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## KASHMIR AND THE UNITED NATIONS

Before the withdrawal of British Power from India, Great Britain exercised sovereignty over the territories then known as British India. The British Crown also exercised suzerainty over the Indian States—about 565 in number—which were otherwise under the direct rule of Indian princes and chiefs.

The Indian Independence Act passed by the British Parliament on 18th July, 1947, terminated British power in India as from the 15th of August, 1947. The same Act provided for the creation from the said date of the new State of Pakistan by separation from British India of certain areas in the North-West and in the East.

These decisions were announced by the British Prime Minister on the 3rd of June, 1947, and he said that "His Majesty's Government wish to make it clear that the decisions announced above relate only to British India and that their policy towards Indian States contained in the Cabinet Mission Memorandum of the 20th May, 1946 remains unchanged."

Indian States were to 'accede' either to India or to Pakistan. Lord Mountbatten, the Viceroy of India and the Representative of the British Crown, in his statement to the Chamber of Princes on the 25th of July, 1947, on which date the suzerainty of the British Crown over Indian States still subsisted, said:

"..... the States are theoretically free to link their future with whichever Dominion they may care. But when I say that they are at liberty to link up with either of the Dominions, may I point out that there are certain geographical compulsions which cannot be evaded."

In the absence of accession, however, the Union of India was responsible for the defence and protection of Indian States, since it had succeeded to the British Crown in the same way as the British Crown had succeeded to the East India Company, which in its turn had succeeded to the Moghal Emperor. The United Nations recognised the Union of India as the successor State to the pre-independence Government of India by allowing it to continue its original membership, while admitting Pakistan, on her application, as a new member State.

Provision for accession of Indian States to the Indian Union was made in the Constitution of India as in force on 15th August, 1947, i.e. the Government of India Act, 1935, as adapted under the provisions of the Indian Independence Act, 1947, both of which were enactments of the British Parliament. This provision stated:

"An Indian State shall be deemed to have acceded to the Dominion if the Governor-General had signified his acceptance of an Instrument of Accession executed by the Ruler thereof.....".

The said Constitution also provided that Indian States acceding in the above manner shall become an integral part of the Union of India.

Almost all the States acceded to India or Pakistan on various dates after 15th August, 1947. In each case the Instrument of Accession was signed by the Ruler, as required by the Government of India Act. The State of Jammu and Kashmir delayed its decision in regard to accession. Pending his decision, the Ruler of Jammu and Kashmir sought to enter into a Standstill Agreement with each of the Dominions in accordance with the Indian Independence Act which, while terminating the suzerainty of the British Crown, with effect from the 15th of August, 1947, had provided for the continuance of certain existing arrangements, pending the establishment of permanent relations. This offer was made by the Ruler by a telegram in identical terms to both the Dominions on 12th of August, 1947. Pakistan agreed to have a Standstill Agreement with regard to communications, supplies, and postal and telegraphic arrangements. The Government of India requested the Ruler to send a representative of his Government to negotiate and settle the terms of the Standstill Agreement and expressed its desire for the maintenance of "existing agreements and administrative arrangements". The invasion of the State by Pakistan prevented such negotiations; but "existing agreements and administrative arrangements" continued.

Almost immediately after agreeing to a Standstill Agreement, Pakistan began to apply economic and other pressures against Kashmir, in order to secure the accession of the State by force. Supplies of food, salt, petrol and other essential commodities were cut off. Pakistan also cut off the only rail link with the State, distributed arms to its own nationals along the State borders, and encouraged and organised attacks on the villages in the State. On the air, in the press and from the platform, it sought to incite Muslims in the State of Kashmir to rise in revolt against the State Government. Repeated representations to the Pakistan authorities by the Government of Jammu and Kashmir in regard to these actions—which terminated existing arrangements with Pakistan and which were contrary to Pakistan Government's standstill agreement with the Government of the State entered into only a few days earlier—proved futile.

Economic and other pressures were soon followed by use of force. Pakistan raiders and other hostiles crossed the frontiers into the State. The incursions, which by October 22 swelled to the size of a large-scale military invasion, were promoted and aided and, as was proved later, organised by Pakistan, who used tribesmen and Pakistan irregulars as the invading force. Led by officers of the Pakistan Army, they were supplied with automatic weapons and transport. Their messages were sent and decoded by Pakistan Army Signals. Their casualties were treated in Pakistan military hospitals.

The Armed Forces of the State and the people offered stout resistance but, by October 25, the invaders had advanced deep into Kashmir and were within a few miles of Srinagar, the summer capital of the State, after burning and sacking the town of Baramula. They indulged in indiscriminate killing, plunder, arson and rape, and whole villages and towns were laid waste.

There were no words of condemnation of all this from the Pakistan Government or its leaders. On the contrary, the invaders were

hailed as 'liberators'. The testimony of the Jesuit Father and three Sisters, then serving at the St. Joseph's Convent at Baramula, speaks eloquently of this "liberation".

### KASHMIR ACCEDES TO INDIA

Faced with this situation—invasion, arson, rapine and plunder—and in order to save the lives of his people and the State from destruction, the Ruler, at this critical point in time, decided to accede to India and appealed to her for assistance to repel the invaders and for protection. This decision of the Ruler had the full support of the National Conference, which was the largest and the most popular political organisation in the State.

On October 26, 1947, the Ruler executed an Instrument of Accession to India in strict accordance with the constitutional forms and procedures. The Governor-General of India, Lord Mountbatten, accepted the Instrument of Accession on October 27, also in accordance with the constitutional requirements as laid down in the Government of India Act, which was in force at that time. This Instrument and the acceptance are identical in terms with the Instruments executed by hundreds of other princely States, which had acceded to either India or to Pakistan.

No conditions were laid down by the Ruler in the Instrument of Accession which he executed, nor by the Governor-General in his acceptance. Jammu and Kashmir, thus, became a constituent state of the Union of India on and from the 27th of October, 1947.

In a separate letter dated the 27th October, 1947, to the Ruler of Jammu and Kashmir, Lord Mountbatten reiterated that the Government of India had decided to accept the accession of the State, adding, *en passant*, that it was the wish of the Government of India to make a reference to the people of Kashmir "as soon as law and order have been restored in Kashmir and her soil cleared of the invader".

### POPULAR RESISTANCE TO PAKISTAN

In the discharge of its responsibilities arising from the accession of the State to the Indian Union, the Government of India sent troops to Kashmir to give support to the resistance offered by the people and the Government of Jammu and Kashmir to repel the invaders and to protect the territory of the State. Even apart from the accession, which gave to the Government of India the right and which imposed upon it the duty, of defending the territory of Kashmir and the integrity of the Union of India, India had the right and the duty, as successor to the British Power, to defend this territory against aggression. Indian troops, which had to be flown in at short notice at the invitation of the Ruler, arrived in Srinagar, just in time to save the town from destruction by the raiders led by Pakistan army officers.

Pakistan often trots out the excuse that the people of Kashmir favouring the State's accession to Pakistan, rose in revolt against the Ruler. If this had been the case, a small detachment of Indian



troops could not have landed in Srinagar or maintained its long lines of communications against the Kashmiris themselves. Besides, Pakistan invaders would have been received with open arms, instead of being resisted bitterly by volunteers and the local Kashmir militia.

The invaders had the active assistance of the Pakistan authorities and their bases and sources of supply were located in Pakistan territory, through which they had been permitted to pass. India repeatedly appealed to Pakistan to deny assistance to the invaders. But all these efforts failed. Anxious for a peaceful settlement, India offered various proposals, none of which was accepted by Pakistan. Any action by India to attack the bases of the invaders in Pakistan would have meant direct conflict with Pakistan. The Prime Minister of India, in a letter dated the 22nd of December, 1947 informed the Prime Minister of Pakistan that, if Pakistan did not deny to the invaders assistance and the use of Pakistan territory for operations against the State, India would be compelled to take such action, consistent with the provisions of the United Nations Charter, as it might consider necessary to protect its interests. There was no response from the Pakistan Prime Minister. On January 1, 1948, India submitted a formal complaint to the Security Council under Chapter VI of the Charter, as India was anxious to avoid a direct conflict with Pakistan.

All proposals and offers for resolving the situation which India had made in her direct approaches to Pakistan, naturally, lapsed when India took the matter to the Security Council.

The Government of India, in its complaint to the Security Council stated:

"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; only thus could the invaders be denied the use of bases and cut off from their sources of supplies, and reinforcements, in Pakistan. Since the aid which the invaders are receiving from Pakistan is an act of aggression against India, the Government of India are entitled, in international law, to send their armed forces across Pakistan 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 spirit of the Charter of the United Nations, desire to report the situation to the Security Council in accordance with the provisions of Article 35 of the Charter. They feel justified in requesting the Council to ask the Government of Pakistan:—

- (1) to prevent Pakistan Government personnel, military and civil, participating in or assisting the invasion of Jammu and Kashmir State;
- (2) to call upon other Pakistan nationals to desist from taking any part in the fighting in Jammu and Kashmir State;

(3) to deny to the invaders:

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

### PAKISTAN DENIES AGGRESSION

When the Security Council took up the matter for consideration, Pakistan emphatically denied that it had any part in the invasion of Jammu and Kashmir. The Pakistan Foreign Minister, Sir Mohd. Zafrullah Khan, informed the Security Council that:

"....the Pakistan Government emphatically deny that they are giving aid and assistance to the so-called invaders or have committed any act of aggression against India. On the contrary and solely with the object of maintaining friendly relations between the two Dominions the Pakistan Government have continued to do all in their power to discourage the tribal movement by all means short of war."

In its resolution dated January 17, 1948, (App. I) which was accepted by Pakistan and India, the Security Council called upon Pakistan and India:

- (i) "to take immediately all measures within their power (including public appeals to their people) calculated to improve the situation and to refrain from making any statements and from doing or causing to be done or permitting any acts which might aggravate the situation; and
- (ii) to inform the Security Council immediately of any material change in the situation which occurs or appears to either of them to be about to occur while the matter is under consideration by the Council, and consult with the Council thereon."

### PAKISTAN ADMITS AGGRESSION

Subsequently, the Security Council sent out a Commission to India and Pakistan, which on arriving in Karachi on July 7, 1948, was surprised to learn from the Foreign Minister of Pakistan that regular units of the Pakistan Army had been fighting against India in the State of Jammu and Kashmir—according to him since early May, but in fact much earlier. Earlier the same Pakistan Foreign Minister had solemnly declared before the Security Council that Pakistan had no part in the invasion of Jammu and Kashmir and had even denied the giving of assistance to the irregulars. How grave was the view which the U.N. Commission took is stated in its First Interim Report:

"As set forth in the letter of 1 January 1948 (S/628), the Government of India placed its complaint against the

Government of Pakistan under Article 35 of the Charter, which allows any Member to bring to the attention of the Security Council any situation the continuance of which is likely to endanger the maintenance of international peace and security. India alleged that such a situation existed between it and Pakistan owing to the aid which invaders, consisting of nationals of Pakistan and of tribesmen from the territory immediately adjoining that Dominion on the north-west, were drawing from Pakistan for operations against the State of Jammu and Kashmir, which had acceded to India on 27 October, 1947, and was part of India.

"The Government of Pakistan in its communication of 15 January 1948 (S/646 and Corr. 1) denied that it was giving aid and assistance to the invaders...."

(Paras 111 and 112)

"In the course of this interview, the Foreign Minister (of Pakistan) informed the members of 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 (1948.)"

(Para 40)

"According to the Security Council's resolution of 17 January, the Government of Pakistan was requested to inform the Security Council immediately of any material change in the situation. In a letter addressed to the Security Council, the Pakistan Government agreed to comply with this request. The Government of Pakistan had, however, not informed the Security Council about the presence of Pakistan troops in the State of Jammu and Kashmir."

(Para 128)

Thus Pakistan concealed vital information from the Security Council and violated its resolution of January 17, 1948.

#### A JURIST'S VIEW

Sir Owen Dixon, who succeeded the Commission as United Nations Representative for India and Pakistan, had this to say about Pakistan's aggression against India:

"Without going into the causes or reasons why it happened, which presumably formed part of the history of the sub-continent, I was prepared to adopt the view that when the frontier of the State of Jammu and Kashmir was crossed on, I believe 20 October 1947, by hostile elements, it was contrary to international law, and that when in May 1948, as I believe, units of the regular Pakistan forces moved into the territory of the State, that too was inconsistent with international law."

## U.N. COMMISSION'S ASSURANCES TO INDIA

The United Nations Commission after careful consideration adopted a resolution on the 13th August, 1948. The Government of India accepted this resolution by a letter dated the 20th August, 1948, (App. IV) while Pakistan declined to accept it. Thus, in addition to having violated and continuing to violate the Security Council resolution of January 17, 1948, Pakistan, by declining to accept the August 13 resolution, became directly responsible for postponing the cease-fire and for prolongation of hostilities. The Chairman of the Commission expressed its concern to the Foreign Minister of Pakistan in the following words:

"The Commission observes with regret that the Government of Pakistan has been unable to accept the resolution without attaching certain conditions beyond the compass of this resolution, thereby making impossible an immediate cease-fire and the beginning of fruitful negotiations between the two Governments and the Commission to bring about a peaceful and final settlement of the situation in the State of Jammu and Kashmir."

(UNCIP First Interim Report, Page 49).

Negotiations continued and the U.N. Commission formulated a further resolution of 5 January, 1949, to supplement the earlier resolution of August 13, 1948. (App. I). This further resolution was accepted by the Government of India on the 23rd of December, 1948, and by Pakistan on the 25th of December, 1948. In this manner, eventually, both the Resolutions were accepted by Pakistan and India. India accepted the two Resolutions, subject to the assurances contained in the correspondence between India and the Commission.

The assurances given to the Prime Minister of India by the Commission were public and known to Pakistan. These assurances on the basis of which alone India accepted the two Resolutions, and which form part of the reports of the Commission and are official records of the Security Council, included the following:

- (i) Responsibility for the security of the State of Jammu and Kashmir rests with the Government of India.
- (ii) The sovereignty of Jammu and Kashmir Government over the entire territory of the State shall not be brought into question.
- (iii) There shall be no recognition of the so-called Azad (Free) Kashmir Government.
- (iv) The territory occupied by Pakistan shall not be consolidated to the disadvantage of the State of Jammu and Kashmir.
- (v) The administration of the evacuated areas in the north shall revert to the Government of Jammu and Kashmir and its defence to the Government of India who will, if necessary, maintain garrisons for preventing the incursion of tribesmen, and for guarding the main trade routes.

- (vi) Pakistan shall be excluded from all affairs of Jammu and Kashmir in particular in the plebiscite, if one should be held.
- (vii) If a plebiscite is found to be impossible for technical or practical reasons, the Commission will consider other methods of determining fair and equitable conditions for ensuring a free expression of the people's will.
- (viii) Plebiscite proposals shall not be binding upon India if Pakistan does not implement Parts I and II of the resolution of 13th August, 1948.

The legality of the State's accession to India was never questioned by the Security Council or the Commission. In fact, on February 4, 1948, the U.S. Representative in the Security Council said:

"The external sovereignty of Kashmir is no longer under the control of the Maharajah.....with the accession of Jammu and Kashmir to India, this foreign sovereignty went over to India and is exercised by India, and that is how India happens to be here as a petitioner."

The Legal Adviser to the U.N. Commission came to the conclusion that accession was legal and could not be questioned. The Commission recognised this position in its report and its two resolutions of August 13, 1948, and January 5, 1949, as also the consequential position that Pakistan had no *locus standi* in the State except that of an aggressor.

The basic resolution is the resolution of August 13, 1948, which is in three parts. Part I required a cease-fire, non-augmentation of military potential on either side and the maintenance of a peaceful atmosphere. Under Part II Pakistan had to withdraw all her forces, regular and irregular, while India was required to keep sufficient troops for the security of the State including the observance of law and order. Part III provided as follows:

"The Government of India and the Government of Pakistan reaffirm their wish that the future status of Jammu and Kashmir shall be determined in accordance with the will of the people and to that end, upon acceptance of the Truce Agreement both Governments agree to enter into consultation with the Commission to determine fair and equitable conditions whereby such free expression of will be assured."

#### WHO HELD UP PLEBISCITE?

Obviously Part III of the resolution could come into focus only after Parts I and II had been fully implemented. The resolution of 5 January, 1949, being subsidiary and supplementary to the resolution of 13 August, 1948, was merely an elaboration of the principle contained in Part III and had no practical significance till the resolution of 13 August, 1948, was fully implemented. The word 'plebiscite' does not occur in Part III of the resolution of 13 August. As

recorded by the U.N. Commission, Pakistan violated Part I and continues to do so even today; Pakistan also refused to implement Part II by going back on the obligation of vacating the aggression.

Pakistan propagandists and supporters have accused India of "wriggling" out of a plebiscite, although they know too well that the responsibility of making a plebiscite at all possible lay not with India but wholly with Pakistan. Nothing could have prevented a plebiscite if Pakistan had promptly honoured her obligations and withdrawn her troops from Kashmir. Not sure of winning a plebiscite, Pakistan tried to gain time to consolidate her unlawful position in occupied Kashmir. Hence the long-drawn-out negotiations with the Commission, Sir Owen Dixon (1950) and Dr. Graham (1951-53), in which she tried to dictate terms for withdrawal of her troops.

Pakistan, in disregard of the stand taken by the U.N., now wants an equal status for the aggressor and the aggressed. Pakistan's proposals have included an equal withdrawal of Pakistan and Indian forces, the stationing of an international police force in Jammu and Kashmir and/or arbitration and even "independence" for Kashmir. All this is intended to sidetrack Pakistan's aggression which is the basic issue in Kashmir.

Another important factor not to be ignored is Pakistan's entry into a number of military pacts. Whatever the intentions of the other parties concerned in regard to those pacts, the effect of military alliances on the situation in the State of Jammu and Kashmir and on India as a whole is significant. Pakistan has been receiving training, substantial supplies of military material and modern sophisticated equipment under these pacts. The influx of this equipment has enabled the Pakistan Government to provide the so-called 'Azad Kashmir' Forces with heavy and more modern equipment from its own resources, in breach of the Cease-Fire Agreement. On the pretext of resisting international communism, Pakistan has got fully equipped bases on the Indian frontier and even amphibious vehicles to cross Indian rivers on the border, to say nothing of supersonic planes, etc.

There are numerous statements by Pakistan Prime Ministers and other official spokesmen as well as by independent foreign observers which clearly state that Pakistan's object in joining military pacts and receiving military aid was only to acquire military strength to solve the Kashmir problem to her own satisfaction and to entangle other Powers in the dispute, if she can.

### HATE PROPAGANDA AGAINST INDIA

Not satisfied with continuous aggression on Indian Union territory and deliberate violations of Security Council and UNCIP resolutions, Pakistan launches a constant campaign of hate and war propaganda against India. Most of the important elements in Pakistan official and public life participate in this calculated campaign for 'jihad' or holy war—Prime Ministers, Ministers, presidents of political parties, the Government-controlled Pakistan radio and the press. The combined anti-India anti-U.S.A. propaganda that followed the last elections in U.S.A. and synchronised with



President Ayub's visit to President Kennedy in July last, was only one phase of the non-stop campaign, which India is expected by her friends to "ignore".

### PAKISTAN BREACHES OF CEASE-FIRE

Frequent, open, official incitement to the people to defy the Cease-Fire Agreement in Kashmir is intended to keep alive the interest in a dead issue and to divert public attention from more pressing problems at home. In 1958, following considerable official effort, 10 Pakistan nationals crossed the cease-fire line, and were arrested by the Jammu and Kashmir police. Even Sardar Ibrahim, the President of the so-called Azad-Kashmir Government, declared that the agitation was trumped up. A similar phoney movement is now being worked up in Pakistan-occupied Kashmir, the puppet government of which is kept in uneasy power by Pakistan gold and guns. Its so-called "President", who is a stooge of the Pakistan Government, is being officially encouraged to claim an independent "sovereign" status for Pakistan-occupied Kashmir, to provide some modicum of justification for another aggression and betrayal of the Charter. Having failed to make a success of subversion and sabotage which Pakistan has been organising since 1947, the Pakistan Government is busy engineering incidents along the border and the cease-fire line, encouraging its armed forces, police and civilians to commit encroachments, fire on innocent villagers or the Indian army and police picquets, and generally create conditions of lawlessness and disorder, if they can. Senseless bomb explosions organised from Pakistan have been condemned by the people in Jammu and Kashmir who have given their full support to the Jammu and Kashmir Government in apprehending the infiltrators who are Pakistan trained Intelligence men or members of Pakistan's armed forces.

Pakistan has thus violated the Security Council resolution of 17 January, 1948, and the UNCIP resolutions, in letter and spirit, and has used the past fourteen years to consolidate the fruits of its aggression. Pakistan's violations include:

- (i) Continuing presence of Pakistan forces and Pakistan personnel in Kashmir.
- (ii) Introduction of additional military equipment into occupied territory.
- (iii) Construction of airfields in occupied territory, thus creating bases for attack against India endangering its security.
- (iv) Consolidation and incorporation of the occupied area of Jammu and Kashmir into Pakistan.
- (v) Using her membership of military pacts to increase Pakistan's military potential in Kashmir, and to strengthen the so-called Azad Forces, officered, trained and equipped by Pakistan.
- (vi) Occupation of Northern areas.



- (vii) Continuous threats of force and the creation of a war atmosphere, which are a constant menace to the cease-fire line.
- (viii) Organising and financing of subversion and sabotage in Jammu and Kashmir.

### SELF-DETERMINATION

Pakistan asserts that she is merely fighting for the Kashmiris' right of self-determination, knowing full well that she has denied self-determination to her own people and those unfortunate Kashmiris who are groaning under her heel in Pakistan-occupied Kashmir.

A country which is governed by martial law ironically urges plebiscite in Kashmir when it has not held a single general election ever since it came into existence in 1947 or permitted one in that part of Kashmir which it holds by force. By refusing to vacate the aggression, Pakistan in fact attempts to prevent the people of Kashmir from exercising their right of self-determination, except on her own terms.

Determined not to be held to ransom by an aggressor, the people of Kashmir, except those held in subjection by Pakistan, have gone ahead, convened a Constituent Assembly of elected members, framed a democratic constitution, reaffirmed their constitutional relationship with India, and drawn up a programme of social reforms and economic development which is changing the face of this Indian State. In accordance with this Constitution, fresh elections were held in 1957 and a new popular legislature was established. Today, the people residing in the State of Jammu and Kashmir, except in the area occupied by Pakistan, are secure in the enjoyment of fundamental rights, which do not exist in Pakistan, and the protection of the High Court of the State and the Supreme Court of India.

Political liberty is barren without economic freedom. At no other time in its history has the State of Jammu and Kashmir enjoyed the prosperity which it does today. Hereditary rule has been abolished. The Government has enlarged civil liberties, introduced bold land reforms, expanded education, health and transport services, and developed irrigation, hydro-electric power supply, industries and its world famous handicrafts. The State of Jammu and Kashmir has undertaken 5-year development plans in the same way as other constituent States of the Union of India. Tourist traffic, which is one of the main sources of State revenue, has touched the highest point ever recorded in its history. A third general election is round the corner in 1962. Defying every obstruction from Pakistan, the people of Kashmir have thus exercised within the Indian Union their right of self-determination and held not one plebiscite but two in the form of elections and are holding a third in 1962.

### REIGN OF TERROR IN INVADIED PART

As against all this, the Military regime in Pakistan have put the clocks back, as is well known, and while demanding a "plebiscite"

in Kashmir, the 90 million population is slowly being "educated" on the virtues of a hypothetical "basic democracy" 14 years after independence. The people have never been given an opportunity to express their political convictions. There is no legislature, no representative Government and hardly any economic development. The administration of the area is controlled from Rawalpindi—on the Afghan border. After 14 years of subjugation all that the people have been given is limited local self-government, presented to the world as "basic democracy". The military dictatorship which does not consider freedom good enough for its own people could not be expected to offer it to those under its subjection in occupied Kashmir. Rigged elections took place from which all inconvenient rivals were eliminated.

### MEDIEVAL NOTIONS

The basic difficulty is that Pakistan's approach to Kashmir issue and other Indo-Pakistan problems is based on the pernicious "two nation" theory. In 1947, this theory was the cause of unfortunate mass migrations from West Pakistan to India and from north-west India to Pakistan. But, even after establishing itself as an independent State, Pakistan has continued to squeeze out members of her minority community from East Pakistan, over four millions of whom have fled to India since 1948, and migration still continues. This is the result of a policy of deliberate discrimination against a section of her own nationals merely on the ground that they belong to a different faith or religion.

The Government of India's policy moulded by the Indian National Congress which for 60 years prior to 1947 had emphasised the secular character of the State, was reiterated by India's Prime Minister on October 12, 1947:

"So far as India is concerned we have very clearly stated both as Government and otherwise that we cannot think of any State which might be called communal or religious State. We can only think of a secular non-communal democratic State, in which every individual, to whatever religion he may belong, has equal rights and opportunities. It was natural for the predominant cultural outlook of a country to be governed by the majority of its population but no person should have a special right because he happens to profess a particular creed and no person should be deprived of any right because he professes some other creed. We want a secular, democratic State. That has been the ideal of the Indian National Congress ever since it started 65 years ago and we have consistently adhered to it."

India is thus a secular, democratic State and her Constitution guarantees equal rights to all her citizens irrespective of race, religion or colour. India has a population of over 45,000,000 Muslims; this is larger than the whole Muslim population of West Pakistan. India's Christian population numbers over 10,000,000. Members of the minority communities occupy high places of honour and responsibility whether in Government or in public life. The Pakistan thesis that India is a Hindu State, whereas Pakistan is a Muslim

State and that therefore, Kashmir which has a Muslim majority population, should go to Pakistan, has no basis in fact, as India has 45 million Muslim citizens, and a constituent State of the Indian Union with a Muslim majority population like Kashmir fits naturally into the Indian Union with its secular policy and its multi-religious pattern. Pakistan's slogans of two-nation theory have only one objective *viz.* an appetite for territorial gain. It is the same desire for territorial gain that led to Pakistan purchase of Gwadar, with its several thousand people, from the Sultan of Muscat and Oman. President Ayub was quite frank about Pakistan intentions, during an address at a luncheon meeting at the National Press Club in Washington on July 13, 1961. "You might say, 'why can't you give up Kashmir?' Well we cannot give up that dispute, not because we are bloody-minded, (pardon the language!) but for the simple reason that Kashmir is connected with our physical security". The medieval slogan is thus employed to screen military and territorial ambitions, to be realised through an appeal to religion.

The contrast between the policies of the two countries has been brought out vividly by Mr. Wilfred Cantwell Smith in his book: *Islam in Modern History*:

"Probably nowhere in the Islamic world, perhaps not even in Turkey, is a Muslim so free as in India to put his mind honestly and earnestly to religious problems, to speak fearlessly, and to publish what he writes."

Stating that Pakistani attitude to India still expressed a basic antagonism, Mr. Smith explains on page 270:

"This fact is stridently obvious to any visitor to the country, especially to West Pakistan. It can be seen in published literature also, cf. almost any issue of the Government's bi-monthly press excerpts, Pakistan News Digest, Karachi, and especially the editorials of the Karachi daily, *Dawn*."

### IMPORTANCE OF STABILITY

India desires to live in a cooperative and friendly way with all her neighbours, and more so with Pakistan with whom she has numerous bonds of tradition and culture. But good neighbourly relations cannot be founded upon hatred and ill-will, violence and aggression or religious frenzy and cries of 'Jehad' (holy war). It is widely recognised that any upsets in Jammu and Kashmir will result in serious consequences to the people of the State and will also have grave repercussions in the rest of India and Pakistan. Stability, peace and progress have been brought about in Kashmir, in the teeth of opposition from the aggressor, and by democratic methods—a glorious tribute to the freedom-loving people of Kashmir and the multi-sided community of the Indian people of which they form an integral part.

Indian leaders have, during the last 14 years, put in considerable efforts to eliminate the virus of religious frenzy and hatred fanned by Pakistan leaders who advocated a theocratic state. This had led to the hideous events which followed the partition. India has been

set on the course of economic, social and political development as a modern secular State. Pakistan is welcome to follow any policies she likes, but she cannot and will not be allowed to undermine India's dearly gained stability and independence by insisting on the application of archaic theocratic principles.

During the last 14 tumultuous years, India has shown every indulgence and consideration to Pakistan. It was hoped that she would settle down as a good neighbour and India would have neighbourly relations on a normal international pattern. Instead, India has been used as a convenient whipping boy and as a handy instrument for maintaining shaky Pakistan governments in power. Pakistan continues to occupy nearly half of the Indian Union territory of Jammu and Kashmir which she took by force and which she continues to hold by violence in defiance of the provisions of the UNCIP resolutions and the obligation undertaken by her to withdraw her regulars and irregulars from the State. Pakistan should vacate this aggression on Indian Union territory and facilitate the establishment of peaceful relations between the two countries. India is prepared to be patient and tolerant and not resort to force to remove Pakistan aggression but it is obvious that there is a limit to patience and tolerance. India cannot permit Pakistan to use her continuing aggression on Indian territory as a jumping off ground for further territorial claims or further territorial aggressions.

## APPENDIX I

*Resolution adopted at the two hundred and twenty-ninth meeting of the Security Council, 17 January 1948 (S/651).*

THE SECURITY COUNCIL having heard statements on the situation in Kashmir from representatives of the Governments of India and Pakistan;

RECOGNIZING the urgency of the situation; taking note of the telegram addressed on 6 January by its President to each of the parties and of their replies thereto; and in which they affirmed their intention to conform to the Charter;

CALLS UPON both the Government of India and the Government of Pakistan to take immediately all measures within their power (including public appeals to their people) calculated to improve the situation and to refrain from making any statements and from doing or causing to be done or permitting any acts which might aggravate the situation;

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

## APPENDIX II

*U.N.C.I.P. Resolution of August 13, 1948. (S/1100, Para 75)*

The United Nations Commission for India and Pakistan having given careful consideration to the points of view expressed by the representatives of India and Pakistan regarding the situation in the State of Jammu and Kashmir, and being of the opinion that the prompt cessation of hostilities and the correction of conditions the continuance of which is likely to endanger international peace and security are essential to implementation of its endeavours to assist the Governments of India and Pakistan in affecting a final settlement of the situation,

Resolves to submit simultaneously to the Governments of India and Pakistan the following proposal:

### PART I

#### *Cease-Fire Order*

A. The Governments of India and Pakistan agree that their respective High Commands will issue separately and simultaneously a cease-fire order to apply to all forces under their control in the State of Jammu and Kashmir as of the earliest practicable date or dates to be mutually agreed upon within four days after these proposals have been accepted by both Governments.

B. The High Commands of the Indian and Pakistani forces agree to refrain from taking any measures that might augment the military potential of the forces under their control in the State of Jammu and Kashmir.

(For the purpose of these proposals forces under their control shall be considered to include all forces, organised and unorganised, fighting or participating in hostilities on their respective sides.)

C. The Commanders-in-Chief of the forces of India and Pakistan shall promptly confer regarding any necessary local changes in present dispositions which may facilitate the cease-fire.

D. In its discretion and as the Commission may find practicable, the Commission will appoint military observers who, under the authority of the Commission and with the co-operation of both Commands, will supervise the observance of the cease-fire order.

E. The Government of India and the Government of Pakistan agree to appeal to their respective peoples to assist in creating and maintaining an atmosphere favourable to the promotion of further negotiations.

## PART II

### *Truce Agreement*

Simultaneously with the acceptance of the proposal for the immediate cessation of hostilities outlined in Part I, both Governments accept the following principles as a basis for the formulation of a truce agreement, the details of which shall be worked out in discussion between their representatives and the Commission.

#### A

1. As the presence of troops of Pakistan in the territory of the State of Jammu and Kashmir constitutes a material change in the situation since it was represented by the Government of Pakistan before the Security Council, the Government of Pakistan agrees to withdraw its troops from that State.

2. The Government of Pakistan will use its best endeavour to secure the withdrawal from the State of Jammu and Kashmir of tribesmen and Pakistani nationals not normally resident therein who have entered the State for the purpose of fighting.

3. Pending a final solution, the territory evacuated by the Pakistani troops will be administered by the local authorities under the surveillance of the Commission.

#### B

1. When the Commission shall have notified the Government of India that the tribesmen and Pakistani nationals referred to in Part II A-2 hereof have withdrawn, thereby terminating the situation which was represented by the Government of India to the Security Council as having occasioned the presence of Indian forces in the State of Jammu and Kashmir, and further, that the Pakistani forces are being withdrawn from the State of Jammu and Kashmir, the Government of India agrees to begin to withdraw the bulk of its forces from that State in stages to be agreed upon with the Commission.

2. Pending the acceptance of the conditions for a final settlement of the situation in the State of Jammu and Kashmir, the Indian Government will maintain within the lines existing at the moment of cease-fire the minimum strength of its forces which in agreement with the Commission are considered necessary to assist local authorities in the observance of law and order. The Commission will have observers stationed where it deems necessary.

3. The Government of India will undertake to ensure that the Government of the State of Jammu and Kashmir will take all measures within its power to make it publicly known that peace, law and order will be safeguarded and that all human and political rights will be guaranteed.

#### C

1. Upon signature, the full text of the truce agreement or a communique containing the principles thereof as agreed upon between the two Governments and the Commission will be made public.



## PART III

The Government of India and the Government of Pakistan reaffirm their wish that the future status of the State of Jammu and Kashmir shall be determined in accordance with the will of the people and to that end, upon acceptance of the truce agreement, both Governments agree to enter into consultations with the Commission to determine fair and equitable conditions whereby such free expression will be assured.

### APPENDIX III

#### *U.N.C.I.P. Resolution of January 5, 1949. (S/1430, Para 143)*

The United Nations Commission for India and Pakistan, having received from the Governments of India and Pakistan, in communications dated December 23 and December 25, 1948, respectively, their acceptance of the following principles which are supplementary to the Commission's resolution of August 13, 1948:

1. The question of the accession of the State of Jammu and Kashmir to India or Pakistan will be decided through the democratic method of a free and impartial plebiscite.

2. A plebiscite will be held when it shall be found by the Commission that the cease-fire and truce arrangements set forth in Parts I and II of the Commission's resolution of August 13, 1948, have been carried out and arrangements for the plebiscite have been completed.

3. (a) The Secretary-General of the United Nations will, in agreement with the Commission, nominate a Plebiscite Administrator who shall be a personality of high international standing and commanding general confidence. He will be formally appointed to office by the Government of Jammu and Kashmir;

(b) The Plebiscite Administrator shall derive from the State of Jammu and Kashmir the powers he considers necessary for organizing and conducting the plebiscite and for ensuring the freedom and impartiality of the plebiscite;

(c) The Plebiscite Administrator shall have authority to appoint such staff of assistants and observers as he may require.

4. (a) After implementation of Parts I and II of the Commission's resolution of August 13, 1948, and when the Commission is satisfied that peaceful conditions have been restored in the State, the Commission and the Plebiscite Administrator will determine, in consultation with the Government of India, the final disposal of Indian and State armed forces, such disposal to be with due regard to the security of the State and the freedom of the plebiscite;

(b) As regards the territory referred to in A-2 of Part II of the resolution of August 13, final disposal of the armed forces in that territory will be determined by the Commission and the Plebiscite Administrator in consultation with the local authorities.

5. All civil and military authorities within the State and the principal political elements of the State will be required to cooperate with the Plebiscite Administrator in the preparation for and the holding of the plebiscite.

6. (a) All citizens of the State who have left it on account of the disturbances will be invited and be free to return and to exercise all their rights as such citizens. For the purpose of facilitating repatriation there shall be appointed two Commissions, one composed

of nominees of India and the other of nominees of Pakistan. The Commissions shall operate under the direction of the Plebiscite Administrator. The Governments of India and Pakistan and all authorities within the State of Jammu and Kashmir will collaborate with the Plebiscite Administrator in putting this provision into effect;

(b) All persons (other than citizens of the State) who on or since August 15, 1947, have entered it for other than lawful purpose, shall be required to leave the State.

7. All authorities within the State of Jammu and Kashmir will undertake to ensure, in collaboration with the Plebiscite Administrator, that:

(a) There is no threat, coercion or intimidation, bribery or other undue influence on the voters in the plebiscite;

(b) No restrictions are placed on legitimate political activity throughout the State. All subjects of the State, regardless of creed, caste or party, shall be safe and free in expressing their views and in voting on the question of the accession of the State to India or Pakistan. There shall be freedom of the press, speech and assembly and freedom of travel in the State, including freedom of lawful entry and exit;

(c) All political prisoners are released;

(d) Minorities in all parts of the State are accorded adequate protection; and

(e) There is no victimisation.

8. The Plebiscite Administrator may refer to the United Nations Commission for India and Pakistan problems on which he may require assistance, and the Commission may in its discretion call upon the Plebiscite Administrator to carry out on its behalf any of the responsibilities with which it has been entrusted.

9. At the conclusion of the plebiscite the Plebiscite Administrator shall report the result thereof to the Commission and to the Government of Jammu and Kashmir. The Commission shall then certify to the Security Council whether the plebiscite has or has not been free and impartial.

10. Upon the signature of the truce agreement the details of the foregoing proposals will be elaborated in the consultations envisaged in Part III of the Commission's resolution of August 13, 1948. The Plebiscite Administrator will be fully associated in these consultations;

Commends the Governments of India and Pakistan for their prompt action in ordering a case-fire to take effect from one minute before midnight of January 1, 1949, pursuant to the agreement arrived at as provided for by the Commission's resolution of August 13, 1948; and

Resolves to return in the immediate future to the subcontinent to discharge the responsibilities imposed upon it by the resolution of August 13, 1948, and by the foregoing principles.

#### APPENDIX IV

*Letter from the Prime Minister of India to the Chairman in reply to the Commission's Resolution of August 13, 1948, (S/1100, Para 78).*

New Delhi,

August 20, 1948.

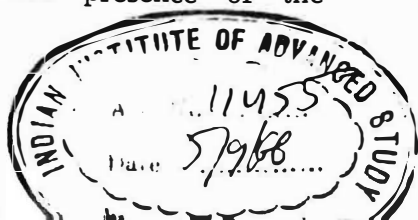
Excellency,

On August 17, my colleague, the Minister without Portfolio, and I discussed with you and your colleagues of the Commission now in Delhi the resolution which you had presented to us on the 14th instant. On the 18th, I had another discussion with you, in the course of which I tried to explain to you the doubts and difficulties which members of my Government, and representatives of the Government of Kashmir whom we consulted, had felt as the result of a preliminary but careful examination of the Commission's proposals.

2. During the several conferences that we had with the Commission when it first came to Delhi, we placed before it what we considered the basic fact of the situation which had led to the conflict in Kashmir. This fact was the unwarranted aggression, at first indirect and subsequently direct, of the Pakistan Government on Indian Dominion territory in Kashmir. The Pakistan Government denied this although it was common knowledge. In recent months, very large forces of the Pakistan regular army have further entered Indian Union territory in Kashmir and opposed the Indian Army which was sent there for the defence of the State. This, we understand now, is admitted by the Pakistan Government, and yet there has been at no time any intimation to the Government of India by the Pakistan Government of this invasion; there has been a continual denial and the Pakistan Government have evaded answering repeated inquiries from the Government of India.

In accordance with the resolution of the Security Council of the United Nations adopted on January 17, 1948, the Pakistan Government should have informed the Council immediately of any material change in the situation while the matter continues to be under the consideration of the Council. The invasion of the State by large forces of the regular Pakistan Army was a very material change in the situation, and yet no information of this was given so far as we know to the Security Council.

The Commission will appreciate that this conduct of the Pakistan Government is not only opposed to all moral codes as well as international law and usage, but has also created a very grave situation. It is only the earnest desire of my Government to avoid any extension of the field of conflict and to restore peace, that has led us to refrain from taking any action to meet the new situation that was created by this further intrusion of the Pakistan Army into Jammu and Kashmir State. The presence of the



Commission in India has naturally led us to hope that any arrangement sponsored by it would deal effectively with the present situation and prevent any recurrence of aggression.

3. Since our meeting of August 18, we have given the Commission's resolution our most earnest thought. There are many parts of it, which we should have preferred to be otherwise and more in keeping with the fundamental facts of the situation, especially the flagrant aggression of the Pakistan Government on Indian Union territory. We recognise, however, that if a successful effort is to be made to create satisfactory conditions for a solution of the Kashmir problem without further bloodshed, we should concentrate on certain essentials only at present and seek safeguards in regard to them. It was in this spirit that I placed the following considerations before Your Excellency:

- (1) That paragraph A-3 of Part II of the resolution should not be interpreted, or applied in practice, so as:
  - (a) to bring into question the sovereignty of the Jammu and Kashmir Government over the portion of their territory evacuated by Pakistan troops;
  - (b) to afford any recognition of the so-called "Azad Kashmir Government"; or
  - (c) to enable this territory to be consolidated in any way during the period of truce to the disadvantage of the State.
- (2) That from our point of view the effective insurance of the security of the State against external aggression, from which Kashmir has suffered so much during the last ten months, was of the most vital significance and no less important than the observance of internal law and order and that, therefore, the withdrawal of Indian troops and the strength of Indian forces maintained in Kashmir should be conditioned by this overriding factor. Thus at any time the strength of the Indian forces maintained in Kashmir should be sufficient to ensure security against any form of external aggression as well as internal disorder.
- (3) That as regards Part III, should it be decided to seek a solution of the future of the State by means of a plebiscite, Pakistan should have no part in the organisation and conduct of the plebiscite or in any other matter of internal administration in the State.

4. If I understood you correctly, A-3 of Part II of the resolution does not envisage the creation of any of the conditions to which we have objected in paragraph 3(1) of this letter. In fact, you made it clear that the Commission was not competent to recognize the sovereignty of any authority over the evacuated areas other than that of the Jammu and Kashmir Government.

As regards paragraph 3(2), the paramount need for security is recognized by the Commission, and the time when the withdrawal

of Indian forces from the State is to begin, the stages in which it is to be carried out and the strength of Indian forces to be retained in the State, are matters for settlement between the Commission and the Government of India.

Finally, you agreed that Part III, as formulated, does not in any way recognize the right of Pakistan to have any part in a plebiscite.

5. In view of this clarification, my Government, animated by a sincere desire to promote the cause of peace, and thus to uphold the principles and prestige of the United Nations, have decided to accept the resolution.

Accept, Excellency, the assurances of my highest consideration.

*Reply from the Chairman of the Commission to the Letter from the Prime Minister of India, dated August 20, 1948.*

New Delhi,

August 25, 1948.

Excellency,

I have the honour to acknowledge the receipt of your communication dated August 20, 1948, regarding the terms of the resolution of the United Nations Commission for India and Pakistan which the Commission presented to you on August 14, 1948.

The Commission requests me to convey to Your Excellency its view that the interpretation of the resolution as expressed in paragraph 4 of your letter coincides with its own interpretation, it being understood that as regards point (1) (c) the local people of the evacuated territory will have freedom of legitimate political activity. In this connection, the term "evacuated territory" refers to those territories in the State of Jammu and Kashmir which are at present under the effective control of the Pakistan High Command.

The Commission wishes me to express to Your Excellency its sincere satisfaction that the Government of India has accepted the resolution and appreciates that spirit in which this decision has been taken.

I wish to avail myself of this opportunity to renew to Your Excellency the assurances of my highest consideration.

## APPENDIX V

*Letter dated 20th August, 1948, from the Prime Minister of India, to the Chairman of the U.N.C.I.P. concerning Northern Territories (S/1100, Para 80).*

Excellency,

You will recall that in our interview with the Commission on the 17th August, I dealt at some length with the position of the sparsely populated and mountainous region of the Jammu and Kashmir State in the north. The authority of the Government of Jammu and Kashmir over this region as a whole has not been challenged or disturbed, except by roving bands of hostiles, or in some places like Skardu which have been occupied by irregulars or Pakistan troops. The Commission's resolution, as you agreed in the course of our interview on the 18th, does not deal with the problem of administration or defence in this large area. We desire that, after Pakistan troops and irregulars have withdrawn from the territory, the responsibility for the administration of the evacuated areas should revert to the Government of Jammu and Kashmir and that for defence to us. (The only exception that we should be prepared to accept would be Gilgit). We must be free to maintain garrisons at selected points in this area for the dual purpose of preventing the incursion of tribesmen, who obey no authority, and to guard the main trade routes from the State into Central Asia.

Accept, Excellency, etc.

(Sd.) JAWAHARLAL NEHRU,  
Prime Minister of India.

*Letter dated 25th August 1948, from the Chairman of the U.N.C.I.P. to the Prime Minister of India, concerning Northern Territories (S/1100 Para 81).*

Excellency,

I have the honour to acknowledge receipt of your letter of 20 August 1948 relating to the sparsely populated and mountainous region of the State of Jammu and Kashmir in the north.

The Commission wishes me to confirm that, due to the peculiar conditions of this area, it did not specifically deal with the military aspect of the problem in its Resolution of 13 August 1948. It believes however, that the question raised in your letter could be considered in the implementation of the Resolution.

Accept, Excellency, etc.

(Sd.) JOSEF KORBEL.

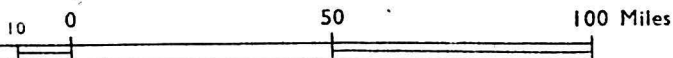




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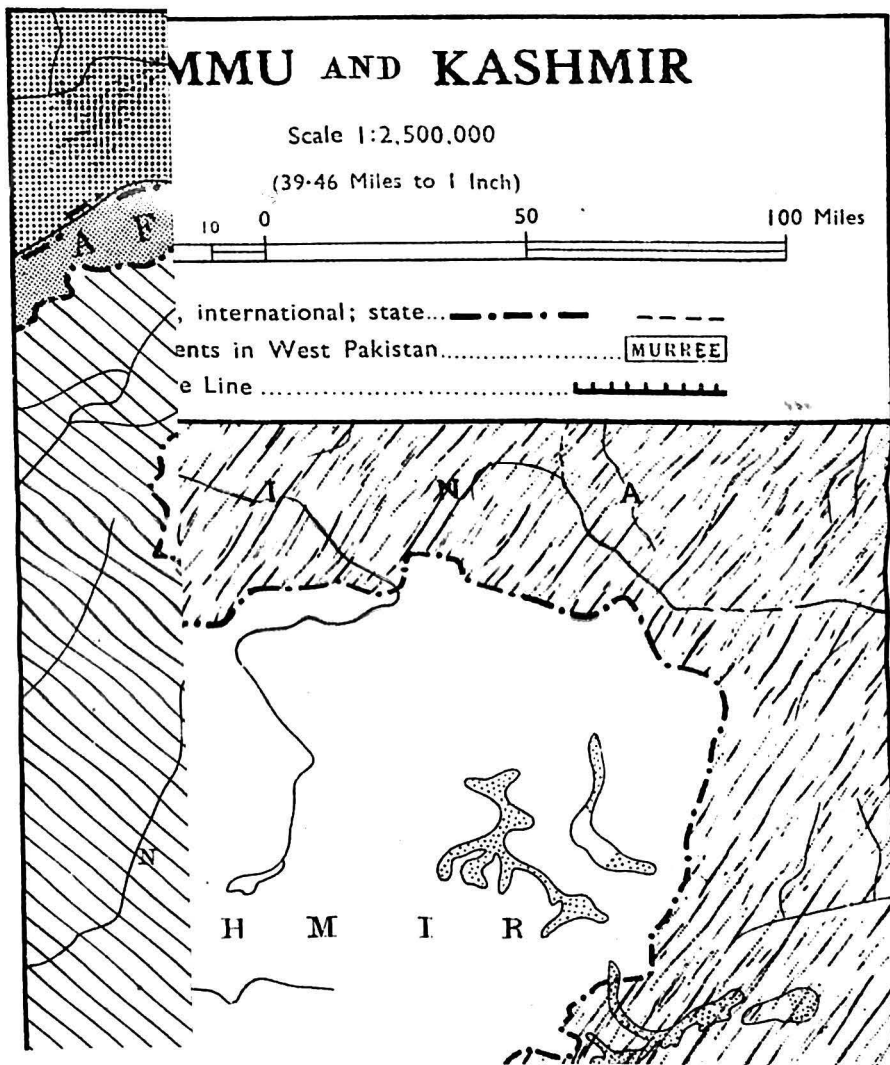


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