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## CONTENTS

	PAGE
INTRODUCTION . . . . .	1
KASHMIR CONFLICT—ITS ORIGIN . . . . .	3
BASIC ISSUES . . . . .	8
KASHMIR AND RELIGION . . . . .	18
INDIA AND KASHMIR . . . . .	23
CONCLUSION . . . . .	26
APPENDIX I . . . . .	28
APPENDIX II . . . . .	31
APPENDIX III . . . . .	34

## INTRODUCTION

The Kashmir problem was first referred to the Security Council on January 1, 1948, when India, invoking Article 35 of the Charter of the United Nations, complained to the Council that Pakistan was engaged in aggression against India.

2. Since then more than eight years have passed. During this long period innumerable debates and discussions have taken place. The Security Council itself considered the Kashmir question in several of its meetings and at great length. In June 1948, it appointed a Commission of five members and directed it to proceed to India and Pakistan. The Commission helped to bring about a cease-fire after the war had ravaged Kashmir for more than a year; but the Commission failed to achieve anything more. There then followed the appointment of three successive mediators—Gen. MacNaughton, Sir Owen Dixon and Dr. Frank Graham. Success did not attend their mediatory efforts. Finally, in an effort to resolve the deadlock the Prime Ministers of India and Pakistan conducted direct negotiations.

3. While these negotiations were in progress, Pakistan entered into a military aid agreement with the United States, seeking thereby to exert military pressure upon India. Soon after this agreement, Pakistan joined the military alliances known as the SEADO and the Baghdad Pact. It has exploited the forum provided by these alliances for conducting a campaign with the object of putting political pressure upon India.

4. Within Pakistan a virulent campaign of vilification of India has been launched and sustained. Hatred for India is being engendered among the people. Newspapers and politicians have, once again, raised the cry of jihad (holy war). It is evident that a sober and realistic con-

sideration of the Kashmir question is impossible in an atmosphere charged with such noxious propaganda.

5. The long years of debate and discussion have tended to blur public memory of the basic facts of the Kashmir Conflict. These facts need to be restated clearly.



## KASHMIR CONFLICT—ITS ORIGIN

6. The Kashmir conflict had its origin in Pakistan's determination to secure by force the accession of the State of Jammu and Kashmir. All the arguments advanced and justifications pleaded by Pakistan only help to bring into sharp relief this fact.

7. On August 15, 1947, when the partition of the Indian sub-continent took place, the state of Jammu and Kashmir was faced, along with other Indian Princely States, with the alternative of acceding to either India or Pakistan. The State did not immediately make up its mind on accession. In order to maintain the *status quo*, the Government of Kashmir approached the Governments of India and Pakistan to enter into a Standstill Agreement with the State. The Government of Pakistan concluded such an agreement with the duly constituted Government of the State.

8. Intensely preoccupied with the problem of the merger of more than 500 Princely States, which lay within her border, India was prepared to wait until the Government of Kashmir had made up its mind on accession. Pakistan, on the other hand, was determined, to coerce the State into accession to it despite the Standstill Agreement. With this object, Pakistan began an economic blockade of the State in violation of the Standstill Agreement. Supplies of food, petrol and other essential commodities to Kashmir were cut off by the authorities in Pakistan. Communications were tampered with, and free transit of people was hindered.

9. While protesting against the economic blockade, the State withstood the resulting pressure. Pakistan then began to apply military pressure on the State. Border raids were organised and Pakistan nationals began to infiltrate into the

State territory from the adjoining districts of Pakistan.

10. The Government of Jammu and Kashmir made repeated representations to the authorities in Pakistan appealing to them to stop violations of the State territory. These representations brought forth only brazen denials. By October 1947 raiders armed with modern weapons began to infiltrate into Poonch and Mirpur areas.

11. On October 15 there began the siege of Fort Owen; nearly 5,000 raiders were involved in these operations. By October 22 infiltrations and raids were transformed into a full-scale military attack upon the State of Jammu and Kashmir.

12. Pakistan thus forced upon the people of Kashmir a cruel war which brought death and devastation. Towns and villages were sacked and burnt and large-scale massacre of Kashmiri people—of Muslims and Hindus alike—took place. The raiders rapidly advanced towards the Valley. On October 27 they were barely four and a half miles away from the capital, Srinagar.

13. At this stage, the legally constituted Government of Jammu and Kashmir, of which the Maharaja was the Head and with whom Pakistan had entered into the Standstill Agreement, sent on October 24, 1947, an urgent appeal to the Government of India for help, requesting that the State be allowed to accede to India.

14. In response to the appeal for help from Kashmir, India decided to accept the Instrument of Accession signed by the Maharaja and supported by the Kashmir National Conference. On the morning of October 27, Indian forces were flown to Kashmir.

15. It should be clearly stated that even up to this stage Pakistan never suggested that the future of Kashmir should be determined by ascertaining the wishes of the people. There was never any reference made by Pakistan to any democratic methods and procedures. The invasion was producing results. The advance column of the invaders had reached the outskirts of Srinagar. Pakistan appears to have felt confident that the method of force already

adopted held out surer promise of achieving its objectives than the uncertain processes of democracy.

16. According to Mr. Campbell-Johnson, Public Relations Officer to Lord Mountbatten, Mr. Jinnah ordered Pakistani troops to march into Kashmir on October 27, 1947, as soon as it became obvious that the tribesmen alone would fail to capture Srinagar. In his own words:

“In the middle of today’s (October 28, 1947)

Defence Committee, Auchinleck rang up Mountbatten from Lahore to say that he had succeeded in persuading Jinnah to cancel orders given the previous night for Pakistan troops to be moved into Kashmir. The order had reached General Gracey, the acting Pakistan Commander-in-Chief in the temporary absence of General Messervy, through the Military Secretary of the Governor of the West Punjab, with whom Jinnah was staying. Gracey replied that he was not prepared to issue any such instructions without the approval of the Supreme Commander (Auchinleck). At Gracey’s urgent request, Auchinleck flew to Lahore this morning and explained to Jinnah that an act of invasion would involve automatically and immediately the withdrawal of every British officer serving with the newly formed Pakistan Army.”

17. On the same day, Campbell-Johnson also noted in his diary, a conversation between Mountbatten and the editor of *The Statesman* of Calcutta:

“Jinnah at Abbotabad, he (Lord Mountbatten) continued, had been expecting to ride in triumph into Kashmir. He had been frustrated.”

18. The arrival of the Indian army on October 27 and the spirit of resistance shown by the people in the Valley of Kashmir turned the tide of war. The units of the Indian Army arrived just in time to save Srinagar, from sharing the

fate of Mirpur, Poonch, Kotli, Jhangar, Nowshera, Bhimber and Baramula.

19. It was only when the Indian Army had entered Kashmir that the scale and extent of Pakistan's participation in the aggression became known to India. The invaders were using Pakistan's territory as base for military operations and the Pakistanis were training and guiding them. Pakistan was supplying stores, military equipment and transport. Pakistani nationals and members of its armed forces were found amongst invaders.

20. The Government of India repeatedly requested the Government of Pakistan to deny facilities to the invaders but there was no response.

21. On December 22, 1947, the Prime Minister of India personally handed over to the Prime Minister of Pakistan a letter in which the details of the aid and assistance which the raiders had been receiving from Pakistan were recited. The letter formally asked the Government of Pakistan to deny to the raiders:

- “(i) access to the use of Pakistan territory for operations against Kashmir;
- (ii) all military and other supplies;
- (iii) all other kinds of aid that might tend to prolong the present struggle.”

22. No reply was received to this letter. On December 26, 1947, the Prime Minister of India requested for a very early reply to it. Pakistan, however, remained silent.

23. India had to make a most difficult decision. Pakistan was carrying on an undeclared war in Kashmir. All along the Pakistan-Kashmir border, there were a large number of bases where invaders were being collected and from where supplies and services to them were being organised. In these circumstances, India would have been perfectly justified in attacking the bases and rendering them ineffective; but in her anxiety not to aggravate Indo-Pakistan relations, India deliberately disregarded the dictates of military necessity and decided to refer the Kashmir dispute to the Security Council in the legitimate hope that the

United Nations would bring to bear the weight of world public opinion upon Pakistan and prevail upon it to discontinue its aggression in Kashmir.

24. On December 31, 1947, the Prime Minister of India informed the Prime Minister of Pakistan that India had decided to refer the Kashmir question to the Security Council and to request the Council to ask the Government of Pakistan:

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

## BASIC ISSUES

"Any consideration of the Kashmir problem must take into account the basic issues involved. These issues are:

- (A) Had Pakistan, in fact, committed aggression as alleged by India in her complaint to the Security Council?
- (B) Whether the accession of the State of Jammu and Kashmir to India was valid in law.
- (C) Whether India's position on the question of plebiscite has remained consistent with the pledges given at the time of acceptance of the State's accession, and with the resolution adopted by the U.N. Commission on India and Pakistan.

These issues are dealt with briefly in the succeeding paragraphs.

### (A) *Pakistan's Aggression*

In the whole history of the Kashmir conflict, there is perhaps no other fact more clearly established than Pakistan's aggression in Kashmir.

Pakistan was an aggressor, and the violations of international law it committed were not mitigated by constant protestations of innocence. One such instance of Pakistan's lack of candour is contained in the document filed by Pakistan in the Security Council in reply to India's complaint. The following extract is of interest:

".....The Pakistan Government emphatically repudiate the charges that they have supplied military equipment, transport and supplies to the invaders or that Pakistan officers are training, guiding and otherwise helping them."

29. Persistent denials by Pakistan may have temporarily

misled the unsuspecting and the unwary; but once the U.N. Commission arrived on the sub-continent of India, the facts could no longer be concealed. In July 1948, the Foreign Minister of Pakistan finally had to admit before the Commission that the Pakistan Army was fighting in Kashmir.

30. On August 13, 1948, the U.N. Commission in its resolution of that date at last recognised the falsity of Pakistan's denials. The following is the relevant extract from the resolution:

"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."

31. The U.N. Commission's verdict was further upheld by Sir Owen Dixon on September 5, 1950. He reached the following conclusion:

".....When the frontier of the State of Jammu and Kashmir was crossed.....by the hostile elements, it was contrary to international law and when in May 1948 units of the regular Pakistan forces moved into the territory of the State, that too was inconsistent with international law."

32. On November 2, 1947, referring to the invasion of Kashmir, the Prime Minister of India had asked a simple question: "Is this not a violation of International Law?" It took three years to get an answer to the question. And the answer was in the affirmative.

33. India's complaint has thus been proved to be true in every material particular.

34. Revealing disclosures about Pakistan's aggression were made in March 1949, by the Premier of the North-West Frontier Province of Pakistan and by the Khan of Mamdot. In his budget speech to the Legislative Assembly of the Frontier Province on March 7, 1949, Premier Abdul

Qayyum Khan advocated a special grant for the tribesmen and justified such an allotment in these words:

“The House will recall with pride the fact that in our greatest hour of danger the Masuds responded to our call by rushing to the rescue of the oppressed Muslims of Jammu and Kashmir State.”

35. In the summer of 1952, the Khan of Mamdot claimed from the Pakistan Government a sum of Rs. 68,000 which, he asserted, as Chief Minister of Punjab at the time, he spent out of his own pocket to facilitate the tribesmen's invasion!

36. Throughout this unfortunate conflict on Kashmir, India has always urged that due consideration be given to the established fact of Pakistan's aggression. It is because this has been ignored that no way for a settlement has thus far been found.

#### (B) *Kashmir's Accession*

37. In a memorandum (dated May 22, 1946) on 'States Treaties and Paramountcy' presented by the U.K. Cabinet Delegation to the Chancellor of the Chamber of Princes in India, the question of the future of the Princely States was considered as follows:

“When a new fully self-governing or independent Government or Governments come into being in British India, His Majesty's Government's influence with these Governments will not be such as to enable them to carry out the obligations of paramountcy. Moreover, they cannot contemplate that British troops would be retained in India for this purpose. Thus, as a logical sequence and in view of the desires expressed to them on behalf of the Indian States, His Majesty's Government will cease to exercise the powers of paramountcy. This means that the rights of the States which flow from their relationship to the Crown will no longer exist and that all the rights surrendered



by the States to the paramount power will return to the States. Political arrangements between the States, on the one side, and the British Crown and British India, on the other, will thus be brought to an end. The void will have to be filled either by the States entering into a federal relationship with the successor Government or Governments in British India, or failing this, entering into particular arrangements with it or them."

38. The legal provision under which the Princely States could enter into a "federal relationship with the successor Government or Governments in British India" was to be found in the Indian Independence Act of 1947 and the India Act of 1935. These two Acts of British Parliament which created the legal basis for Indian and Pakistani Independence provided that a State could accede to the Dominion of India or Pakistan by an Instrument of Accession executed by the ruler thereof. This legal position was affirmed on several occasions by the late Mr. Mohammad Ali Jinnah who was the architect of Pakistan and was its first Governor-General. On June 17, 1947, he had declared:

"Constitutionally and legally the Indian States will be independent sovereign States on the termination of paramountcy and they will be free to decide for themselves to adopt any course they like. It is open to them to join the Hindustan (Indian) Constituent Assembly or the Pakistan Constituent Assembly, or decide to remain independent."

A fortnight before Partition, on July 31, 1947 Mr. Jinnah declared again:

"They are...free to join either of the two Dominions or to remain independent."

39. The Accession of the State of Jammu and Kashmir became complete and final by the execution of the instrument of Accession by the Ruler, and on its acceptance by

the Governor-General of India. It was on this very basis that the accession of more than 500 States took place.

40. If the Ruler of Kashmir had executed the Instrument of Accession in favour of Pakistan, no one in India or in Pakistan would have called into question such an accession. This was perfectly well understood at the time. In a speech made on June 29, 1948, at the Imperial Institute in London, Lord Mountbatten clearly affirmed this position. He stated:

“ . . . Had he (Ruler of Kashmir) acceded to Pakistan before August 14, 1947, the future Government of India had allowed him to give His Highness an assurance that no objection whatsoever would be raised by them. Had His Highness acceded to India before August 14, Pakistan did not then exist and therefore could not have interfered.”

41. At no time during the debates and discussions in the Security Council was the legality of accession of Kashmir to India ever called into question. The resolutions adopted by the U.N. Commission on India and Pakistan on August 13, 1948, and January 5, 1949, were, in fact, predicated on the assumption that the accession was perfectly legal.

42. In the resolution of August 13, 1948, Pakistan was required to withdraw its army, tribesmen and its nationals who went there for fighting; this provision was, obviously, made because Pakistan had no legal status in Jammu and Kashmir. Furthermore, the right of India to maintain forces in Jammu and Kashmir for the purpose of defence and for assisting the local authorities in the observance of law and order was clearly recognised. Again, in the resolution of January 5, 1949, the proposed Plebiscite Administrator was to be appointed by the Jammu and Kashmir Government from whom he was to derive the powers necessary for organising and conducting the plebiscite, and to whom, along with the Security Council, he was to submit the result of the plebiscite. In addition, the right of the

**Indian Army to defend the State was affirmed in clear and specific terms. All these facts clearly establish that the accession of the State of Jammu and Kashmir to India was legally valid and is beyond question.**

**(C) *Kashmir and Plebiscite***

43. Any impartial examination of India's conduct on the question of ascertaining the wishes of the people of Kashmir would lead to only one conclusion, *viz.*, that India's position has throughout been consistent with the promise it unilaterally made to ascertain the wishes of the people.

44. Reference must, first, be made to the actual terms in which India made the unilateral offer to ascertain the wishes of the people. The Governor-General of India, in a letter dated October 27, 1947, to the Ruler of Kashmir, made the following statement:

“...It is my Government's (India's) wish that *as soon as* law and order have been restored in Kashmir and its soil cleared of the invader, the question of the State's accession should be settled by a reference to the people.”

45. It should be noted that the offer was made unilaterally; secondly, it was not made to Pakistan; indeed, Pakistan was, at that time, engaged in a brutal aggression and could hardly be entitled to any such offer; thirdly, the unilateral offer did not form part of the Instrument of Accession which was unqualified and complete. Consequently, Pakistan could not acquire any right to make any claims on its basis. It should, further, be noted that India's offer to seek the will of the Kashmiri people on the accession issue was to be implemented *only after* the expulsion of the invaders from the State of Jammu and Kashmir and the restoration of law and order there.

46. It will be recalled that from the very beginning of the invasion of Kashmir, India had repeatedly appealed to Pakistan to assist in effecting the withdrawal of the invading force. This appeal was met with scorn and contempt. Pakistan, as we have already noted, denied all responsibility

for the invasion. India then appealed to the Security Council. While the matter was being debated there, Pakistan despatched its regular armies into Kashmir. How, in these circumstances, can India be expected to ascertain the wishes of the people of the States as a whole?

47. The U.N. Commission recognised the difficulties which Pakistan had created by sending its regular armies into Kashmir.

48. In a resolution which the Commission adopted on August 13, 1948, it provided for:

- (a) the establishment of a cease-fire;
- (b) a truce agreement;
- (c) the Governments of India and Pakistan to enter into consultations with the Commission to create such conditions whereby free expression of the wishes of the people of Kashmir could be secured.

49. So far, only the provision in the resolution dealing with the cease-fire agreement has been put into effect. The provisions in regard to the Truce Agreement have been systematically set at naught by Pakistan. One has only to quote the relevant portion of the resolution to realise the correctness of this statement.

50. In its resolution of August 13, 1948, the Commission provided as follows:

"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."

51. The Government of Pakistan has, to this day, done nothing towards the fulfilment of this very first and primary obligation. On the contrary, they have systematically reinforced their military position within the occupied portion of the State territory. It is, therefore, unrealistic to talk about India's obligations in regard to ascertaining the

wishes of the people of Kashmir without also taking into account the fact that it is Pakistan which has for the last eight years made the performance of these obligations utterly impossible.

52. The failure to withdraw its troops from the State of Jammu and Kashmir is not the only impediment put by Pakistan in the path of peaceful settlement of the Kashmir conflict. Another, and more serious obstruction, has come from its determined effort to organise the so-called Azad Kashmir forces into a disciplined force with the necessary administrative and ancillary units commanded and led by Pakistani officers.

53. When the U.N. Commission adopted the resolution dated August 13, 1948, it had, apparently, proceeded on the assumption that the Azad Kashmir forces were a mere rabble. India even then had insisted on their being completely disarmed and disbanded. In 1949, however, the Commission discovered the full meaning and significance of India's demand. According to the Military Advisers of the Commission these "Azad" forces constituted a formidable force. In its third report, the Commission reported as follows:

"Although it might be a matter of discussion whether the numerical strength of the Azad Kashmir forces has actually increased since August 1948, there is no question that those forces who have since been working in close co-operation with the Pakistan regular army and officered by that army have increased their fighting strength. It is reasonable to suppose that if the Commission had been able to foresee that the cease-fire period would be prolonged throughout the greater part of 1949 and Pakistan would use that period to consolidate its position in the Azad territory, the Commission would have dealt with this question in Part II of the resolution of 13th August."

54. Here was militarisation with vengeance instead of

demilitarisation. Faced with the increase in the fighting strength, and more than that, the consolidation of its position by Pakistan, India, naturally, insisted upon *complete*, as distinguished from the large-scale, disarmament and disbandment of Azad Kashmir forces. Obviously, the Pakistan Army, after its withdrawal from the State, could not be allowed to leave another fighting force in the shape of the Azad Kashmir forces. The withdrawal of the Pakistan Army had to be complete and absolute. This cannot be brought about if a part of the Pakistan forces, the so-called Azad Kashmir Army, were to be maintained intact and left behind.

55. It may be noted that the clandestine building up of these forces of Pakistan disguised as Azad Kashmir forces was contrary to the terms of the August 13 Resolution which had specifically called upon the High Commands of India and Pakistan to "refrain from taking any measures that might augment the military potential of the forces under their control ..... (including) all forces organised and unorganised, fighting or participating in hostilities on their respective side."

56. Pakistan has, obviously, no intention to undo her aggression in Kashmir. This is all too evident from the entire course of its conduct during the last three years. Its membership of military alliances and its military aid agreement have only one meaning for India, namely, that Pakistan wishes to reinforce its occupation of Kashmir and to seek a solution of the Kashmir conflict by means of military and political pressure. The Government and people of India could not, obviously, be expected to look upon these actions of Pakistan as symbolising its peaceful intentions.

57. It will thus be seen that the question of ascertaining the wishes of the people of Kashmir is by no means a simple question. Pakistan must, first of all, do everything to vacate the territory which it has forcibly occupied as a result of its aggression. It must also give effect to the resolutions adopted by the U.N. Commission on August 13, 1948 and January 5, 1949. It is equally necessary for

Pakistan to completely disband and disarm the large forces which it has built up and which it disguises under the name of Azad Kashmir forces.

## KASHMIR AND RELIGION

58. There is nothing more destructive to a true understanding of the Kashmir problem than attempts to reduce it into religious terms. A dramatic incident reported by Margaret Bourke-White\* in her vivid account of the tribal invasion of Kashmir would illustrate the fallacy of the argument advanced by Pakistan that simply because the majority of the people of Kashmir profess Islamic faith, they must, inevitably, become part of Pakistan:

"In Baramula the towns people told me of a young Muslim shopkeeper who had sacrificed his life rather than recant in his creed of religious tolerance. His martyrdom had taken place almost under the shadow of the convent walls, and in the memory of the devoted Kashmiris he was fast assuming the stature of a saint.

When the tribesmen invaded Kashmir and terrorised the countryside, Sherwani, who knew every footpath in the Valley, began working behind the lines, keeping up the morale of the besieged villagers, urging them to resist and to stick together regardless of whether they were Hindus, Sikhs or Muslims, assuring them that, help from the Indian Army and People's Militia was on the way. Three times by skillfully planted rumours he decoyed bands of tribesmen and got them surrounded and captured by the Indian Infantry. But the fourth time he was captured himself.

The tribesmen took Sherwani to the stoop of a little apple shop in the town square in front of them

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*Half way to freedom by Margaret Bourke-White,*



with the butts of rifles. Knowing Sherwani's popularity with the people, his captors ordered him to make a public announcement that joining Pakistan was the best solution for Muslims. When he refused, he was lashed to the porch posts with ropes, his arms spread out in the shape of a cross, and he was told he must shout, 'Pakistan Zindabad: Sher-e-Kashmir Murdabad.'

It was a curious thing that the tribesmen did next. I don't know why these savage nomads should have thought of such a thing, unless the sight of the sacred figures in St. Joseph's Chapel on the hill just above had suggested it to them. They drove nails through the palms of Sherwani's hands. On his forehead they pressed a jagged piece of tin and wrote on it: 'The punishment of a traitor is death.'

Once more Sherwani cried out, 'Victory to Hindu-Muslim unity,' and fourteen tribesmen shot bullets into his body."

59. The martyrdom of Sherwani at the hands of his co-religionist throws into sharp relief the inner meaning of the conflict in Kashmir.

60. For more than half a century, the people of India had struggled for emancipation of their country from foreign domination. Hindus, Muslims, Christians, Sikhs and Parsis—all made sacrifices for this great cause. People from all parts of India joined in the great movement, which developed into a powerful force under Mahatma Gandhi's leadership. All over Asia and Europe it evoked sympathy and support. The movement aimed at not merely freeing India from British domination but also building a united, independent and democratic India. Against it stood many sectarian, religious, feudal and other vested interests. The Muslim League represented one of these. It set itself up against the main stream of Indian nationalism, endeavouring to sow disruption and discord by inciting religious hatred. The Muslim League provided a counterpoise to the growing national

movement and as such it received encouragement and support from various quarters. But the national movement grew in strength.

61. At the end of the last war, it became clear that India could no longer be held in thralldom.

62. Realising that Britain could no longer rule India and that the Indian national movement was on the eve of its final victory, the League intensified its activities and caused tremendous strife. It was aided in this by its Hindu counterpart in the Mahasabha, the Jan Sangh and others. The Indian national movement fought against both. It was in this context that the British Government announced its Partition Plan on June 3, 1947. And on August 15, 1947, the partition was effected.

63. The dividing line of partition was not a religious one. It was political, despite the religious colouring which Pakistan endeavoured to give to it. India was partitioned between composite Indian nationalism, on the one hand, and reactionary political sectarianism, on the other. India accepted the partition as it provided the only peaceful means of attaining freedom.

64. Acceptance of the partition as a political necessity did not mean that India also accepted the entire ideological facade which the Muslim League had created for its own purposes. Such an acceptance would have struck at the very foundations on which India was endeavouring to build the entire structure of her newly won freedom.

65. Speaking at a Press Conference on November 16, 1949, the Prime Minister of India stated:

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

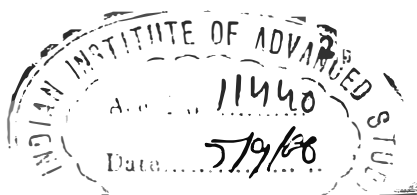
66. The reason why India repudiates Pakistan's entirely novel concept of nationality is simple enough: Indian Constitution is democratic and not theocratic. Even after partition India has over 40 million Muslims as against Pakistan's 60 millions. These Muslim citizens of India enjoy complete equality with the other citizens. They occupy an important position in the public life of the country and in the judicial, executive and diplomatic services of India.

67. In tragic contrast is the position of the bare ten million Hindus left in the Islamic theocracy of Pakistan.

68. If one examines the Kashmir conflict in the light of history, it becomes clear why India cannot recognise Pakistan as the self-styled Protector of Islam; consequently too, India cannot accept the argument that merely because three million people of Kashmir are Muslim, the State must be annexed to Pakistan. India with her 40 million Muslim citizens is quite capable of ensuring the well-being and economic, social, and cultural progress of the people of Kashmir.

69. In the ultimate analysis, the well-being of people is not determined by mere religious affinity between the Government and the people. This is amply borne out by what is going on in the Pakistan-occupied Kashmir where people live a life of frustration without any inspiration of social and economic progress, constantly being imposed upon by non-Kashmiri people, and lacking even in the most elementary forms of democracy. Personal intrigue and rivalry alone determine the political life of the territory.

70. The Jammu and Kashmir State of the Indian Union is governed by the duly elected representatives of the people just as West Bengal or Andhra or Bihar is governed by its own people. All who have visited Kashmir, and last year 50,000 people visited the State, have testified to the remarkable progress made by the people of the State in every sphere of life. It cannot be to anybody's advantage to disturb this peace, progress and stability. The Muslim citizens in India, as indeed the Government and people of India, look upon Kashmir as a symbol of their hopes and



aspirations for a way of life which is above religious strife and intolerance.

## INDIA AND KASHMIR

Apart from the fact that the partition of India was not effected on the basis of religion, it applied only to what was known as British India. The Indian Princely States were specifically excluded from it. To this effect the British Government made an announcement simultaneously with the announcement of the partition scheme on June 3, 1947. The following is the text of the announcement:

“His Majesty’s Government wish to make it clear that the decisions announced above (about partition) relate only to British India and that their policy towards the Indian States contained in the Cabinet Mission Memorandum of 12th May 1946 remains quite unchanged.”

72. Pakistan cannot invoke the partition scheme in aid of its claim to Kashmir. And as has been stated already, India cannot accept Pakistan’s claim to Kashmir on the basis of religion.

73. The factor of geographical contiguity does not give Pakistan any special claim to Kashmir; for India is in equal proximity to the State.

74. As regards economic relations, nearly 80 per cent of Kashmir’s imports come from the present-day India and a similar percentage of her exports found their market in India. As for tourists who constitute the most important source of revenue for the State. India contributed an overwhelming number of them. This should not cause surprise if one only compared the size and resources of India with those of Pakistan.

75. Another argument which Pakistan advances in support of her claim to Kashmir is that since the sources of the three most important rivers in West Pakistan

are situated in Kashmir, Pakistan cannot feel a sense of security until she acquires control over them.

76. If the argument is taken seriously it has absurd implications. For, on this basis, Pakistan could lay claim to Indian territory where the sources of all the rivers, except one, which flow into the most populous region of Pakistan, viz., East Pakistan, are situated. During the last eight years rivers in East and West Pakistan have continued to flow without any interruption. In other parts of the world too, States do not always control the sources of the rivers which constitute their life-blood.

77. India's rebuttal of Pakistan's claim to Kashmir on geographic, economic and other considerations does not mean that its own relationship with Kashmir is based on these considerations. India and Kashmir are bound together by common suffering in the struggle for political and economic freedom.

78. The Prime Minister of India in a speech in Parliament on March 5, 1948, described how the people of Kashmir and India shared in the common struggle:

"Those people, men and women of Kashmir, who are with us and who are fighting for their freedom and liberty there, they are not newcomers in the struggle for freedom; for the greater part of a generation, they have fought for freedom of Kashmir, in Kashmir; they have suffered for it and some of us have deemed it a privilege to be associated with them in this fight for the freedom of Kashmir against autocratic rule. These people are with us today. Who are their opponents, who are against them in Kashmir or elsewhere? What has been their record in the past ten, twenty years in regard to the freedom of Kashmir? It is an interesting speculation and an interesting enquiry, because these gentlemen who talk about the autocracy, of the Ruler of Kashmir, who talk about autocracy there, what did they do during these

last ten, twenty years? They never fought for the freedom of the people of Kashmir; most of them supported that autocracy; most of them opposed the freedom movement in Kashmir. Now, because of entirely different reasons, they have become the champions of the freedom of Kashmir. And what is the type of freedom they have brought into Kashmir to-day? The freedom so-called that they have brought into Kashmir is the license to loot and murder and burn that lovely country and to abduct and carry away the beautiful women of the Jammu and Kashmir State; and not only carry them away, but place some of them in the open market-place for sale! So let us have this background before us when we consider this Kashmir story."

## CONCLUSION

79. Whichever way one views the history of the Jammu and Kashmir State during the last eight years, there are only two basic approaches to the solution of the problem: one is obviously based on legal, and constitutional realities; and the other on practical considerations. The Government of India is prepared to consider the problem in either terms.

80. Legally and constitutionally the State of Jammu and Kashmir is part of the Indian Union. Pakistan had committed an act of wanton aggression against the Indian Union. The Government of Pakistan must undo that aggression, and vacate all the territories occupied by them before steps could be taken to ascertain the wishes of the people of the entire State. In any arrangements to be made for this purpose, Pakistan cannot obviously have any *locus standi*.

81. The U.N. Commission on India and Pakistan accepted this position on August 25, 1948. The Commission confirmed that "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".\*

82. Nearly nine years have gone by since Pakistan invaded Kashmir. During these long years, the people of Kashmir could not remain in a state of suspense, awaiting Pakistan's withdrawal from the occupied territories. The accession of Kashmir to India and the establishment of popular rule in the State created the necessary conditions, for the first time in Kashmir's history, for the people to

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\*See Appendix III.



develop their economy by harnessing the resources of the State. The Government of India placed at the disposal of the State resources as well as technical skill. As a result of this, the Government of Kashmir led by the National Conference succeeded in putting into effect large development projects. Considerable and rapid progress has been made in the State in all branches of national economy. Education, public health, rural development, etc., have considerably expanded.

83. If the Kashmir problem is approached from a practical standpoint, one must take into account all the changes that have taken place in Kashmir which is divided by the cease-fire line. The cease-fire line has been the only achievement to the credit of the U.N., on the one hand, and India and Pakistan, on the other. If this line is to be obliterated, it should be done in the interest of achieving something better than what at present exists. Certainties and the stability of today should not be sacrificed.

84. There is not much point in taking a step which, as the Prime Minister of India urged in Parliament on March 29, 1956, "would be disruptive, which would upset things which had settled down and which might lead to migration of people this way or that way and which further, if that happened, would again lead to conflict with Pakistan which (India) wanted to avoid; because, while we were desirous of settling this Kashmir problem with Pakistan, there would be no settlement of the Kashmir problem if that itself—the manner of settling itself, would lead to conflict with Pakistan. This is an important consideration; because, as things settle down, any step which might have been logical some years back becomes more and more difficult, means uprooting of things that have been fixed—legally, constitutionally and practically."

## APPENDIX I

Resolution of the Commission of August 13, 1948:

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 effecting 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, organized and unorganized, 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 as 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 being 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 the 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 II

Resolution of the Commission of January 5, 1949:

The United Nations Commission for India and Pakistan, having received from the Governments of India and Pakistan, in communications dated 23rd December and 25th December 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 co-operate 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 Commission 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 victimization.

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 cease-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 III

#### LETTER FROM THE PRIME MINISTER OF INDIA IN REPLY TO THE COMMISSION'S RESOLUTION OF AUGUST 13 1948

NEW DELHI  
*August 20, 1948.*

EXCELLENCY,

On the 17th of August, 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. Indeed, 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 the 17th January, 1948, the Pakistan Government should have informed the Council immediately of any material change in the situation while the matter continued 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 Pakistan armies 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 the 18th August, 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 recognised 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 assurance 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 the 14th of August 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 the 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.



