparisons between the attitude of the United Nations toward the Korean war and its attitude

toward the Kashmir question, and insisted that if the United Nations found it fit to describe the North Korean Communists as aggressors, then Pakistan should have received the same treatment. India's loss of faith in the United Nations had in fact reached its climax. It is not surprising therefore that India unilaterally proceeded, in spite of the Security Council's resolutions, to incorporate that part of the State under its occupation within the Indian Union. This will be considered in the following chapter together with the work of the second mediator Dr. Frank Graham.

## CHAPTER VII

### THE KASHMIR SCENE CHANGES

No action was taken following Sir Owen Dixon's failure until January 1951, when the Commonwealth Prime Ministers informally discussed the conflict in London. Britain, fearing Indian criticism, did not play a major role. Three alternative proposals were submitted by the Australian Prime Minister, Robert Gordon Menzies, namely, the stationing in Kashmir of (a) a Commonwealth force; or (b) a joint Indo-Pakistan force; or (c) a local force to be raised by the Plebiscite Administrator. India rejected them all.<sup>1</sup> The Commonwealth countries from then on kept out of the dispute, fearing an Indian withdrawal from the association.

India, having lost faith in the United Nations' action, unilaterally proceeded to annex its part of the State. On October 27, 1950, the Jammu and Kashmir National Conference adopted a resolution urging the State Government to convene a Constituent Assembly in order to decide on affiliation and political structure of the State. Pakistan's protest to the Security Council did not produce any action. All the seventy-five members of the Constituent Assembly were elected unopposed; as Korbel puts it: "No dictator could do better."<sup>2</sup> India then in a position to consolidate its position in Kashmir by utilizing the so-called popularly

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<sup>1</sup>Korbel, op. cit., pp. 176-177.

<sup>2</sup>Ibid., p. 222.

elected Assembly, which was nothing more than the puppet of India, and using it as the basis for legal actions. India's action shut the door before any possible intervention by the United Nations or claim by Pakistan. This is what the Chairman of the Assembly seems to have had in mind when, on October 31, 1951, he declared: "...Kashmir was not interested in the United Nations, which was the victim of international intrigues. The path of Kashmir and U.N. lay in different directions..."<sup>3</sup>

The latest developments in Korea which brought China into the war made the Western Powers more than ever before feel the need for peaceful settlement of the dispute over Kashmir. With China on one frontier, Tibet on the other, Kashmir was to the West Communism's northern gateway to the strategic and rich Indian sub-continent. The Western Powers clearly could not afford a continuation of the tension between India and Pakistan. On March 30, 1951 the Security Council again tried to do something when it adopted the Anglo-American resolution designating a new United Nations Representative to expedite the demilitarization of the State of Kashmir and it required recourse to arbitration in case of failure. A month later Dr. Frank Graham was appointed United Nations Representative in Kashmir.

When Pakistan accepted the resolution and India rejected it, the failure of the resolution was almost certain. Nehru described the resolution as "most extraordinary and objectionable," and "a challenge to India's self-respect."<sup>4</sup> A few days earlier, in addressing the Indian Parliament, he reasserted India's stand on the question of Paramountcy

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<sup>3</sup>Ibid.

<sup>4</sup>The Hindustan Times (New Delhi), April 3, 1951, p. 1.



and the status of Princely India. He said:

Kashmir had at no time been recognized as a state under international law, but had been an integral part of India. Partition made no difference to our responsibilities in regard to Kashmir as long as it did not deliberately accede to Pakistan.<sup>5</sup>

At a press conference, Nehru accused the United States and Britain of having "completely lost the capacity to think and judge anything," and added: "No organization and no country has any business to interfere with what is done in Kashmir by India or the Kashmir people."<sup>6</sup> The United Nations' action was to India nothing more than intervention in the internal affairs of Kashmir and, in turn, an infringement of the sovereign rights of India.

In Pakistan the atmosphere was laden with tension. People demonstrated against the United Nations and calls for Jihad (holy war) were heard. In Karachi a conference of Muslim leaders, Mutamar el-Alam el-Islami (The Muslim World Conference), met in February 1951 and the delegates adopted a resolution urging their home governments to support the Pakistanis in their struggle for Kashmir. Dr. Mustafa Subai, Chief Delegate of Syria, assured the Pakistanis of the full support of the whole Muslim world and warned them against reliance on the United Nations or the Anglo-American bloc. He said: "In the valleys of Kashmir, it is not Pakistan alone which has her honor at stake, but the whole Moslem world."<sup>7</sup> India retaliated by charging Pakistan before the Security Council with violations of the cease-fire and accused her of anti-Indian,

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<sup>5</sup>Korbel, op. cit., pp. 182-183.

<sup>6</sup>Ibid., Quoted in The Hindu, June 12, 1951.

<sup>7</sup>Lillienthal, op. cit., p. 56.

pro-Jihad propaganda. Pakistan's Prime Minister protested and declared that 90 per cent of the Indian Army was massed along Pakistan's border. In no time both nations had their troops massed on both sides of the border, but the crisis passed.

Early in June 1951 and in this inauspicious atmosphere, Dr. Frank Graham proceeded to the sub-continent. His mission was limited to the demilitarization of the State as a pre-requisite for a plebiscite. Within three years of mediation, Dr. Frank Graham submitted to the Security Council five reports<sup>8</sup> without achieving an agreement between the two parties. The principal points of difference were the size of the forces which each could maintain after demilitarization and the time the Plebiscite Administrator should assume his duties.<sup>9</sup> Dr. Frank Graham found himself in the same position that his predecessor, Sir Owen Dixon, was in back in 1951, and throughout his mediatory efforts, he became aware of the deep-seated differences underlying the Indian and Pakistani approach to the dispute. The differences were manifestations of fundamental issues which are anchored in the origin and meaning of the Kashmir dispute to both parties as well as the proper role of the United Nations. Dr. Graham, on October 10, 1952, had this to tell the Council:

...the narrowing of the differences...to one main

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<sup>8</sup>(S/2375, October 15, 1951); (S/2448, December 19, 1951); (S/264, April 22, 1952); (S/2783, September 19, 1952); (S/2967, March 27, 1953).

<sup>9</sup>At the beginning he proposed that 12,000 to 18,000 soldiers be stationed on the Indian side, plus 6,000 men of the local state militia; and 3,000 to 6,000 Azad soldiers on the Pakistani side, plus 3,500 scouts in the Northern area. Then he modified it to 18,000 and 6,000 troops respectively. India insisted on 21,000 soldiers excluding the state militia, and insisted on a complete demilitarization of the Azad forces and its substitution by a civil force of 4,000 (half armed and the other half unarmed). In his final proposals he increased the number of Indian soldiers to 21,000, and the Azad troops were limited to 6,000.

point, upon which the whole plan depends, emphasizes the depth of the difference on this point....It is related to the different conceptions of the two Governments...relating (1) the status of the State of Jammu and Kashmir, (2) the nature of the responsibilities on each side of the cease-fire line after demilitarization, and (3) the obligations of the two Governments under the two agreed... plans of August 13, 1948, and January 5, 1949.<sup>10</sup>

The fundamental differences in 1953 were the same differences of 1948 and Dr. Graham, like his predecessor Sir Owen in 1951, found himself recommending direct negotiations between the two Governments. He expressed the hope:

...may the leadership of 400 million people, with the goodwill and assistance of the United Nations, join in negotiating and reporting an agreement on Kashmir and thereby light a torch along the difficult path of the people's pilgrimage toward peace.<sup>11</sup>

The United Nations does encourage all efforts outside the organization whenever other possible instrumentalities have been exhaustively used. It, however, resorts to this procedure only when the situation reaches the stage where the dispute is no longer threatening to erupt into a major outbreak of hostilities. In Kashmir the cease-fire line established and effectively supervised by the United Nations had eased the tension, and the effective observance of the cease-fire agreement by both parties showed that they were not after the resumption of major hostilities. Only when hostilities are resumed does the United Nations intervene and this is what happened late in 1965.

What happened in Kashmir between the time of the failure of the Graham mission and the 1965 flare up? In the "Azad" Kashmir side of the cease-fire line political conditions had been relatively smooth. Most,

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<sup>10</sup>(S/PV 605, September 10, 1952), p. 42.

<sup>11</sup>(S/2967, March 27, 1953), pp. 14-15.

if not all, the non-Muslim population moved to the other part of the State. The "Azad" Kashmir Government, which is supported by the Muslim Conference Party, is in charge of local affairs, while postal and telegraph services, defense, and foreign affairs are run by the Pakistani Government through the Ministry of Kashmir Affairs. The system of government based upon general democratic principles which was promised in June 1954 has not yet come into being. In the northern mountainous parts of the State, where the population is scarce and communications are poor, political power is, for all practical purposes, exercised by local chieftains. It is safe to say that the Western and North-western parts of Jammu and Kashmir are virtually a part of Pakistan.

On the Indian side of the cease-fire line political conditions were far from being smooth. Anxious to safeguard the autonomous status of Kashmir, Sheikh Abdullah in April 1952 refuted the applicability of the Indian constitution to the State, and following negotiations with Nehru, declared in July 1952 that the status of Kashmir was different from the other Indian States. Both agreed that the Supreme Court of India was not the final court of appeal for Kashmir; the Indian President's power to declare a state of emergency in Kashmir was only to be exercised with the consent of its Government; and that the State was to continue to have its separate flag.<sup>12</sup> In November 1952 Sheikh Abdullah had the Constituent Assembly abolish the Dogra hereditary rule and replace it with an elected Head of State.

Sheikh Abdullah's actions and views contributed greatly to his downfall. His policies did not appeal to certain parts of the State,

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<sup>12</sup>Korbel, op. cit., pp. 224-225.

particularly in East Jammu where sections of the population wanted closer ties with India and considered his radical economic program a threat to their interests. Demonstrations for complete integration with India were followed by a split in Sheikh Abdullah's National Conference Party. On August 9, 1953, Bakshi Ghulam Mohammend, the Acting Prime Minister, took over and put Sheikh Abdullah in prison and, except for a short period of freedom in 1958, Sheikh Abdullah remained in prison until 1965 when he was released, only to be rearrested a few month later. The new Government of Bakshi step by step led the State toward full and complete integration with India, and on March 30, 1965, the Kashmir Constituent Assembly passed the "Integration Bill," which formally made Kashmir a State in India. This sparked the uprising in the early days of August 1965.

Developments in Indian Kashmir produced endless repercussions in Pakistan. While the people were demonstrating and demanding the use of force, the Pakistani Government was trying by all ways and means to prevent the full integration of Indian Kashmir into the Indian Union and somehow get the long discussed and promised plebiscite implemented. Upon Dr. Graham's recommendation of direct negotiation, Prime Ministers Nehru and Mohammed Ali (the new Pakistani Prime Minister) met in New Delhi in the summer of 1953 and affirmed that the future of the State should be decided according to the wishes of the people, but early in 1954 the United States announced its agreement to give military aid to Pakistan, and India immediately declared that the United States' action had put the whole question of relations between India and Pakistan, including the Jammu and Kashmir question, in a different light. At the Colombo Conference in April 1954 Nehru opposed all the Pakistani efforts

to discuss the dispute.<sup>13</sup>

Pakistan countered this with stronger association with the United States as a military ally. Pakistan first subscribed to the Manila Treaty (SEATO) and to the Baghdad Pact (later CENTO), mainly out of a desire to secure international support in its quarrel with India. India, in turn, began to view the dispute as a crucial matter invoking military alliances that could affect the whole balance of power in that part of the world. There is no doubt that "In its effect on Indian attitudes, American military aid to Pakistan has been more important perhaps than Kashmir itself,"<sup>14</sup> for India felt that its very existence was being threatened. Nehru demanded the withdrawal of all the Americans serving with the United Nations military observers corps on the ground that they were no longer neutral, and Secretary-General Hammarskjold insisted that they were "denationalized."<sup>15</sup> Indian leaders pressed for closer relations with the Soviet bloc, but Nehru did not want to go all the way as he did not want to involve India in the cold war. It would seem safe to say that "a good deal of Nehru's condemnation of Armed Alliances derived from his objection to the United States giving arms to Pakistan and to Pakistan's being a member of SEATO and of CENTO."<sup>16</sup> India's suspicions, however, were eased only in March 1956 when Pakistan pressed the SEATO Council to seek a settlement of the Kashmir question, but the Council went no further than urging both parties to reach an early peaceful

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<sup>13</sup>Ibid., pp. 192-195.

<sup>14</sup>Taya Zinkin, "Indian Foreign Policy," World Politics, VII (1955), p. 191.

<sup>15</sup>Korbel, op. cit., pp. 163-164.

<sup>16</sup>Walter Crocker, Nehru (New York, 1966), p. 89.

settlement.

Pakistan, on several occasions, tried to get the United Nations to act without any practical results. On 24 January 1957, the Security Council again called for a general plebiscite and sent Gunnar D. Jarring, the Swedish President of the Council, on a mission to the area that fared no better than the previous ones. Later that same year the Council once more sent Dr. Frank Graham, but India this time insisted that the plebiscite was unrealistic so long as India had ratified the State's accession. The Indian Defense Minister, Krishna Menon, considered the Council's request an infringement on India's sovereignty: "The Security Council is telling India what it can have in its constitution, because if we are to follow this, surely we have to amend the Indian constitution because the Security Council has asked us to do so."<sup>17</sup>

The question again came before the Security Council on April 27, 1962. By 1962 the Kashmir dispute had become increasingly vital to Pakistan's as well as India's defense. Afghanistan and the Pakhtunistan separatist movement were threatening the Pakistani border, while China was spilling over the Indian Himalayan border. Pakistan took this opportunity to arrive at an understanding with China. In 1961 Pakistan formally proposed the demarcation of the boundary between Chinese Sinkiang and Pakistani Kashmir, and with China's agreement the boundary was formally demarcated. China seems to have tried to neutralize Pakistan before the Chinese advance into Ladakh in 1962, and to keep Indian forces tied up on the Pakistani border out of fear that Pakistan would move into Kashmir. Since 1962 China and Pakistan have drawn closer and have

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<sup>17</sup>(S/PV 765, January 24, 1957), p. 51.

concluded a number of agreements, such as the trade agreement of January 1963 and the cultural agreement of 1965.

The Chinese attack in 1962 forced India to reappraise its non-alignment policy and turn to the West, especially the United States, and the closer India's relations with the West became and the more weapons the United States sent to India, the closer Pakistan came to China. In 1962, the Great Powers were faced with the threat of a general war that would have upset the whole balance of power and the status-quo in that part of the world. They could not afford renewed hostilities over Kashmir, and felt this would have adversely affected not only Western Ladakh but all of Kashmir and both India and Pakistan. Accordingly they appealed to both parties to renew their efforts to reconcile their differences. By the end of November 1962 negotiations started between India and Pakistan and lasted till the beginning of 1963 but without producing any tangible results.

Pakistan took the case again to the Security Council in January 1964. India, having recovered from the shocking and humiliating war with China, pleaded that the dispute had ceased to exist and that there was nothing left to negotiate. Britain, which proposed negotiations, was accused by Nehru of betraying India and he threatened to withdraw from the Commonwealth. In fairness to Nehru, it must be said that the Sino-Indian conflict kindled the fire of nationalism in India and made it extremely difficult for Nehru to make any significant concessions to Pakistan. In addition, Pakistan itself was flirting with China at the time China was attacking India, and this irritated the Indians. Alarmed by the massacres in Bihar and Orissa in March 1964 and the rising pressure of communalism, Nehru had Sheikh Abdullah released in April, after eleven



years in jail, and arranged for a meeting with President Mohammed Ayub Khan in June. Nehru's initiative came late, for he died in May.

Once again the attention of the world was drawn to the Kashmir dispute when Sheikh Abdullah upon his release went on a tour abroad and on his return to India was arrested. The new Shastri Government, still unclear about its position at home, could not take the risk of allowing Sheikh Abdullah to challenge India. Sheikh Abdullah's statements during his visits to Cairo, London, Paris, and Algiers, particularly his meeting with Chou En-lai in Algeria while the Afro-Asian Conference was in session, provoked the Indian Government.<sup>18</sup>

Hardly had the Rann of Kutch dispute,<sup>19</sup> which in April 1965 brought India and Pakistan to the brink of a full fledged war, been brought under control, when in August 1965 the conflict between India and Pakistan over Kashmir took a violent turn. India claimed that the so-called freedom fighters were "infiltrators" from Pakistan and that Pakistan, by sending them in, had violated the cease-fire line. Pakistan denied having sent any "infiltrators," and said that the so-called "infiltrators" were the people of Kashmir who had risen in revolt.<sup>20</sup> On August 25 the

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<sup>18</sup> He attacked the Indian policies toward the full integration of Indian Kashmir into the Indian Union without reference to the will of the people and held that only a free and impartial plebiscite could determine the status of the state as a whole.

<sup>19</sup> It is a territory of 3,500 square miles forming the northern part of the Rann State and was, for more than a century, the subject of a dispute between the Kutch State and the Province of Sind. This dispute was bequeathed to India and Pakistan by their predecessor, the British Indian Government. In 1948 Pakistan laid claim to this area. The Indian Government after independence claimed that the whole of the Rann formerly belonged to the State of Kutch and hence became a part of India when the state acceded to it in 1947.

<sup>20</sup>(S/PV 1240, September 18, 1965), p. 11.

Indian forces crossed the cease-fire line in the State of Jammu and Kashmir at two points in retaliation against the infiltrations. Fighting continued and, on September 6, 1965, the Indian forces crossed the international frontier between India and West Pakistan and attacked the city of Lahore. Thereupon President Mohammed Ayub Khan announced that Pakistan was at war with India and declared a state of emergency in Pakistan. The entire armed forces of the two countries were locked in combat.

At an emergency meeting of the Security Council, on September 6, the Pakistani representative accused India of armed aggression and denied the Indian accusation that Pakistan had violated the international border south of the cease-fire line between the State of Kashmir and West Pakistan.<sup>21</sup> A resolution jointly sponsored by the non-permanent members of the Security Council was unanimously adopted the same day. It called on both India and Pakistan to observe a cease-fire in the entire area of conflict and withdraw their armed forces to the positions held by them before August 5, 1965. It also requested the Secretary-General to take the necessary action to put the resolution into effect, strengthen the United Nations military observers, and keep the Council informed. The Security Council action was a natural outgrowth of its request for a cease-fire. The Secretary-General, U-Thant, was given the role of mediator to ease tension in a troubled area, a role in the field of pacific settlement of international disputes which has been greatly developed by Hammarskjold, the man who developed the so-called "preventive diplomacy" in an effort to ease tensions and bring the parties together to work out an agreement on major differences.

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<sup>21</sup>(S/PV 1238, September 6, 1965), pp. 13-15.

On the basis of the resolution, U-Thant visited India and Pakistan. He held talks in New Delhi and Rawalpindi with the Prime Minister of India and the President of Pakistan and, following his return to New York on 16 September 1965, he had a series of talks with the United Nations' Representatives of India and Pakistan. Soviet Prime Minister Kosygin also offered the good offices of the Soviet Union to both countries. On September 22 the Security Council, with all the five permanent members concurring, ordered a cease-fire and both parties agreed to observe it.

The cease-fire agreement was not solely the result of the mediatory efforts of the Secretary-General, as pressure by the Great Powers on both parties to avoid any escalation in the war also played its part. Developments in South-East Asia and the growth in Chinese Communist action in the part of the world made the Great Powers, including the Soviet Union, take keen interest in the Indo-Pakistani war. The Chinese on 16 September sent an ultimatum to the Indian Government "to dismantle all military structures along the Sikkim border" in three days, or else feel the "grave consequences."<sup>22</sup> Many in the United States feared that Chinese help to Pakistan would upset the international scene and bring America to India's side, thus the danger of a world conflagration was evident. The Chinese ultimatum made the Great Powers feel apprehensive and made the United Nations move fast in adopting the cease-fire resolution. The Economist, in analyzing the situation, pointed out that both the United States and the Soviet Union knew that prolonging the war in the sub-continent would serve China's special interest in causing confusion south

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<sup>22</sup>Time, September 24, 1965, p. 32.

of the Himalayas.<sup>23</sup> Pressure was applied to both India and Pakistan to have them end the war. On September 8, United States Secretary of State, Dean Rusk, announced the United States Government's decision to suspend the shipment of military supplies to India and Pakistan. He added, "If these two countries could find peace with each other the sub-continent could be impregnable from the point of view of defense and safety...."<sup>24</sup> It would appear that "moral sympathy for Pakistan was brushed aside in the general desire to put out the flames before China was in there chucking the paraffin around."<sup>25</sup> That is why "the Administration in Washington is carefully not using the word plebiscite."<sup>26</sup> The United States, after a reappraisal of its policy in that part of the world, renewed its previous invitation to the Heads of Governments of India and Pakistan to visit the United States. President Mohammed Ayub Khan accepted the invitation and arrived in Washington in December 1965. The United States was in a position to use pressure in support of the United Nations as the massive volume of American aid to both countries provided the United States with some power to help the United Nations bring about a cease-fire.

The Soviet Union this time added its efforts to those of the United States to end the war. On 4 September, the Soviet Prime Minister, Alexei Kosygin, addressed identical messages to President Mohammed Ayub Khan and Prime Minister Shastri, urging them to stop the fighting and resort

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<sup>23</sup>The Economist, September 25, 1965, p. 1177.

<sup>24</sup>U.S. Government, Department of State Bulletin, Washington, September 27, 1965, p. 54.

<sup>25</sup>The Economist, op. cit., p. 1178.

<sup>26</sup>Ibid., p. 1203.

to peaceful means to settle the Kashmir dispute, and he offered the good offices of the Soviet Union if both sides deemed it useful. On September 7 an official statement by Tass said that

The armed conflict between India and Pakistan evokes serious concern in the Soviet Union....The concern is increasing because the conflict is passing /correct/ in an area neighbouring on the frontiers of the Soviet Union.<sup>27</sup>

Tass went on to remind the two parties of the grave consequences of prolonging the war, which it said would be in the interest of foreign forces.<sup>28</sup> Tass, considering the Sino-Soviet conflict, could possibly have meant China as one of those foreign forces. It seems that the Soviet Union's attitude toward the war and its desire to stop it stemmed from factors still applicable to the present-day situation and this has helped to maintain the status-quo in that part of the world. Briefly, these factors are: the Soviet Union's proximity to the Indo-Pakistan sub-continent; its policy of peaceful coexistence with the West; its fear that the present East-West detente is not permanent; its fear of war because the political and ideological reasons would see the Soviet Union siding with China; the Sino-Soviet ideological split over who is the champion of world Communism; and the Soviet's fear of the growing influence of the Chinese in the sub-continent which, with all probability, would threaten its border. This situation brought about strange parallels in the United States and the Soviet Union's policies. For the first time the Soviet Union offered its good offices in a dispute like this. On the invitation of the Soviet Union, Indian Prime Minister Shastri and Pakistani President Mohammed Ayub Khan met in Tashkent early in 1966 and

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<sup>27</sup>(S/6671, September 8, 1965), p. 2.

<sup>28</sup>Ibid.

produced the Taskent Declaration in which the two parties agreed to a truce and the withdrawal of their armed forces to the 1949 cease-fire line.

This marked the end of the last and present phase of the Kashmir struggle which added another chapter to the joint United Nations and Great Powers efforts toward a peaceful settlement of an international dispute and peaceful change. In this case it only amounted to a "perpetuation" of the status-quo. The United Nations had to limit itself to this for the circumstances of the case made it conclude that only the status-quo is a guarantee of peace until such time as peaceful settlement is reached. This is a case study of United Nations' action under its powers of peaceful settlement of international disputes and provides a model for the study of the power politics within and outside the United Nations. Within this framework the dispute served to prove that "Small power aggression can never be a serious problem to the peace of the world if the Great Powers agreed among themselves to deal with it."<sup>29</sup>

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<sup>29</sup>J. S. Brierly, The Law of Nations (New York, 1963), p. 386.

## CHAPTER VIII

### CONCLUSION

The maintenance of international peace and security is the United Nations' most important function and its success or failure will be judged by the degree of success achieved in this endeavor. It is necessary to consider the record of the United Nations in dealing with international disputes and, of the many international disputes dealt with by the United Nations, I have used the Kashmir issue as a case-study of how the United Nations operates in this field of peaceful settlement.

The United Nations system for pacific settlement of international disputes requires members to seek a solution by any one of the prescribed peaceful means they choose. Article 33, Paragraph 1, of the Charter provides that "The parties...shall, first of all, seek a solution by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice." These steps enumerated do not follow in a rigid sequence but are a range of possibilities to be utilized as appropriate and feasible.

Thus, upon the failure of negotiations held between India and Pakistan late in 1947, both parties, in an effort to break the impasse and reach a pacific settlement, invoked Article 35 of the Charter of the United Nations. Within the sphere of power prescribed to it in dealing with international disputes, the United Nations responded by employing a

wide variety of techniques in an effort to bring about a peaceful settlement of the Kashmir dispute. The first step was an attempt to facilitate constructive negotiations between the two parties and, at the same time, the United Nations, playing the role of a third party, explored all the divergent views and considered all the available possibilities to bridge the gap separating the two parties' views.

To that end and acting within the spirit of Chapter VI of the United Nations Charter, the Security Council recommended to both parties procedures of adjustment and terms of settlement it considered appropriate for working out a settlement. Thus the Security Council came out with its resolution of 21 April 1948, which did not tell the parties in the dispute what to do but merely recommended an approach it hoped would lead to a peaceful settlement. The resolution was not intended to be the final act of settlement, but what the members of the Council considered to be the most effective way of dissuading India and Pakistan from aggravating the situation in Kashmir and a means of encouraging them to compromise their differences on the fundamental issues so as to arrive at a common ground for agreement. Thus the Kashmir Commission, whose scope, method, and competence were prescribed under the April resolution, was created for the purpose of mediation and conciliation and without the power to impose its recommendations or plans. It was as such limited in its activities to only personal, face-to-face contacts with the officials of the parties concerned and to recommending to them different plans and methods backed by the Commission's power of persuasion and its political prestige. In the final analysis, the applicability of such plans and methods has to depend on the agreement of both parties and their good will.



In pursuance of its role under pacific settlement of international disputes, the Security Council not only intentionally avoided taking sides in the dispute, but also refused to pass judgment. It neither condemned, as requested by India, Pakistan as an aggressor, nor did it sit down to consider the legal issues involved in the dispute. This need not surprise us, as the conflict was essentially political, and had the Council considered it a legal question, like the legality of the accession, then it should, under Article 96 of the Charter, have requested "the International Court of Justice to give an advisory opinion." This juridical approach would have naturally concluded that one party was wrong while the other was right, and, one may argue, the Council would then have the crucial legal fact before it and would be in a stronger position to make appropriate recommendations. This is not that simple because the fact that neither India nor Pakistan invoked the jurisdiction of the Court indicates that both did not consider it a justiciable issue. Due to the nature of the dispute, a juridical verdict would not have constituted a settlement. Both countries have avoided a juridical consideration of the dispute, for to them the dispute is so vital that it does not allow them to take any risk that might weaken anyone's position in the dispute.

Furthermore, the Council itself did not invoke the jurisdiction of the International Court of Justice, because a legal decision as to who was right or wrong would, with all probability, have impeded all efforts toward a mutual compromise settlement and would have introduced a rigid situation that does not lend itself to negotiations and a political compromise. The Council felt the most it had to hope for was a political compromise based on political realism; the realism of Indo-Pakistani

relations, the changing world situation, and the powers and limitations of the Council, rather than the fundamentals of pure abstract justice. The Council, itself a political body, relied heavily on its institutional mechanics and the diplomatic skills at its disposal. Its policy appears to have been based on the view that a measure of success toward a settlement by negotiation and mediation is better than getting nowhere by a juridical verdict. "The United Nations may not have achieved the ideal balance between legal and political approaches to pacific settlement, but it has been on sound ground in rejecting primary reliance upon the device of adjudication."<sup>1</sup>

Both India and Pakistan had appealed to the United Nations under Article 35 of the Charter of the United Nations; that is under Chapter VI which deals with pacific settlement of international disputes, rather than Article 39 of Chapter VII which deals with threats to the peace and acts of aggression. This explains why the Security Council could not entertain the Indian insistence of having Pakistan branded an aggressor and why the United Nations for twenty years persisted in regarding the Kashmir question as a "situation" or a "dispute" rather than an "act of aggression" under Article 39 of the Charter. It is not clear why India, which kept insisting that Pakistan had committed an act of aggression, did not request United Nations' action under Article 39. This might have been a technical error on the part of the Indian officials, but whatever the reasons behind it may be, the fact remains that had India considered aggression to have been the real issue, she should have appealed to the United Nations Security Council in the manner prescribed

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<sup>1</sup>Claude, op. cit., p. 215.

in Article 39 of Chapter VII of the Charter.

It is worth mentioning here that Nehru, the avid advocate of branding Pakistan with aggression, himself opposed a similar treatment for China on the basis that it would embitter Red China and make it impossible to reach a settlement of the Korean War by negotiations. Nehru was trying to secure a political triumph for India in Kashmir and this illustrates so well how statesmen can preach in international relations what they do not practice when it comes to matters involving their national interests. Naturally, this poses a real problem for the United Nations whenever it is called upon to embark on the pacific settlement of international disputes.

A big question is the Security Council's failure to take the initiative and deal with the whole question under Chapter VII of the Charter. Both parties have stressed the gravity of the situation and accused each other of aggression in Kashmir. The Security Council had the power to act under Chapter VII by claiming that the situation was a potential danger to international peace and security. Had the Security Council done so the two parties would have been obligated to abide by the decision of the Council.

It seems the Council decided against such a move mainly out of fear that such action instead of producing permanent results would obstruct the possibility of any peaceful settlement in the future. International accusation, or what Inis Claude calls "international finger-shaking"<sup>2</sup> is a very serious thing and its use is not advisable for promoting the settlement of disputes between states. States despise being censured by

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<sup>2</sup>Ibid., p. 219.

any organization and would never under normal conditions assent to what is imposed on them against their will. In addition, the Council is also aware of the fact that the United Nations as yet is not equipped to impose a decision on the disputants by force, even if it decides such action is desirable. What is more, enforcement measures are always subject to the threat of the Big Power veto. It might be argued that at the early stages of the dispute the Soviet Union was disinterested in the whole question, and would not have used its veto power as it did not want to harm its relations with either India or Pakistan. This is mere speculation and there was always the possibility of a veto, Soviet or otherwise. Another reason for the United Nations' cautious treatment of the Kashmir dispute and the reluctance to take any resolute measure under Chapter VII was the United Nations' continued involvement in other equally important international disputes, namely the Palestinian, Indonesian, and Czechoslovakian questions, and later Korea, Congo and others. For all these reasons it appeared more advisable for the United Nations to rely on its mediation powers and skills.

It follows that the roles of the United Nations Commission, General McNaughton, Sir Owen Dixon, and Dr. Frank Graham, were merely mediatory without any right to impose a decision or their own solution as a final solution. They were all devices sent to that troubled area for varying periods of time as United Nations presences, and symbolized the United Nations' interest and involvement in maintaining peace wherever a troubled international situation exists. Each performed high level political and administrative functions on behalf of the organization by making personal contacts with the Indian and Pakistani authorities and recommending what they thought to be reasonable and appropriate as a basis

for agreement. They proved to be instrumental in freezing the unsettled situation which was the best action short of a solution dictated by force. Hostilities were brought to a stop and the basis was laid out for direct negotiations between the two parties to settle the outstanding issues. The issues are such that they do not lend themselves to a permanent settlement by the pacific methods at the disposal of the United Nations so it was for both governments to try to work out a settlement. That is why Sir Owen as well as Dr. Graham recommended direct negotiations between the leaders of India and Pakistan.

Differences on fundamental issues are the same in 1967 as they were in 1948. Both want the State; Pakistan for economic, defensive and ideological reasons; India more for defensive and ideological reasons than for economic reasons. Pakistan believes that a fair over-all plebiscite under United Nations auspices would result in a decision in its favour and that while certain districts in Jammu might favour India, yet the total vote would cancel them out. Whenever the legality of Pakistan's presence in Kashmir is questioned it counters this by questioning the Maharajah's accession to India late in 1947, charging conspiracy and describing India's acceptance of the accession as "fraudulant." As to the subsequent accession by the Kashmir Constituent Assembly, Pakistan denounces the Assembly as an improperly elected body. India, on the other hand, stresses the illegality of Pakistan's support of the tribal invasion and its later presence and actions in the State, and demands the question be settled before any other is considered, and hopes that following this Pakistan would evacuate the section of the State it now holds. The "Azad" Kashmir Government would cease to exist and the Indian supported Government of the State would be recognized.

With the two states standing at the two ends of the pole, the United Nations rightly felt it should restrict itself for the time being to the most urgent problem; namely, the cessation of hostilities in order to ensure the minimum prerequisites of peace between India and Pakistan. The United Nations, by accepting the realities of the situation and its complications, by realizing that the roots of the dispute go deep in the economic, religious, and cultural make-up of the sub-continent, and by having failed to induce a compromise settlement, found itself concentrating its efforts on the last possible alternative left to it in the circumstances; namely, the stoppage of the fighting. This was in other words pacification without a solution. The United Nations worked hard to ease the tension and to freeze the situation, and in so doing has contributed to the present stagnation and the development of a status-quo situation. It is clear therefore that the United Nations did not settle the main issues of the dispute nor bring about a permanent settlement of the Kashmir question.

It appears that the United Nations' peace-keeping operations in Kashmir as they were backed by Great Powers' collective action have of necessity been limited to restoring a fragil peace and maintaining the status-quo. Recently Ambassador Arthur J. Goldberg warned that peace keeping operations must not "be a sofa to provide a comfortable respite from efforts at peaceful settlement" but should "be a springboard for accelerated efforts to eliminate the root causes of conflict."<sup>3</sup> It has been argued that if the Security Council is in possession of the power

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<sup>3</sup>Robert O. Matthews, "The Suez Canal Dispute: A Case Study in Peaceful Settlement," International Organization XXI (1967), p. 79.

to enforce solutions of disputes, many questions might be prevented from ever reaching a fighting stage, and that to the extent the Security Council is able to compel resort to arbitration or judicial processes, the final settlements might be more in accordance with law and justice. As it is, the voluntary procedures of pacific settlement now in use are largely based on political compromise which may or may not produce "just" solutions. The very existence of the power to enforce solutions might mean that solutions could be reached more quickly by voluntary procedures of pacific settlement.

It has to be admitted that compulsory procedures might not safeguard what nations regard as their rights of sovereignty or that under international compulsory procedures an individual country would be assured protection of what it considers to be its "national interest" or "honour"; yet the present Charter provisions with respect to pacific settlement reflect a very important fact that states at San Francisco were on the whole reluctant to surrender what they hold to be their "vital interests," their political independence" and "honour", to the custody of other nations or an international agency and that, barring the development of a strong and operative United Nations force, lasting solutions of disputes between sovereign states can only be achieved by the consent of the parties.

We must not expect the United Nations to be other than what it was intended to be and what it is: a voluntary association of sovereign states. When countries feel that "national interest" is at stake as India and Pakistan clearly do, they have a tendency not to abide by any United Nations resolution they deem to be contrary to their "national interests", and unless the Great Powers working together are willing to

exercise their power through the United Nations, the success of United Nations' actions remains doubtful. The effectiveness of the United Nations in any given situation will ultimately depend upon the agreement of the Great Powers to channel their combined efforts within the organization to attain this objective. Evidence of this can be seen in the last major outbreak between India and Pakistan, as the unity displayed by the Great Powers in the Security Council provided the basis for all the restraints used to stop the fighting.

The same forces and conditions which operated within and outside the United Nations to keep the status-quo are still there. Indo-Pakistani differences on the main issues of the dispute are still in existence, but the Great Powers in the Council have the same unchanging interest in keeping the situation under control by trying to eliminate all the causes which produce eruptions. The Security Council is no longer pressing for a plebiscite, and there is no certainty that a plebiscite will ever be held. Furthermore, the Council, being aware of the complex background of the problem, does not underestimate the probability of new disturbances in case a plebiscite is held at this time.

How is it that the Kashmir question has not been taken off the agenda of the Security Council and placed on the agenda of the General Assembly? The General Assembly does not have the coercive powers of the Security Council. Yet it could appeal to both parties to demilitarize the state and if the parties refuse to comply the Assembly could then propose the arbitration of the fundamental differences. What would make us believe that the parties would agree to this? This substantiates the basic concept of pacific settlement of international disputes; that is, there are many ways to pacific settlement, but all of them depend on the



presence of good will and mutual cooperation. Failing this a peaceful settlement would not be assured.

In summing up, an impartial third party has an all-important role to play in efforts to achieve pacific settlement of disputes. This has been the unique contribution of the United Nations in the field of peaceful settlement of international disputes and peaceful change. Its constant endeavor to negotiate, explore, and press for possible common grounds for agreement, guided in this by an "impartiality" which is the product of the multiplicity of the nations represented, have contributed to a cooling-off effect on international disputes. This is clearly the case of the Kashmir dispute where the United Nations devised one procedure after another for the purpose of finding out a possible basis for a truce agreement with the hope that force would then no longer appear as a feasible alternative.

The United Nations efforts have also proved to be a practical way for focusing on the disputants the moral pressure of world opinion. The debates and negotiations have exercised a powerful influence on the protagonists by mobilizing world opinion against their excessive views, thus making them avoid actions that would make either of them responsible for the deterioration of the situation. On the other hand, the non-publicized diplomacy which takes place within the United Nations provides an additional element of value: the mediating influence of all those who are vitally interested in peace, while free from an immediate involvement in the issues at stake in terms of prestige or national interest. In the Kashmir dispute debate and negotiations did take place; the proposals advanced were directed toward arriving at a mutually acceptable solution; and the threat of forceful coercion was not used by the United Nations

to back up its mediation efforts. The results again showed that States are normally more cooperatively disposed when they know that no solution will be imposed on them against their will.

Nations are obliged by the Charter not to resort to force in solving their disputes. The United Nations did not and can not abolish the use of force, at least in its present make up, by compelling the nations of the world to live at peace. It only provides the organizational machinery that could be used to facilitate peace but it is not by itself a guarantee of peace. Those who were disturbed because the United Nations did not use force to halt the events of late August and early September 1965 in Kashmir must have been thinking of an organization other than the United Nations, for in the United Nations the ultimate decision is up to the national governments.

But the United Nations can inform, it can appeal, it can persuade, it can maintain contact between hostile states, it can voice the world's will to peace. This is its true vocation in the struggle for world security. Its struggle will not depend on the strength of its 'teeth' as on the responsiveness of its members to its reconciling mission.<sup>4</sup>

Under the auspices of the United Nations, the nations of the world are laying out their problems as never before. The United Nations provides a platform and an auditorium where nations could air out their differences and cool off their temper. The proposition that it is better for statesmen to argue than to fight is embedded in the foundations of international organization and in the hope that debate may eliminate the need and the will to fight. The United Nations offers to statesmen the ways and means of identifying the central problems of international life.

In the present era the international stage is becoming increasingly

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<sup>4</sup>Jacob and Atherton, op. cit., p. 321.

occupied with new players, and with this the complexities of world politics are growing. In this situation, the existence of the United Nations is of vital significance to world peace. It provides a forum within which national foreign policies may be adjusted on agreed terms, subject to the realities of the political forces within and outside the organization and to the degree that states are prepared to abdicate their unilateral role in international affairs.

Given our international system as it is, can we expect the United Nations to have a will of its own regardless of what the parties want? This is a problem which is aggravated by the nations' interpretation of the role of the United Nations, the importance and power of the parties involved in dispute, and whether they are committed to any of the world forces in this divided world. The Kashmir problem does not seem to be an exception. Whatever action the United Nations has taken seems to have been the only possible and feasible action in the over-all situation.

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## APPENDIX A

The letter of accession, dated October 26, 1947.

"My dear Lord Mountbatten,

"I have to inform Your Excellency that a grave emergency has arisen in my State and request the immediate assistance of your Government. As Your Excellency is aware, the State of Jammu and Kashmir has not acceded to either the Dominion of India or Pakistan. Geographically my State has a common boundary with the Union of Soviet Socialist Republics and with China. In their external relations the Dominions of India and Pakistan can not ignore this fact. I wanted to take time to decide to which Dominion I should accede or whether it is not in the best interests of both Dominions and of my State to stand independent, of course with friendly and cordial relations with both. I accordingly approached the Dominions of India and Pakistan to enter into a standstill agreement with my State. The Pakistan Government accepted this arrangement. The Dominion of India desired further discussion with representatives of my Government. I could not arrange this in view of the developments indicated below. In fact the Pakistan Government under the standstill agreement is operating the post and telegraph system inside the State. Though we have got a standstill agreement with the Pakistan Government, that Government permitted a steady and increasing strangulation of supplies like food, salt and petrol to my State.

"Afridis, soldiers in plain clothes, and desperadoes with modern weapons have been allowed to infiltrate into the State, at first in the Poonch areas, then from Lialkot and finally in a mass in the area adjoining the Hazara District on the Ramkote side. The result has been that the limited number of troops at the disposal of the State had to be dispersed and thus had to face the enemy at several points simultaneously, so that it has become difficult to stop the wanton destruction of life and property and the looting of the Mahura power house, which supplies electric current to the whole of Srinagar and which has been burnt. The number of women who have been kidnapped and raped makes my heart bleed. The wild forces thus let loose on the State are marching on with the aim of capturing Srinagar, the summer capital of my Government, as a first step to overrunning the whole state. The mass infiltration of tribesmen drawn from distant areas of the North-West Frontier Province, coming regularly in motor trucks, using the Mansehra-Muzaffarabad road and fully armed with up-to-date weapons, can not possibly be done without the knowledge of the Provincial Government of the North-West Frontier Province and the Government of Pakistan. In spite of repeated appeals made by my Government no attempt has been made to check these raiders or to stop them from coming into my State. In fact, both the radio and the press of Pakistan have reported these occurrences. The Pakistan radio

even put out the story that a provisional government has been set up in Kashmir. The people of my State, both Muslims and non-Muslims, generally have taken no part at all.

"With the conditions obtaining at present in my State and the great emergency of the situation as it exists, I have no option but to ask for help from the Indian Dominion. Naturally they can not send the help asked for by me without my State acceding to the Dominion of India. I have accordingly decided to do so, and I attach the instrument of accession for acceptance by Your Government. The other alternative is to leave my State and the people to freebooters. On this basis no civilized government can exist or be maintained. This alternative I will never allow to happen so long as I am the ruler of the State and I have life to defend my country.

"I am also inform Your Excellency's Government that it is my intention at once to set up an interim government and to ask Sheikh Abdullah to carry the responsibilities in this emergency with my Prime Minister.

"If my State is to be saved, immediate assistance must be available at Srinagar. Mr. V. P. Menon is fully aware of the gravity of the situation and will explain it to you, if further explanation is needed.

"In haste and with kindest regards,

Your Sincerely,

(Signed) Hari Singh."

APPENDIX B

Lord Mountbatten's reply, dated October 27, 1947.

"My dear Maharaja Hari Singh

"Your Highness's letter dated 26 October 1947 has been delivered to me by Mr. V. P. Menon. In the special circumstances mentioned by Your Highness, my Government have decided to accept the accession of Kashmir State to the Dominion of India. In consistence with their policy that in case of any State where the issue of accession has been the subject of dispute, the question of accession should be decided in accordance with the wishes of the people of the State, it is my Government's wish that, as soon as law and order have been restored in Kashmir and its soil cleared of the invader, the question of the State's accession should be settled by a reference to the people.

"Meanwhile, in response to Your Highness's appeal for military aid, action has been taken today to send troops of the Indian Army to Kashmir, to help your own forces to defend your territory and to protect the lives, property and honour of your people. My Government and I note with satisfaction that Your Highness has decided to invite Sheikh Abdullah to form an interim Government to work with your Prime Minister.

(Signed) Mountbatten of Burma."

Quoted in: White Paper on Jammu and Kashmir, pp. 48-49.



VITA

Mahmud Ahmad Faksh

Candidate for the Degree of

Master of Arts

Thesis: THE KASHMIR DISPUTE: A CASE STUDY OF UNITED NATIONS ACTION IN  
HANDLING AN INTERNATIONAL DISPUTE

Major Field: Political Science

Biographical:

Personal Data: Born in Aleppo, Syria, March 2, 1942, the son of  
Ahmad and Ramzeia Faksh.

Education: Attended grade school in Aleppo; graduated from Hanano  
High School in 1961; received the Bachelor of Arts degree  
from the American University of Beirut, with a major in Poli-  
tical Science, in June, 1965; completed the requirements for  
the Master of Arts degree in Political Science at Oklahoma  
State University in July, 1967.

Professional experience: A graduate assistant in the Department  
of Political Science at Oklahoma State University for the  
academic year 1966-1967.