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Kashmir Issue: Some dimensions

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Abstract: Kashmir is a product of partition that has all the years determined the relationship of India and Pakistan. Every move of both the countries on the world political scene is by one way or the other related with it. It has kept India and Pakistan divided and has largely influenced the international outlook of the two countries. Many a times, it has caused embarrassing situation for the friends and allies of the two countries. Because of this dispute the two countries are spending huge sums of money on arms and this phenomenon, has greatly affected the economic development of the two countries.

Key words - Kashmir, Pakistan, UN

Kashmir is a product of partition that has all the years determined the relationship of India and Pakistan. Every move of both the countries on the world political scene is by one way or the other related with it. It has kept India and Pakistan divided and has largely influenced the international outlook of the two countries. Many a times, it has caused embarrassing situation for the friends and allies of the two countries. Because of this dispute the two countries are spending huge sums of money on arms and this phenomenon, has greatly affected the economic development of the two countries.

Its importance lays in the fact that it has helped the elites of Pakistan to rationalize their hostility towards India and strengthen their hate India campaign. It is helpful in containing discontent within and keeps their hold over the masses. For the Government of Pakistan, the Kashmir is not merely a struggle for territory but something more i.e. struggles for her ideology. If in India, the Kashmir issue is connected with prestige or principle; in Pakistan, it looks like a matter of life and death. Any hostile power installed in Kashmir can dominate Pakistan military and at the hour of crisis can threaten at close range the vital road and rail communications from Lahore to Peshawar. She can control the waters of Chenab and Jhelum on that Pakistans economy is dependent. In short, for strategic, economic and ethnological factors, the Government of Pakistan is pleading her case and will not allow potentially hostile power to hold the administration of Kashmir. Mohammed Ayub Khan in his autobiography has also emphasized that security of Pakistan is closely linked with the solution of Kashmir.

Maharaja Gulab Singh founded the State of Jammu and Kashmir. Initially, he had secured in 1820, the principality of Jammu from Maharaja Ranjit Singh of Punjab in recognition of his loyal services and was authorised to rule over the territory as a (King). By the time of Maharaja Ranjit Singhs death in 1839, he had consolidated his power in the area by subjugating and confiscating the jagirs of many feudal chiefs.

After the Anglo- Sikh War, the East India Company concluded a treaty with Raja Gulab Singh on 16 March 1846. Under the Treaty of Amritsar Kashmir was sold to Gulab Singh for cash payment of Rs. 75 lacs. It recognized Gulab Singh as the Maharaja of Jammu & Kashmir.

The State of Jammu and Kashmir lies between 32.170 and 36.580 north latitude and 73.260 and 80.300 east longitude. The total area of the state was 2, 22,236sq.km Out of this area, Pakistan had occupied 78,114 sq.km and has illegally ceded 5180 sq.km to China. Thus leaving 1, 61,387 sq.km. with the people of Jammu and Kashmir who had earlier acceded to India. The present State of Jammu and Kashmir consists of three divisions i.e. (i) Kashmir, consisting of 15,948 sq.km (ii) Jammu, having 26,293 sq.km and (iii) Ladakh Division

covering an area of 59, 146 sq.km the State has common borders with India, Pakistan and China. The climate of the State ranges from arctic cold of Ladakh to the tropical heat of Jammu plain. The valley of Kashmir, which is the only plain in the State is extremely cold in winter and has a moderate climate in summer. Kashmiri and Dogri are the languages spoken in the State. Ladakhis speak a language, which is akin to Tibetan language. Urdu in Persian script is the official language of the State.

Pakistan has links with the State, through the Jhelum valley road connecting Srinagar with Rawalpindi. Between Srinagar and Jammu town runs a road through the Bannihal pass and from Jammu two roads spread out, one in the direction of Sialkot and another in the direction of Pathankot in India.

The geographical situation of the State was such that the new Dominion of Pakistan would bound it on all sides. Its only access to the outside world by road lay through the Jhelum valley road that ran through Pakistan via Rawalpindi. The only rail line connecting the State with the outside world lay through Sialkot in Pakistan. Its postal and telegraphic services operated through areas that were close to Pakistan.

The State was dependent for all its important supplies like salt, sugar and petrol and other necessities of life on their safe and continued transit through areas that would form part of Pakistan. The tourist transit traffic, which was a major source of income and revenue, came via Rawalpindi. The only route available for the export of its valuable fruit and timber was the Jhelum valley route. The only option to draft down timber was in the Jhelum River, which ran into Pakistan.

The Instrument of Accession: Some Facts

The Maharaja of Kashmir could not decide to accede to India or to Pakistan in time. Pakistan supported the tribal raiders and they were in fact, Pakistani soldiers. When the raiders were about to capture the Srinagar Airport, the Maharaja of Kashmir agreed to Kashmir accession to India and signed the Instrument of Accession on 26 October 1947. After the lapse of the British rule in August 1947, it had become optional for the princely states to accede to India or Pakistan or remain independent. By 15 August 1947, almost all the princely states, with three exceptions had acceded to India or Pakistan, on the same basis as the principle underlying the partition of British India, namely non-Muslim majority areas joined India and Muslim majority states joined Pakistan. The three, which stood out, were Junagadh, Hyderabad and Kashmir.

First, 597 states out of 600 acceded to India or Pakistan, in accordance with the religion accepted by most of the population in each case. Second, in all three cases in which the rulers had indicated that their wish to go against the principle of partition, India compelled them to abandon the idea on the ground that their action would violate the principle on which the division of the sub-continent had been affected. Furthermore, in the Muslim provinces of Bengal and Punjab in Pakistan the League had desired to include the whole of the predominantly Muslim areas at the Congress insistence, so that the Hindu parts could join India. The trouble over Kashmir arose, according to a Pakistan scholar, when India laid claim to every single Hindu majority area on the ground that partition of the British India was on communal lines, at the same time, she denied Muslim Kashmir to Pakistan.

The Indian spokesman while pleading the Indian case for Kashmir singled out two basic facts and desired that the rest of the world must concede that the Pakistan has been the aggressor in Kashmir. The first is that, the tribal invaded Kashmir on 22 October 1947 and the second is the open intervention of the Pakistani armed forces inside Kashmir in the first week of May 1948. The Indian Government completely ignored the developments and provocation that led to the creation of chaos in the valley. The fact of the matter is that United Nations (UN) did not pronounce Pakistan as an aggressor and these occurrences notwithstanding, India agreed in the UN Security Council that the people of Kashmir were to decide their own future by a plebiscite, thus making the holding of a plebiscite the central issue in the dispute.

A direct approach by India for getting Kashmir was clearly impossible because at that very time, she was pressuring Junagadh and Hyderabad to accede with her, on the ground that they had Hindu majority by which criterion Muslim obviously was to join Pakistan. India therefore did not demand Kashmir accession openly but employed political pressure behind the scene to create situation in which the appearance would be that the majority of the people of Kashmir wished to join India at their own will.

Acharya Kripalani, President of the Indian National Congress, Maharaja of Patiala, Kapurthala and Faridkot and the rulers of the Punjab Hill States, visited the valley and were on a noble mission of persuading the Maharaja of Kashmir to join India. The members of the Muslim Conference had also been pressing the Maharaja to join Pakistan and on 19 July 1947, passed a Resolution to this effect. Trouble started, towards the end of July when the Maharaja ordered his Muslim subjects to surrender their arms to the police. The Muslim got annoyed, responded by organizing themselves as guerrillas in the hills of Poonch, an area dominated by ex-soldiers who had fought in the Second World War in the ranks of the British Army. While the tough warriors of Poonch held their own against the Maharaja forces, the Muslims in Jammu province,

where Hindus formed a considerable portion of the population and where Sikhs and other militants from India had infiltrated.

Josef Korbel, analysed the Kashmir issue analytically, felt that if the struggle for Kashmir was a struggle for territory, if it was a struggle for national resources or for manpower or for strategic position, or for any of the other prizes for which nations traditionally contest, it might well have been solved some years ago. It might no longer constitute for the entire sub-continent, the meaning that today it remains.

Primarily what makes the problem of Kashmir, the high insoluble, debate that is, what makes the leaders of both contending parties to dispute in such bitterness and compromise with such grudging reticence, what makes the whole history of its attempted settlement such a record of frustration, annoyance and exasperation is something more than these traditional causes for international disputes. The real cause of all the bitterness and bloodshed, the recalcitrance and the suspicion that have characterized the Kashmir dispute in the uncompromising struggle for two ways of life, two concepts of political organizations, two scales of values, two spiritual attitudes, find these selves locked in deadly conflict, a conflict in which Kashmir has become both symbol and background.

Simply, these two irrevocably opposed positions may be characterized this: To India the sub-continent is inescapably one nation. To Pakistan, it is just inescapability. The examination of the intensity of these two beliefs, their nature, their origins and the events, which were and remain the expression of their conflict, is essential to the full understanding of this conflicts present day symbol Kashmir.

Korbel analysis is still very much relevant even today. There is no change in the attitude of the leadership of both the countries on the various aspects of the Kashmir issue. Only the circumstances and the environments are different. There is no visible change in the perception and outlook of both the countries.

After the Kashmir, formal accession with India, the real problem emerged with Pakistan Government when it declared that accession was a fraud perpetrated on the people of Kashmir by its cowardly ruler with the aggressive help of the Government of India. The Indian Government gave an assurance to the people of Kashmir about the holding of plebiscite by saying that as soon as law and order have been restored in Kashmir and its soil cleared of the invaders a plebiscite would be held.

In the original text of the Instrument of Accession, there was no mention of holding of plebiscite in the valley after the normalization of situation. It clearly said that:1. I hereby declare that I accede to the dominion of India with the intent that the Governor General of India, the Dominion Legislature, the Federal Court and any other Dominion authority established for the purpose of the Dominion shall by virtue of this Instrument of Accession. Subject to the terms there of and for the purposes only of the Dominion, exercise in relation to the State of Jammu and Kashmir (hereinafter referred to as this State). Such functions as may be vested within by the Government of India Act, 1935, as in force in the Dominion of India, on the 15th day of the August 1947 (which Act as to so in force in hereafter referred to as the Act.

2. I hereby assume the obligation of ensuring that due effect is given to the provisions of the Act within this State so far as they are applicable therein by virtue of this my Instrument of Accession.

3. I accept the matters specified in the scheduled hereto as the matters with respect to which the dominion legislature may make laws for the State.

4. I hereby declare that I accede to the Dominion of India on the assurance that if an agreement is made between the Governor General and the Rulers of the State whereby any functions in relation to the administration in this State of any law of the Dominion Legislature shall be exercised by the Rulers of this State, then any such agreement shall be deemed to form part of this Instrument and shall be construed to have effect accordingly.

5. The terms of my Instrument of Accession shall not be varied by any amendment of the Act or the Indian Independence Act, 1947, unless such amendment is accepted by me by Instrument Supplementary to this Instrument

6. Nothing in this Instrument shall empower the Dominion Legislature to make any laws for this State authorizing the compulsory acquisition of land for any purpose, but I hereby undertake that should the Dominion for the purpose of a Dominion law which applies in the State deem it necessary to acquire any land, I will at their request acquire the land at their expense, or if the land belongs to me transfer it to them on such terms as may be agreed or, in default of agreement, determined by an arbitrator to be appointed by the Chief Justice of India.

7. Nothing in this Instrument shall be deemed to commit in any way to acceptance of any future constitution of India or fetter my discretion to enter into arrangement to the government of India under any such future constitution.

8. Nothing in this Instrument affects the continuance of my sovereignty in and over this State, or save as provided by or under this Instrument, the exercise of any powers, authority and rights now enjoyed by me as Ruler of this State or the validity of any law at present in force in the State.

9. I hereby declare that I execute this Instrument on behalf of this State and that any reference in this Instrument to me or to the Ruler of the State including a reference to my heirs and successors.

The Instrument of Accession, on 27 October 1947, was accepted formally by the Governor General of India, Lord Mountbatten. In his reply, he said that in the special circumstances maintained by your highness, my government has decided to accept that accession of Kashmir State to the Dominion of India. In consistence with their policy that in the case of any state where the issue of accession has been the subject of dispute, the question of accession be decided in accordance with the wishes of the people of the state. It is my governments wish that as soon as law and order have been restored in Kashmir and her soil cleared of all invaders, the question of the states accession should be settled by a reference to the people.

Now question arises when there was no mention of holding of plebiscite in the valley in the original text of the Instrument of Accession that was responsible for adding the plebiscite offer. So far, it is not clear what the need to add this clause was. Furthermore, this clause was against the original text of the Instrument wherein under the clause 5, no changes were permissible in the text and nature of the Instrument without the permission of the Maharaja. We can say the offer of holding of plebiscite by the Nehru Government, violated in clear terms the spirit of the Instrument of Accession.

When Pakistan came to know about this plebiscite offer, it termed the Instrument of Accession as provisional, based on fraud and violence. The Government of Pakistan communiqué to the Indian Government on 30 October 1947, not only traced under which circumstances the accession was finalized, but also blamed the Nehru Government responsible for the whole situation. The communiqué said, the Government of Pakistan cannot accept the version of the circumstances in which Kashmir acceded to the Indian Dominion... calling attention to the repeated attempts of Pakistan to improve its relations with Kashmir... the threat to call outside help amounted almost to an ultimatum and showed that the real aim of the Kashmir Governments policy was to seek an opportunity to join the Indian Dominion by a coup d'état. It further pointed out that in the opinion of the Government of Pakistan, the course of these negotiations clearly shows that Kashmir Government had never any intention of maintaining friendly relations with Pakistan and that at any rate as early as 15 October. they had made up their mind to call in outside assistance, presumably after ascertaining the attitude of the Government of India by secret negotiations which have been going on for weeks. The Government of Pakistan denied consistently the raiding into Kashmir valley by people from Pakistan, The Pathan raid was provoked using Kashmir troops to attack and kill Muslims in Kashmir and Jammu and for this the policy of the Government of Kashmir was solely responsible. The Kashmir Government must have been fully aware of the inevitability of the Pathan reaction. Their deliberate refusal to consider several suggestions that the Government of Pakistan made for a meeting of the representatives of both to handle the situation jointly by friendly cooperation. They hatched a conspiracy with the Indian Government to enable them to use this raid as the occasion for putting into effect the pre-planned scheme for the accession of Kashmir to India. The occupation of Kashmir by Indian troops with the object of holding down the people of Kashmir who have driven to rebellion by this well-calculated and carefully planned aggression... The reference to plebiscite in the Kashmir is merely to put forward and mislead, as it ostensibly seems effective, but as a practical proposition, it remains on paper. If the Indian Government are allowed to act freely and unfettered, as they please by virtue of having already occupied Kashmir and landed their troops there, then their Eldora of plebiscite will prove a mirage.

Lord Mountbatten held a meeting with Jinnah at Lahore in November 1947 to solve the various issues related with the Kashmir issue but failed. Again, on 8 December, a meeting of the Joint Defence Council (JDC) was held at Lahore in which Nehru and Mountbatten participated. Nevertheless, it did not produce any fruitful results. Even, Lord Mountbatten was convinced that negotiated settlement of the Kashmir issue was practically impossible.

The main argument of Pakistan was that if self-determination was the governing principle for the partition of India, then the people of Kashmir should be allowed to exercise this right and refers to the Mountbattens note on reference to the people while, the accession of Kashmir. India contended that this assurance of reference to the people was a unilateral offer to the people of Kashmir and had nothing to do with Pakistan.

In the words of a Pakistan scholar, if Pakistan accepts the tribal areas as having confined their loyalty to Pakistan, why the elections in Kashmir cannot be taken as a confirmation? If the reason is that no party with a programme other than continued accession to India came up, similar objection can be made against the tribal confirmation of loyalty.

The issue became more complicated after the decision of the Nehru Government to refer the issue to the UN Security Council. Even before the formal accession of Kashmir to India, Nehru anticipated that Pakistan might attempt to seize Kashmir by force. He was convinced that Maharaja Forces would not be in a position to stop invaders unless a popular resistance was organized. In a letter to Patel, then Home Minister of India, on 27 September 1947 he gave the following perceptive assessment of the situation prevailing in the valley. It is obvious to me from the reports I have received that the situation there (Kashmir) is dangerous and deteriorating one. The Muslim League workers are preparing to enter Kashmir in considerable numbers. The approach of winter is going to cut off Kashmir from the rest of the world. The only normal route then is via Jhelum valley. The Jammu route can hardly be used during winter and air-traffic is also suspended.

I understand that the Pakistan strategy is to infiltrate into Kashmir now and to take some big action as soon as Kashmir is isolated because of the coming winter.

Whether this strategy succeeds or not, it depends upon the forces opposed to it I rather doubt if the Maharaja and the state forces can meet the situation by themselves without some popular help... obviously the only major group that can side with them is the National Conference under Sheikh Abdulahs leadership.

Indeed, it seems to me that there is no other course open to the Maharaja but thus: to release Sheikh Abdullah and the National Conference leaders, to make a friendly approach to them, seek their cooperation and make them feel that this is really meant and then to declare for accession to the Indian Union. Once the State accedes to India, it will become very difficult for Pakistan to invade it officially or unofficially without coming into conflict with Indian Union. If however there is delay to the accession, then Pakistan will go ahead without much fear of consequences, especially when the winter isolated Kashmir.

Pakistan in order to put pressure on Maharaja stepped up the level of infiltration, causing a material change in the ground situation, Punjabis and other Pakistani nationals were sent to carry out irregular warfare against the Maharajas forces. Though Pakistan Government always refuted the charges and disclaimed responsibility, the raiders received weapons transport and overall direction from Pakistani authorities. Because of the stepped-up invasion, the Maharajas forces suffered significant reverses and on 15 October 1947, the Dewan of Kashmir sent a telegram to Attlee, appealing to him to advise Pakistani Government to deal fairly with Kashmir. Pakistan was thus able to mount clandestine military pressure against the Maharaja along a strip of border territory in Jammu province. This was an area where pockets of pro-Pakistani sentiments existed because of cross border ethnic affinities. Pakistan was able to exploit the fact that large number of Poonch soldiers served in its army because of the decision to allot to her the Muslim units of the army of undivided India. The tactics followed in the border area of Jammu, were not replicated in other areas of the State where there was a little local support for Pakistan. The conquest of the valley of Kashmir would be affected through a massive tribal invasion along the main highway linking Rawalpindi to Srinagar via the towns of Dornel and Muzaffarabad. In the absence of any significant political support in the Kashmir valley, the raid could not take the form of an outright invasion by the tribal irregulars. On 22 October 1947, Pakistan launched the invasion of valley. The India Government anticipated that Pakistan would try to seize Kashmir by force of arms. It therefore took a prompt decision to assist the State with military supplies. On seven October, Patel wrote to the Defence Minister Baldev Singh: I hope arrangements are being made to send immediately supplies of arms and ammunition to Kashmir. If necessary, we must arrange to send them by air. I think the question of military assistance in time of emergency must claim the attention of our Defence Council as soon as possible. There is no time to lose.

The decision that arms supplied to Kashmir on top priority was simply derailed by the Commander-in-Chief, General Lockhart, acting in collusion with Field Marshall Auchinleck; Lockhart took the position that no arms were available in Delhi. Army Head Quarters asked about the availability of arms. The latter raised the question: could arms supplied to states, which had not yet acceded to either Dominion? In this connection, reference was a decision taken by the (JDC) that no arms should be available to Hyderabad without the Council approval. Though the decision was specific to Hyderabad, it furnished a pretext for stalling action on the Governments decision. Auchinleck and Lockhart knew that Pakistan would protest vigorously if military supplies sent to the Maharaja. They were reluctant to be into an inter-dominion controversy. Despite increasing urgent appeals from the Kashmir State authorities, no arms were made available by the Indian Army till 22 October when Pakistan launched the invasion in the Jhelum valley with the support of tribal lashkars.

However, tribal invasions precipitated matters, and it conveniently asserted that Abdullah and his National Conference represented the majority in Kashmir and their opinion for India was a sufficient declaration of the popular will. Meanwhile efforts by the leadership to settle the issue continued. On 2 November 1947, the day after the Mountbatten-Jinnah meeting, Nehru made a public offer to hold a referendum under UN auspices. He announced that: We on our part have no intention of using our troops in Kashmir. The danger of invasion

has passed. The people are to decide their future. We are prepared when peace, law, and order is restored, to have a referendum held under auspices like the UN. The British Government welcomed Nehru move. Prime Minister Attlee rushed to congratulate Nehru on his initiative. He called, I may say so it seems to me that you have made a notable step towards the restoration of mutual confidence (with Pakistan) by the announcement made in your broadcast yesterday. The Pakistan reaction took Attlee by surprise. Liaquat Ali Khan rejected the Indian offer in the most violent terms in a cable to Attlee: It is full of most dangerous potentialities. What the Indian Government calls restoration of law and order is no more than an attempt to oppress, kill, terrorize and drive out the Muslim population of Jammu and Kashmir. The composition of the population is entirely changed; Nehru has even avoided the use of the word plebiscite and has spoken of referendum, which might mean anything. After the Indian Government has established complete mastery over the territories of Jammu and Kashmir and the holding of a plebiscite or referendum will be purely a farce.

Liaquat spelled out the Pakistani proposals on the lines that Jinnah had indicated earlier to Mountbatten. These, he said, comprised the following: -

1. To put an immediate stop to fighting, the two Governments should be authorised to issue a proclamation forth with giving 48 hours notice to the two opposing forces to stop fighting. Governor General of Pakistan has no control over the forces of the provisional Government of Kashmir or engaged in fighting, but he will warn them in the clearest terms that if they do not obey (call) to ceasefire immediately, the forces of the two Dominions will declare war on them.
2. Both forces of the Indian Dominion and the tribesmen to withdraw simultaneously and with utmost expedition from Jammu and Kashmir state territory.
3. The two Governor Generals are to be given powers to restore peace, undertaking the administration of Jammu and Kashmir state and arrange for plebiscite without delay and under their joint control and supervision.

Attlee commended, these proposals, a promising starting point for discussion but rejected Liaquat's allegations against Nehru and sought to minimize the differences in the two approaches. I cannot believe that Nehru's pledges have the sinister implications which you suggest, he informed Liaquat Ali Khan it seems to me therefore that both you and the Prime Minister of India have put forward proposals, which also differ in form, are broadly based on the same principles".

In reality, the divergence between the two positions was formidable. Pakistan attempts to seize Kashmir by clandestine employment of irregulars had misfired, precipitating the state's accession to India. Pakistan tried to reverse the events by diplomatic means. Her proposals totally disregarded the fact of accession; they sought also to set aside the authority of both the Maharaja and the most popular political party by transferring control jointly to Jinnah and Mountbatten, India, stand was because the state had legally acceded to India, with the support of largest and most popular political organization. She was prepared to accept referendum under UN auspices. After the expulsion of the raiders and restoration of the order, Pakistan irregulars be replaced by regular Pakistani army troops was legally and politically unacceptable to her. Mountbatten sought to avail the chance, to bridge the gulf through negotiations on margins of the (JDC) session in November and December 1947.

Nehru was quite disturbed when he had learnt that his intentions were under scanner in Pakistan. He was sensitive to the need for allaying Pakistani misapprehension concerning India's intentions and preventing, the outbreak of a war between the two new states; he shared his thinking in one of the periodic circular letters he wrote to the Chief Ministers of the Indian states.

He wrote, Recent events in Kashmir and partly our action in Babriwad and Mangal has been a severe blow to the Pakistani Government. They have a terrible sense of frustration. Already, they were being overwhelmed by their problems. The vast numbers of Muslim refugees who have gone to Pakistan are a terrible burden on them and they cannot look after them. Because of all this, they are suffering from the delusion that the Government of India are conspiring to destroy Pakistan. That of course, is false. There is no conspiracy and there is no desire to destroy their state in anyway. Any such attempt would lead to grave injury to us. The war is a dangerous proposition and those who do not understand it or its consequence talk lightly of war. From the military point of view, there is little doubt that if there was war between India and Pakistan, Pakistan as a state would perish. However, undoubtedly, India would suffer very great injury and all our schemes of progress would have to be pushed aside for many years. Therefore, we must do our utmost to avoid war and that is our definite policy. Both diplomacy and expediency as well as humanity, requires this.

The atmosphere of goodwill created in the sub-continent came under stress on the eve of the (JDC) meeting when in telegrams to Nehru and Attlee, Liaquat Ali Khan dismissed Sheikh Abdullah as a quisling and once more accused the Indian Government of attempting to eliminate the entire Muslim population of Jammu and

Kashmir. Smarting from these vicious attacks, Nehru had virtually decided to call off the talks but was discarded from doing so by Mountbatten.

On 27 November 1947, the (JDC) meeting held in New Delhi in a frosty atmosphere. Nehru broached the question of Kashmir. It was left to Mountbatten to introduce the subject by recounting his efforts towards paving the way for a plebiscite following the states accession to India. Nehru and Liaquat followed by giving an account of developments from their respective viewpoints. Mountbatten then proceeded to place before the (JDC), the proposals based on the discussions. He made it clear that there was full agreement on the following points:

1. That a plebiscite should be held under an independent body like the UN
2. That as soon as the situation had cleaned up, Indian troops would be withdrawn, except from small garrisons at vital strategic points to prevent further raids,
3. The full freedom of speech would be permitted and
4. That the refugees would be allowed to return to the state before the plebiscite. In addition to these, the Pakistani Government had desired that
Sheikh Abdullah should form a coalition with the opposition parties,
5. UN representatives should be sent for as early as possible to speed up the plebiscite process and to act as preliminary observers,
6. Alternatively, an entirely new administration should be set up in Kashmir, which the people of Kashmir would accept as important.

There were certain difficulties, like mainly on the question of residual Indian military force in the state and could the Pakistan Government appeal to the raiders, local rebels and the people in Pakistan who were assisting them only after they were able to give them an assurance that the object had been achieved. Mountbatten was struggling very hard to bridge the gap between Nehru and Liaquat by offering various alternatives on the situation prevailing in the State of Jammu and Kashmir.

Mountbatten requested Lord Ismay to draft a paper for discussion by taking the help of Mohammad Ali and V.P. Menon. These proposals were placed before the Council for discussion. They were the following: -

1. Pakistan should use all the influence to persuade the so-called Azad Kashmir forces to cease fighting and the tribesmen and other invaders to withdraw from Kashmir territory as quickly as possible,
2. India should withdraw the bulk of the forces, leaving only small detachments of minimum strength to deal with disturbances,
3. The UN should be asked to send a Commission to hold a plebiscite and before, it was held to recommend to the Governments of India and Pakistan steps which should be taken to ensure a free and fair plebiscite and
4. Certain steps which were intended to take towards this objective such as release of political prisoners and return of refugees should be announced immediately.

In essence, Lord Ismay proposals sought to reconcile the legal implications of Kashmir's accession to India with the requirements of Pakistan has expressed concern for a fair and impartial plebiscite. It implicitly acknowledged India's sovereign rights by permitting her to maintain a military presence in Kashmir after the withdrawal of the invaders and by recognizing the authority of the Kashmir administration. At the same time, it offered an assurance that the plebiscite would be free and fair by restricting the Indian army presence to a minimal level and by expanding the role of the UN by giving it an advisory role in the run up to plebiscite. It thus conceded Liaquat's demand for the induction of UN presence before the plebiscite but not his demand for reconstituting the state government.

Mountbatten was very happy to note that by the course of discussion both Nehru and Liaquat had reserved their respective positions, neither having rejected the Ismay formula outrightly. Mountbatten formed the impression that Liaquat Ali Khan was willing to compromise on total withdrawal of Indian troops and on a change, of administration in Jammu and Kashmir. Nehru on his part had not rejected this implied linkage between the raiders withdrawal and an accord on conditions for a fair plebiscite. Nor had he dismissed the idea of a substantially expanded UN role. Mountbatten was hopeful that Ismay's Proposals would bring peace in the Kashmir valley. In fact, Nehru was encouraged by the sincerity of Mountbatten and showed his desire to accept the Ismay proposals in a spirit of accommodation.

Mountbatten took Liaquat Ali Khan into confidence and asked whether he could count on his support for the proposals. Liaquat's reply was in affirmative, and he readily agreed to cooperate. Having Liaquat's approval in his kitty, Mountbatten sprung the proposal on Nehru when the meeting resumed, and he requested both the parties to accept the Ismay proposals immediately so that peace could be restored in the State of Jammu and Kashmir. It was the only way to stop fighting, he argued, emphasizing that this must be the main objective. Liaquat gave Mountbatten his full support, stating that he would not mind in what manner the UN was

approached, even if it should take the form of an accusation by India that Pakistan was assisting the raiders. Nehru remained adamantly opposed to the proposal, insisting that the first step was to drive out raiders. At one point he declared in an outburst that, in view of the Pakistan's position, the only solution was to clear Kashmir with a sword and that he would throw up his Prime Minister-ship and lead the men of India against the invaders.

The meeting did not bear any fruit and Mountbatten was quite perturbed. It marked the end of Mountbatten's efforts of mediation between the two warring nations. Nehru in fact was more generous and offered significant concessions, which were not reciprocated. The Indian Prime Minister had finally reached the end of his patience. Probably, Nehru was convinced that military solution was the only way out left. However, Mountbatten had a different thinking. He was of the considered opinion that the only escape from war lay in an early reference to the UN. In the initial stages Mountbatten was in favour of only the limited role i.e. supremacy in nature of the UN. But when Pakistan did not agree on this, Mountbatten concluded that the UN should be called to find a way out of the impasse which he himself had failed to break.

When the hostilities in the Kashmir valley further flared up, Mountbatten wrote a lengthy letter to Nehru after the worsening of the whole situation. He expressed his concern over the proposal to send the army into Pakistani territory in order to strike the bases or nerve centres from which the raiders were operating. He hinted at the international pressures, warning the Indian Prime Minister that the idea that a war between India and Pakistan could be confined to the sub-continent or finished off quickly in favour of India without further complication, is to my mind a fatal illusion. He urged the Prime Minister to broaden the terms of the reference to the UN. Surely the main object should rather be to bring UN here at the earliest possible moment to get a team nominated to come out and deal with the business and help to stop the fighting, within a matter of days, he suggested. Nehru sent a vigorous reply on the next day, The invasion of Kashmir is not an accidental affair resulting from the fanaticism or exuberance of the tribesmen, he wrote, but a well-organized business with the backing of the state. We have in effect deal with a state carrying on an informal war but nevertheless a war, India had thus far followed a cautious defence policy which had presented Pakistan with an advantage. By carrying on operation in a weak defence way India could not produce an effective impression on the adversary. From a strictly legal and constitutional point of view, it is our right and duty to resist this invasion with all our forces.

From the point of view of international law, take any military measures to resist it including the sending of our armies across Pakistan territory to attack their bases near the Kashmir border...Peace will come if we have the strength to resist invasion and make it clear that it will not pay. Nehru went on to say that, the Government of India had accepted Mountbatten's suggestions too and would refer to the UN but it cannot ask the UN to arbitrate between raiders and the Dominion of India or to make a joint reference with Pakistan on mutually agreed lines. India as the aggrieved party would draw the attention of the UN to the invasion and to the fact that Pakistan was aiding and abetting, it and she would ask the UN to call upon Pakistan to refrain from doing so. Meanwhile India must prepare for every eventuality we have taken enough risks already we do not care any more. We cannot even permit much longer the continuation of the use of bases in Pakistan to attack our troops and our territory in Kashmir. There is no question of small operations going on the Kashmir through the winter months, but of quick developments. The Prime Minister concluded that the government should immediately proceed on the parallel lines of action.

1. Reference to the UN
2. Complete military preparations to meet any contingency that may arise. If grave dangers threaten Kashmir or elsewhere on the West Punjab frontier, then we must not hesitate to march through the Pakistan territory towards the bases.

On 22 December, Nehru in a letter to the Prime Minister of Pakistan had drawn his attention towards the aid which the raiders into Kashmir State were deriving from Pakistan. They had free transit through Pakistan territory and using it as a base for operating against Kashmir State. Their modern military equipment could only have been obtained from Pakistan sources, mortars artillery and Marh V mines were not normally the kind of armaments to which tribesmen possessed. Motor transport, which the raiders had used and the petrol required for it, could only be obtained from Pakistan Food and other supplies are also secured from Pakistan; indeed we have reliable information that the raiders get their rations from military messes in Pakistan. According to our information, large numbers of these raiders are receiving military training in Pakistan, which could only be under officers of the Pakistani Army. The forms of aid which the raiders were receiving constitute an act of aggression against India because they are being used against a state which has acceded to the Indian Dominion... since protests have failed to bear fruit, the Government of India now formally ask the Government of Pakistan to deny to the raiders.

1. All access to and use of Pakistani territory for operations against Kashmir,
2. All military and other supplies,
3. All other kinds of aid that might tend to prolong struggle.

Nehru in clear terms warned the Pakistan Government that failing such response, they would be compelled to take such action, consistently with the provisions of the UN Charter, as they may consider necessary to protect their interests and to discharge their obligations to the Government and people of Kashmir.

Liaquat Ali Khan replied to back Nehrus letter on 30 December 1947 in which he had shown his disappointment regarding the referring of Kashmir issue to the UN. He strongly said that a reference of the UN therefore in my opinion must cover much larger ground and embrace all the fundamental differences between the two Dominions. They should see, it is neither Kashmir alone nor Junagadh and Manavendra, nor even the tragedy of massacres of Muslim men, women and children in extensive area of the Indian Dominion, but a totality of these horrors and iniquities, indicating but one consistent, sinister pattern which should rightly form subject- matter of international investigations. There was a need to determine the root- cause which was vitiating the Indo-Pak relations and reinvented it, was much to be feared that fresh incidents will continue to threaten the peace not only between the two Dominions, but in a much wider field.

He also made it clear that Pakistan Government had not accepted and could not accept the so- called accession of the Jammu and Kashmir State to India. As it was fraudulent and achieved by deliberately creating certain conditions, to finding an excuse to stage the accession. It was based on violence because it furthered the plan of Kashmir Government to liquidate the Muslim population and could not be justified on any grounds whether moral or constitutional, geographical or economic, cultural or religious. He refuted Nehrus charge of aid and assistance to the invaders.

On the contrary, the Government of India must answer the charge of conspiracy with the Maharaja of Kashmir repudiation of the very principles on which it had only one month before opposed Junagadhs accession to Pakistan. The plea that the accession was only temporary pending restoration of peaceful conditions is too flimsy to stand examination particularly in the light of recent negotiations in the course of which a perfectly fair and workable plan of withdrawal of opposing forces followed by a referendum under Government. He criticized the Indian Governments general attitude towards Pakistan ever since it becomes evident that partition was the only possible solution of the constitutional problems.

Liaquat, in the same tone, was critical of the Indian Government handling of the situation that formation after the emergence of the Dominions of India and Pakistan regarding the fate of the princely states. According to the Indian Independence Act, 1947, Indian states were further under no compulsion to join either of the two Dominions. Notwithstanding with this clear provision, the Government of India; by a combination of threats and cajolers, forced a number of states into acceding to the Indian Union.

The rulers of Junagadh and Manavendra, threatened with dire consequences but they stood firm and exercised their right of joining Pakistan in preference to India. This was the signal for India to launch with full force her attack, using every, possible weapon to force the states against their will, to change their affiliations. India protested with the Pakistan Government, pointing out that a state, which had a Hindu-majority population, could not accede to Pakistan and its accession to Pakistan was to cause disruption in the integrity of India. Simultaneously with these protests, the Government of India had stationed Indian troops on the borders of Junagadh and encouraged the neighbouring Hindu states that had acceded to India, to do likewise. In clear violation of the Stand Still Agreement, the Junagadh state was subjected to an economic blockage involving stoppage of all vital supplies, communications, including railways and telegraph services, were operated in such a manner that it became impossible for the State or the Muslim population of Junagadh to communicate with the outside world. A strong press campaign, calculated to destroy the morale of the State administration and to create panic among the population. In the interests of peace between the two Dominions, Pakistan refrained from sending a single soldier to Junagadh. The occupation by force of Junagadh, which was a Pakistan territory, was a clear act of aggression against Pakistan. The military action against Junagadh and Manavendra and other state, was an attempt of destroying the integrity and the very existence of Pakistan.

Liaquat wanted to know from Nehru, Now that you propose to take the case of Kashmir to the UN, you would be good enough to let us know why in spite of our clear request you have not withdrawn from the territories of Junagadh, Manavendra and Hyderabad

Liaquat Ali in his communication to Nehru also raised the other issues, which were awaiting solution. The Indian Government refusal to implement the financial agreement , deliberately with-holding the payment of rupees fifty Crores of cash balance which was the legal due of the Pakistan Government according to that agreement, in his opinion, that was the deliberate move of the Government of India to strangle Pakistan financially and economically which characterized the partition proceedings. In the case of the military stores, there was a similar refusal to implement the agreement. The Supreme Commander, who was appointed as a

neutral authority under the (JDC) to carry into effect the partition of the armed forces and military stores was forced, despite the protestations of the Pakistan Government, to leave, by the Indian government long before he could complete his task. The (JDC) pledged the word of the India cabinet that Pakistan would receive her due share of military stores. This pledge like other similar pledges had not been honoured.

To sum up, Pakistan had levelled the following counter charges against India. 1. That India at the time of partition had never whole-heartedly accepted the partition scheme but her leaders paid lip services to it merely to get the British troops out of the country,

2. That India was out to destroy the State of Pakistan, which her leaders persistently continue to regard as part of India itself.

3. That there had been systematic sabotage against the implementation of partition plan, the stoppage of such essential requirements as coal and rail transport, the deliberate with-holding of Pakistans share of funds and arms and equipments. The massacre of Muslim population are all designed towards one aim namely the destruction of Pakistan, and

4. India forcibly occupied Junagadh, Manavendra and other states in Kathiawar that had acceded to Pakistan.

In all the inundation of contradictory reports, mutual accusations and denials, it was not possible to ascertain true situation. The Pakistani central authorities did not initiate the tribal invasions. On the other hand, it also appeared that the Prime Minister of NWFP himself a Kashmiri and his officers were at the back of the tribesmen and providing them overall support. Certainly, all Pakistanis viewed with open sympathies the struggle of the Kashmiri Muslims against the Maharaja and were ready to give them all political and moral support. When, however the Indian Army was to intervene and stop the tribesmen, an unknown number of Pakistani nationals joined the Azad forces for which the Pakistani Government was responsible. All the same when the Indian forces succeeded not only in stopping the tribesmen at the gates of Srinagar but began to push them back towards borders of Pakistan, the Pakistani Government became thoroughly concerned about the outcome of the struggle and helped them with military equipments, arms and ammunitions. Pakistan became alarmed that the intervention of the Indian army was not to be limited to Kashmir. She suspected that this was the beginning of an Indian onslaught against Pakistan herself. And it was this fear, perhaps was largely responsible for the extent of Pakistans participation in the struggle. A fear which Liaquat Ali Khan expressed in a telegram, addressed to Nehru: It is a matter for deep regret that even today, responsible members of the Government of India, including yourself, openly declare the intention or hope of bringing Pakistan back into Indian Union, well knowing that this could be done only through conquest of arms... In other words, Pakistans existence was not accepted by India. Jawaharlal Nehru not only emphatically rejected Liaquat accusations but also hurled the counter accusations that Pakistans complicity in the Kashmir fighting was an act of aggression. Once again the real issue had broken through; it was once again the old issue of partition.

In any case, as Jagmohan, a former Governor of Kashmir wrote, If opinion of Kashmirs accession to India was being kept open, there was nothing wrong in it. India has never accepted the Two Nations Theory. It was justified in believing that if both the Maharaja and Sheikh Abdullah, who at that time had the support of the valley people, had expressed desire to join the union; it would have demonstrated the hollowness of the Two Nations Theory. The issue was largely one of ideology and the Indian perspective and not in territorial extension. The tragedy of India lay not in the conceptual frame- work, but in being wayward and impractical in executing.

The Indian Government lodged a formal complaint with the UN Security Council on 1 January 1948. Taking the case to the UN, Jagmohan, felt that was yet another mistake. The case got enmeshed in the international power- politics. At every stage, India faced a rough weather and Kashmir became almost a permanent item on the agenda of the UN.

Under Article 35 of the UN Charter, any member may bring any situation whose continuance is likely to endanger the maintenance of international peace and security to the attention of the Security Council. Such a situation existed between India and Pakistan owing to the aid which invaders, consisting of nationals of Pakistan and tribesmen, from the territory immediately adjoining Pakistan on the northwest, are drawing from Pakistan for operations against Jammu and Kashmir State which has acceded the Dominion of India and is a part of India. The Government of India requested the Security Council to call upon Pakistan to put an end to the act of aggression against India. If Pakistan did not do so, the Government of India could be compelled, in self defence, to enter in Pakistan territory, in extreme urgency and calls for immediate action by the Security Council for avoiding a breach of international peace.

A grave threat to the life and property of innocent people in the Kashmir valley and to the security of the State had developed. It was imperative on account of the emergency that the responsibility for the defence of the

Jammu and Kashmir State should be taken over by a Government capable of discharging it. In order to avoid any possible suggestion that India had utilized the states immediate peril for her own political advantage, the Government of India made it clear that once the soil of the state had been cleared of the invaders and normal conditions restored, its people would be free to decide their future by the recognized democratic method of a plebiscite or referendum, which in order to ensure complete impartiality might be held under international auspices. The Government of India filled their duty to respond to the appeal for armed assistance because:

1. They could not allow a neighbouring and friendly state to be compelled by force by others to determine its internal affairs or its external relations.

2. The accession of the Jammu and Kashmir State to the Dominion of India made India responsible for the defence of the State.

India also raised several points before the world body, the facts of Pakistans active involvement in the tribal invasion. The facts mentioned below point indisputability to the solid conclusion:

- a. The invaders were allowed to transit across Pakistani territory.

- b. They used Pakistan territory as a basis of operations and mostly belonged to Pakistan

- c. They draw much of their military equipments, transportation (including petrol) from Pakistan. They got training, guidance and ot actively got all types of help too. ,

It should be clear from the foregoing recital that Government of Pakistan was unwilling to stop the assistance in material and men that the invaders were getting from Pakistans territory and from Pakistanis, including Pakistan Government personnel both military and civil. This attitude is not only un-neutral but continues active aggression against India of which the State of Jammu and Kashmir is a part.

The complaint in clear words stated that the Indian Government have exerted persuasion and exercised patience to bring about a change in the attitude of Pakistan The invaders are still on the soil of Jammu and Kashmir and the inhabitants of the state are exposed to all atrocities of which a barbarous foe is capable... The Government of India has no option, therefore, but to take more effective military action in order to rid the Jammu and Kashmir State of the invaders.

It was strongly felt that In order that the objective of expelling the invader from Indian Territory and preventing him from launching fresh attacks should be quickly achieved, Indian troops would have to enter Pakistan territory and the invaders be denied the use of bases and cut off from his sources of supplies and reinforcements in Pakistan. Since the aid that the invaders are getting from Pakistan is an act of aggression against India, the Government of India is entitled under international law to send its armed forces across Pakistani territory for dealing effectively with the invaders. However, as such action might involve armed conflict with Pakistan, the Government of India ever anxious to proceed according to the principles and aims of the Charter of the UN, desire to report the situation to the Security Council under Article 35 of the Charter. They feel justified in requesting the Security Council to ask the Government of Pakistan:

1. To prevent, Pakistan Government personnel, military and civil ,from participating or assisting in the invasion of the State of Jammu and Kashmir.

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 to the invaders

- A. access to the use of its territory for operations against Kashmir;

- B. military and other supplies.

- C. all kinds of aid that might tend to prolong the present struggle.

The Government of India approached the Security Council inspired by the sincere hope that, through the prompt action of the Council, peace may be preserved.

Jawaharlal Nehru on 2 January 1948 in a broadcast over All India Radio to the people of India stated at length the complaint made by India to the UN Security Council. He also informed that the reference to the Security Council was thus limited to the issues related with the Jammu and Kashmir State. He also made it clear that the accusations and allegations levelled against the Government of Pakistan 'has been brought to cover up the Kashmir issue in a forest of other matters which have nothing to do with it.

The Government of Pakistan gave a detailed reply to the Indian Complaint and presented its own complaint to the Security Council. It was a lengthy paper consisting of three documents. In document one, replying to Indias complaint, Pakistan denied giving aid to tribesmen and thereby committing an act of aggression. On the contrary, the Pakistan government continued to do all in their power to discourage the tribal movement by means short of war. It admitted that a certain number of independent tribesmen and persons from Pakistan are helping the Azad Kashmir Government in their struggle for liberty, as volunteers. In the document II, the

Government of Pakistan raised numerous counter- complaints of its own. 1. It charged India with widespread genocides and the Union of India in the period proceeding and following the partition.

2. It accused India of having forced by way of arms and occupation of Junagadh, a predominately Hindu state with a Muslim ruler, into accession to India, though the ruler had acceded to Pakistan. This action on the part of the Government of India amounted to a direct attack upon and aggression against Pakistan. Thus, Pakistan was entitled to repel by force. It maintained the Pakistan document is an obvious attempt to make the Indian accusations boomerang.

3. It gave the genesis of the Kashmir case and denied the validity of Kashmir accession to India. It protested Indian forces sent to Kashmir, without consultation with or even by notice to the Government of Pakistan with which the state had concluded Stand Still Agreement. As to the Indian promise about a plebiscite in Kashmir, Pakistan expressed through this document the strong conviction that a plebiscite would be a farce if it was to be conducted in the presence of the Indian armed forces and proper conditions were not established to guarantee to the people of Kashmir complete freedom to express their will.

4. It protested that India had failed to fulfil various agreements reached in connection with the partition, such as division of military stores, cash balances and other matters.

After summing up its complaints, the Government of Pakistan in this section of its replies requested the Security Council: -

1. To call upon the Government of India to desist from acts of aggression against Pakistan and implement all agreements she had signed with Pakistan.

2. To appoint a Commission charged with the task of investigating all the accusations against India, arranging, cessation of hostilities in Kashmir, enforcing the withdrawal of all outsiders whether they came from India and Pakistan, facilitating the return and rehabilitation of Kashmiri refugees, establishing an impartial administration in Kashmir and finally conducting an impartial plebiscite.

In document III, Pakistan presented before the Security Council, the detailed information on the preceding matters. Stressing that even the Kashmir episode in all aspects is but one link in the chain of events which has been unfolding itself ever since it became obvious that there was no solution of Hindu - Muslim problem except the partition of India, with which the Pakistan suspected, India had never recognised and consequently, harboured hostile intentions towards Pakistan. As to Kashmir, the document concluded the Pakistan Government has not accepted the accession of de against the Muslim population, pursued by responsible officials of the princely and the Union of India in the period proceeding and following the partition.

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Government has not accepted the accession of Jammu and Kashmir State with India. In their view, the accession is based on violence and fraud.

As both parties had presented their case to the Security Council, the differences were sharp between the two on the nature of the conflict but also on the way of solving it. The Indian Government strongly emphasized that the tribal invasion and Pakistans participation in it, was the real cause. India therefore limited her presentation and defence of the case before the Security Council in these two acts. To Pakistan, however, the hostilities in Kashmir were only the part of the whole picture of unhappy Indo- Pakistani relations and her presentations were therefore an exhaustive account of all problems dividing the two countries.

After the presentation of the complaint by the Indian delegate before the Security Council, the then Minister for External Affairs Sir Zafarullah Khan, the Pakistani delegate presented his countrys viewpoint. In his lengthy speech that lasted for more than five hours, he went into the details of the story of Kashmir. He linked it with the generally unsettled situation of the sub-continent, with the communal strife, the political struggle of Kashmiris for freedom. He agreed with the India delegate with one aspect of the issue: That the situation is grave and urgently needed to be dealt.

Sir Zafarullah Khan summed up the Pakistan case when he concluded that. All that we want to ensure is this everyone who has gone into Kashmir, should go out. Such bands, the (RSSS) volunteers, people who had gone from the Muslim side and men from Pakistan Indian Muslims and who were refugees in Pakistan, everybody. They must get out including Indian troops.

Therefore by whatever means may be necessary, the condition to be brought about is this whether by joint administration under the two Governor Generals, by joint occupation of predominately non-Muslim areas in, Kashmir by Indian troops, by joint occupation in each place, by inviting the Commonwealth forces, non-Indian forces altogether, or whether through the UN, Kashmir must be cleared. Fighting must stop in Kashmir and vacated of everybody, and normal administration be restored. There should be no kind of pressure either from the Muslim Conference being in power and holding the reins of the administration. There should not be any pressure upon the people. The people afterwards were to express the way in which they want to go and whatever they decide, they should be welcome to do it.

In its 29th meeting, the Security Council on 17 January 1948 adopted a Resolution. Realizing the urgency of the situation, taking note of the telegram addressed on 6 January 1948 by its President to each of the parties concerned Called upon both the Governments to take immediately all measures within their power (including public appeals to their people) to improve the situation. To refrain from making any statements and from doing or permitted any acts which might aggravate the situation. Further requests that each of those Governments to inform the Council immediately of any material change in the situation that occurs to appear to either of them, to be about to occur while the matter is under consideration, by the Council and consult with the Council there on.

India failed to present her case by not declaring that Pakistan had committed an act of aggression on India, allowing and helping the raiders to invade Kashmir. Pakistan was irrevocably hostile towards India; the diplomats of Pakistan were successful in convincing members of the Security Council that the Kashmir dispute was the direct outcome of and related to the partition of the Indian sub-continent on the basis of the Two Nations Theory.⁷³ Zafarullah Khans handling of the case was clever and skilful. Though his attacks were too dignified, they put the Indian delegation on defensive. He was successful in winning over the members of the Security Council by presenting a gloomy picture of the mass killings in and around Delhi and in the Punjab Alwar, Bharatpur, Patiala, Nabha, Jind and Kapurthala. In contradiction to Indias legalistic approach, Khan brought in a human approach. He said, the issues involved are not merely legal and constitutional or even political. There is a very large human background which it will be very necessary for the Security Council to appreciate before the members bring their minds to bear upon the concrete questions that need to be resolved and decided.

The Security Council on 20 January 1946 adopted a resolution keeping in mind the urgency of the situation. The Security Council, considering that it may investigate any dispute or any situation, which might by its continuance, endanger the maintenance of international peace and security that, in the existing state of affairs between India and Pakistan, such as investigation is matter for urgency.

UN Commission for India and Pakistan

It decided to constitute a three-member Commission composed of the UN members, one selected by India and Pakistan each, and the third jointly by the two. The Commission was to proceed on the spot as quickly as possible and was to act under the direct authority of the Security Council in accordance with the directions it might receive from it. The Commission was to suggest on the issues as mentioned below:

1. To investigate the facts pursuant to Article 34 of the Charter.

2. To exercise without interpreting the work of the Security Council and the mediatory influence likely to smooth away difficulties to carry out the directions given to it by the Security Council and report how far it considered the advice and directions. Speaking on the Resolution Noel Baker elaborated: It is a first step of great value. I feel sure that both sides had to make concessions on some points to each other. That is right practice in an international authority. It is the way in which the litigants in a dispute uphold their points of view to arrive at an honourable result.

3. India wanted that the Commission must restrict its activities to the cessation of hostilities and should work for the holding of plebiscite by the Sheikh Abdullah Government. It was critical of inclusion of other issues in the purview of the Commission because Pakistan wanted to delay the consideration of one problem which might intensify and prolong Indo-Pakistan conflict by raising issues which were either already settled or about to be settled or which did not pose any threat to peace and security. Secondly widening the scope of UN investigation might mean expanding the possibilities of international interference.

Thirdly, it was an admission of defeat by both India and Pakistan.

The Resolution, the Security Council adopted on 21 April 1948 was very meaningful. Almost for four months, the Security Council heard the representatives of India in support of the complaint and the reply and counter complaints of the representative of Pakistan.

The Resolution clearly said that the Security Council was interested in the early restoration of peace and order in Jammu and Kashmir. It was required that India and Pakistan should do their utmost to bring about the cessation of all types of hostilities. It noted with satisfaction that both India and Pakistan had agreed to hold plebiscite in free and impartial manner. The membership of the Commission should be increased to five it was to proceed to the Indian sub-continent and there place its good offices and mediation at disposals of both the Governments. With a view to facilitating the taking of the necessary measures, both with respect to the resolution of peace and order and to the holding of a plebiscite by the two Governments, working in cooperation with one another and with the Commission and further instructed the Commission to keep the Council informed of the action taken under the Resolution.

It recommended to the two Governments several measures, which the Council felt, were appropriate to bring about the cessation of hostilities and to create proper conditions for a free and fair plebiscite.

1. Restoration of peace and order: The Government of Pakistan should undertake to use its best endeavours. a. To secure the withdrawal from the State of Jammu and Kashmir of tribesmen, Pakistan nationals not normally resident there and who have entered the State for the purpose of fighting and to prevent any intrusion into the State of such elements and any furnishing of material aid to those fighting in the State.

b. To make known to all concerned that the measures indicated to this, and the following paragraph provide full freedom to all subjects of the State regardless of creed, caste or party to express their views and to vote on the question of accession of the State and that therefore they should cooperate in the maintenance of peace and order.

2. The Government of India should: -

a. When it is established to the satisfaction (j) of the Commission setup in accordance with the Councils Resolution on 20 January that the tribesmen are withdrawing and that the arrangements for the cessation of the fighting have become effective and put into operation in consultation with the Commission a plan for withdrawing them progressively to the minimum strength required for the support or the civil power in the maintenance of law and order.

b. Make known that the withdrawal is taking place in stages and announces the completion of each stage.

c. When the Indian forces shall have been reduced to the minimum strength mentioned in (a) above, arrange in consultation with the Commission a plan for the stationing of the remaining forces to be carried out in accordance with the following principles.

i. That the presence of troops should not afford any intimidation or appearance or intimidation to the inhabitants of the State.

ii. That as small a number as possible should be retained in forward areas.

iii. That any reserve of troops which may be included in the total strength should be located within their present base area

3. The Government of India should agree that until such time as the Plebiscite Administrator (PA) finds it necessary to exercise the power of direction and supervision over the State forces and police

4. After the plan referred to in paragraph 2(a) has been put into operation, personnel recruited locally in each district should so far as possible be utilized for the reestablishment and maintenance of law and order with due regard to protection of minorities.

The Resolution also gave a comprehensive plan for the holding of plebiscite in the valley and gave detailed instructions to the Government of India. It suggested that Indian Government with the cooperation

of the State Government should seek the help of the major political groups for the holding of plebiscite. It asked the Indian Government to establish a (PA) to hold the plebiscite as soon as possible on the question of the accession of the State to India or Pakistan. It also desired that the Indian Government should agree that nominee of the Secretary General of the UN would be appointed to be the (PA). The (PA) should be allowed to work independently and according to his wishes in order to establish a plebiscite administration. The Indian and the state governments should... declare and make known that all subjects of the State of Jammu and Kashmir, regardless of creed, caste or party, will be safe and free in expressing their views and in voting on the question of the accession of the State and there will be freedom of press, speech and assembly and freedom of travel in the State, including freedom of lawful entry and exit.

Prior to the passing of this important Resolution, a debate was going on in the political as well as in the diplomatic circles in and outside the UN, whether the accession of the State of Jammu and Kashmir was provisional or final. Earlier, the President of the Security Council unilaterally changed the title of the issue from Jammu and Kashmir question to India-Pakistan question. The Indian representative lodged his protest with the Security Council but ultimately accepted the change. Interestingly, the Soviet and British representatives supported the Indian delegation plea but the US attitude was different. Its representative did not see any difference whether the title India-Pakistan question was used or whether the title Jammu and Kashmir question be referred.

It seemed clearly that the UN Security Council was not much impressed with the Indian delegation presentation of their case. The change of the title resulted in the enlargement of the scope of the Kashmir issue. A renowned scholar Michael Breacher believed, India conceded not only one of the cardinal theses of Pakistans case but also provided the Pakistans Foreign Minister with an opening wedge for the exploitation of his approach to the dispute. It was a victory for Pakistan as Zafarullah Khan was successful not only in enlarging the scope of the Kashmir issue but also in diverting the attention of the Security Council from the Pakistani backed tribal invasion. Furthermore, Pakistan achieved what it cherished, the status of equality. The discussions at the Security Council in the initial stages were clearly going in favour of Pakistan. No doubt, the areas of disagreement were wide and since the reference of the Kashmir dispute to the UN, the gap between India and Pakistan on the Kashmir issue had widened considerably and it seemed, there was no change visible. The Security Council President on 28 January 1948 after lengthy discussion with the Indian and Pakistani representatives held that it was desirable at that moment to concentrate on the idea of plebiscite. He categorically stated that as the holding of plebiscite was agreed upon by both India and Pakistan and it was no longer matter of dispute. But Indian representative Gopala swami Aiyengar vigorously opposed the holding of plebiscite first as it meant sidetracking the issue of the hostilities in the valley and restoration of law and order. He said, It would be putting the cart before the horse if the Security Council omitted that point at the very beginning but proceeded instead to deal with the question of a plebiscite, which if it is in fact a matter for discussion and decision by this body, should have come at the very end.

Pakistan immediately reacted positively and accepted the proposal of holding plebiscite immediately and Zafarullah Khan stated that Pakistan was really not to poke its nose into the matter concerning the legality of the Kashmir accession to India and various other issues. Plebiscite was to be held under the supervision of the Security Council. On the other hand, Indian representative while rejecting Zafarullah contention emphasized that the cessation of hostilities was the first requirement. He maintained that even if the accession was illegal, a demand and assumption of Pakistan which was not going to be conceded. Noel Bakars sympathies were with the Pakistan when he not only supported Pakistan viewpoint and said that: Of course, this would not exclude anything else which the representative of India may think relevant to the points which came up. We should not thereby put off the question of stopping the fighting. Perhaps we might be accelerating it because the plebiscite is part of that process. If we can create confidence in the plebiscite, then perhaps all that the Indian representative desires may quietly follow.

The Indian Government was perturbed about the developments in the Security Council. India felt that Pakistan was not sincere and was adopting the delaying tactics.

The Hindu pointed out that, the Pakistan Government apparently thinks it necessary that the Commission should not arrive at these conclusions too easily or quickly as that might lead to a directive from the Security Council to the effect that Pakistan should immediately fortify through its territory to the Frontier raiders, stop giving supplies and other help to the invaders already on the soil of Kashmir and further, actively aid to ejecting those.

End of the hostilities was a genuine demand of the Indian Government but no one in the Security Council was paying any attention to it. Indian delegate felt that the Security Council resolutions did not raise the real problem; rather there was a vague reference to the core issue i.e. the cessation of hostilities. He said:

We put the issue (cessation of hostilities) in the fore-front of our proposal for a settlement. What we tried to do has apparently been brushed aside? We attempted to propose something concrete, something that a Council of this composition and influence could issue as a directive to the parties concerned to bring about the stoppage of the fighting. That has been passed over.

Aiyengar felt somewhat different with the various interpretations of the Kashmir issue. To correct the various versions, he said that the Instrument of Accession is a document complete in itself. It does not contain any conditions. It does not state that the accession is provisional. The commitment that the Government of India made for themselves on the question of ascertaining the wishes of the people was contained in a letter accompanying the accepted Instrument of Accession. The Government of India is certainly bound by its commitment, but it would be wrong to call the accession itself provisional.”

India rejected the 20 April Resolution because nothing had been in the Resolution regarding the territory to be evacuated by the tribesmen. A coalition Government was not possible, that it was essential for India to keep troops sufficient to not only maintain law and order but also for defence against external aggression but that it was highly undesirable that the (PA) should receive advice from Pakistan in matters pertaining to plebiscite. It also opposed the provision regarding the appointment of special magistrates.

Pakistan reaction was equally sharp and very critical. Zafarullah Khan opined that the arguments and suggestions given by the members of the Security Council in the past were nowhere in the Resolution. He said that there was no logic in the retaining of the Indian forces for the maintenance of the law and order. He said that the Security Council had for once let itself slip into a position of fairness and impartiality between the two contending parties which might help to restore to the UN, a fraction of the prestige that it was so rapidly losing in the eyes of the world. They therefore beat a hasty retreat from a position so unfamiliar, embarrassing, and fraught with the possibility of such undesired consequences. The Economist of London, however, regarded the Resolution as a sound proposal in the direction of restoring peace in the State of Jammu and Kashmir. It considered it as a serious and sincere attempt to provide for a free democratic decision in Kashmir. However, it had its own reservations concerning the holding of plebiscite in the valley. It said, a partition with pre-arranged and orderly transfers of population based on the lessons of the Punjab may still be the better way of cleaning up the Kashmir tangle and it is yet possible India and Pakistan will be able to agree on a boundary before the heat of plebiscite campaigning is turned on curiously enough, the political struggle would be likely to cause greater tension than the present military operations which have dwindled away into desultory skirmishing.

The Resolution was considered one sided, as it contained elaborate provisions to safeguard the interests of Pakistan and Pakistan has backed raiders. India could not agree to the proposal to withdraw its army. There would have been serious repercussions for India. There was no guarantee or assurance in the resolution that the tribesmen would not return or re-enter Kashmir. It was naive on the part of the Western powers to expect India to let her be in the situation which existed in October 1947 and which forced her to airlift her troops to defend the State of Jammu and Kashmir. The provisions regarding the composition of the Government of Kashmir i.e. huddling of two warring elements in one Government was tantamount to giving a place of responsibility to unlawful intruders.

The UN Commission, constituted under Security Council Resolution of 21 April 1948, arrived in Karachi on 7 July 1948. Soon after Pakistan Foreign Minister informed the Commission, that the Pakistan army at the time had three brigades of regular troops in Kashmir and that troops had been sent into the state during the first half of May 1948. Joseph Korbel had analyzed the impact of this disclosure on the Commission. The Commission preferred not to express its opinion openly about the most important element in the picture but to one another the members admitted that the presence of the Pakistani troops in Kashmir made of the situation something far graver and far more disturbing than what it had appeared to be to the members of the Security Council. India could derive no satisfaction from the fact that the UN Commission had after eight months discovered the truth of India's allegations, for by now Pakistan had entrenched itself in Kashmir in flagrant violation of international law and morality. The predicament the Commission found itself was described by Korbel, it explained to the Pakistanis, the movement of these troops into foreign territory without the invasion of that territory Government was in violation of international law, it had seriously aggravated the problem and had given India certain rights to explain. These complaints, it then further explained, must be reflected in any Commission's findings and moreover, the Commission would necessarily, on the same ground, have to give some expressions to the complaint. The Commission prepared a Resolution and adopted it on 13 August 1948, and it was carried unanimously.

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