

The Evaluation of UN Intervention in Kashmir A Historical Prospective

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The State of Jammu and Kashmir (hereafter referred to as Kashmir) is a very mountainous region of the northwestern Indian subcontinent. India lies to its south, Pakistan to the west, and China to the north and east. Its population of roughly 8 million is predominantly Muslim, but about one-third are Hindus. Kashmir has been divided since that late 1940s along a line extending southwest to northwest; territory west of the line is under Pakistani control, while territory east of it is ruled by India.

Historical Review

The division dates from shortly after Great Britain's decision to relinquish control of British Indian to local governments. The Indian Independence Act, passed in July 1947, provided for the creation of two independent countries: Pakistan, comprised of the predominantly Muslim provinces, and India, covering the predominantly Hindu provinces. In addition, the Act technically and legally made independent some 584 princely states with a combined population of 99 million people.¹

Except for the state of Jammu and Kashmir largest of the former princely states of India, all others had linked their destinies to either one of the Dominions. Kashmir being in a very peculiar situation as it had a Maharaja (Shri Hari Singh), a Hindu ruler with a Muslim majority, wished to have more time before deciding to join either of the Dominions. In the meantime, India and Pakistan vied for the possession of Kashmir. The Indian position was that Pakistan was using mainly economic pressure on Kashmir to join with it, and this was followed by the invasion through Pakistan and from Pakistan. The Pakistan position, on the contrary, was that it did not know anything about invaders and that India was using pressure to make the Hindu Raja join with India.

When no decision, however, was forthcoming from the Maharaja. In August 1947, revolt broke out in Poonch, near the border with Pakistan. The Maharaja sent his state troops into Poonch to quell the uprising, his Muslim soldiers deserted and formed the Azad (Free) Kashmir movement. Further unrest followed in the weeks to come and culminated in the invasion of Kashmir by some 5,000 Pathan tribesmen on

October 22. They captured the outpost of Domel in the northwest and moved on in the direction of the capital, Srinagar. In addition, raiders advanced from Gilgit in the north and came within 50 Kilometers of the capital by late October.² Fighting in these encounters was fierce, and the tribesmen looted, burned, raped, and pillaged wherever they went.

After that when not being able to stop the invasion, the Maharaja wrote to the Governor General of India, Lord Mountbatten, and said that in view of the conditions obtaining at present in Kashmir he had no option but to ask for help from the Dominion of India which naturally could not send the troops asked for without his state acceding to the Dominion of India.” Lord Mountbatten, in consultation with the Govt. of India, accepted this accession but informed Kashmir that consistent with the policy whereby any state in which the issue of accession had been the subject of dispute, the question of accession should be decided in accordance with the wishes of the people of that state.³ Hence, when the Maharaja of Kashmir executed an instrument of accession in favour of India on October 26, 1947 Kashmir became legally and constitutionally a part of India.

UN Intervention

On January 1, 1948 the Indian Govt., under Article 35 of the Charter, laid down in the UN Security Council a complaint against Pakistan for its complicity with the tribesmen and officials in the tribal invasion.⁴ Moreover, India was afraid that the invasion by tribesmen from the North West Frontier Province of the state of Kashmir was likely to endanger international peace and security.

The Security Council having heard statements on the situation in Kashmir from representatives of the Govt. of India and Pakistan adopted a resolution which established “a commission of the Security Council composed of representatives of three members of the United Nations, one to be selected by India, one to be selected by Pakistan and the third to be designated by the two selected”. During the month of April the UN Commission in India and Pakistan (UNCIP)⁵ rose from three to five because of practical necessity. This commission was invested with a dual function:

1. To investigate the facts pursuant to Art. 34 of the Charter of the United Nations.
2. To exercise without interruption the work of the Security Council and supply mediatory influence to smooth away difficulties; to carry out the directives given to it by the Security Council; and to report how far the advice and direction, if any, of the Security Council have been carried out.⁶

UNCIP’s continuous efforts to restore peace and order proved successful when a cease-fire order was announced on January 1, 1949. To render this cease-fire effective, the Security Council established UNMOGIP,⁷ the main duties of which included not only observation of the cease-fire line, but also competence to decide whether the cease-fire was being violated or not.

On December 9, 1949 the commission made a final report recommending the replacement of the Commission by a Mediator. Accordingly, the first Mediator was Sir Owen Dixon, a judge of the High Court of Australia. It ended in failure because of India's stand on the withdrawal of its forces and its refusal to equate its position to that of the aggressor. The mission of Dr. F. Graham ended also in failure;⁸ the chief obstacle to his proposition of demilitarization was the difference over the number and character of the forces to be left on each side of the cease-fire line at the end of the period of demilitarization.

Accordingly, the Secretary General appointed a Belgian officer, Lieutenant General Maurice Delvoie, as Military Adviser to the Commission. He arrived in the area on January 2, 1949. One month later a group of twenty UN military observers was in place to oversee the cease-fire.⁹ This was the beginning of the United Nations Military Observer Group in India and Pakistan, UNMOGIP.

As the initial UNMOGIP mandate was both vague and indirect, its real duties were spelled out in the Karachi Agreement, a bilateral instrument between India and Pakistan. The Agreement and subsequent elaboration's on it established the UNMOGIP functions as being:

1. Observation of the cease-fire-line
2. Investigation of alleged breaches
3. Adjudication of conflicting claims
4. Recording the nature and disposition of the forces

These have been and still are the functions of UNMOGIP, derived not from a UN mandate but from bilateral national agreements.¹⁰ The first group of UNMOGIP arrived in the subcontinent in January 1949, the number has varied from 40 to 60 since then. The team was composed of officers from Austria, Belgium, Ecuador, Mexico, Norway, Sweden, Uruguay and the USA.

After a relatively calm period the situation became explosive in 1965, when fighting broke out, violating the cease-fire line, and also in other parts of the state. The United Nations established another observation mission called UNIPOM.¹¹ It did not last long in the subcontinent as it ended its duties by March 1966.¹²

It took a much smaller conflict to underline the effectiveness of UNMOGIP seriously. For two weeks in December 1971, the Indian and Pakistani armies exchanged fire in various locations in Kashmir as well as along their own borders. By the time a cease-fire went into effect, the Indian army had made significant advances beyond the original 1949 cease-fire line. Indian authorities informed the United Nations that they intended to reach a settlement on the territory in direct negotiations with Pakistan without United Nations participation. In addition, India reiterated its claim that Kashmir was an integral part of India. Shortly thereafter, India stopped reporting alleged cease-fire violations by Pakistan to UNMOGIP, although Pakistan continued to do so.¹³

Indian and World Opinion

The ineffectiveness of UN Observers in Kashmir was also noted among Indian politicians. The General Secretary of the Jana Sangh, an Indian right-wing party, strongly criticized the UN Observers, saying that “India could hardly rely on the assurances of UN Observers. Their role in Kashmir was not satisfactory” and he added that “the United Nations would undermine the country’s defence to Pakistan’s advantages”.¹⁴ The Communist Party of India was militantly opposed to the UN presence in Kashmir. They even called for the expulsion of the United Nations from Kashmir.

There is no doubt that at the time of independence paramountcy over the princely states in the subcontinent was abandoned by Britain and wrongly so. The consequence was the Kashmir dispute. This was why India went to the United Nations, making the simple request that Pakistan be asked to cease aiding those aggressors, either (our) facts were right or they were wrong; the United Nations never gave an answer. Now it is clarified by the fact Pakistan has never admitted that her troops are fighting in Kashmir.

The result is that Kashmir territory, which is under the law, under the constitution and by all canons of morality and justice Indian territory, one-third of it is to-day occupied by these illegal trespassers who are still sticking to it and Indians are passive spectators and cannot do anything. The third bungle was the offer a plebiscite which led to this confusion and resulted in a serious situation.¹⁵

When the formation of a UN military force in Kashmir was proposed, India was categorically against it. Pakistan had already requested the UN Commission in 1948 to form an international force or a neutral force.¹⁶ India had rejected this on the basis that to have such a force on its territory would be derogatory to an independent nation.¹⁷ Because UN presence in the area serves to keep the Kashmir dispute alive as an international issue. Indian has sought to define Kashmir as an internal matter, arguing that the territory is an integral part of India. As concerns a peaceful settlement, the Indian politicians were unanimous in holding that a lasting solution to the Kashmir issue could only be possible through negotiations between India and Pakistan and they considered that the United Nations could be of no assistance in achieving a lasting settlement.

There is a general feeling among many United Nations delegations that the crisis in Kashmir was prolonged because of the failure of the United Nations to implement its decisions in the disputed territory. They tried to bring about an end to the fighting but they could not provide a final solution.¹⁸

World opinion showed itself to be divided. However, it seems, particularly from the legal point of view, that Kashmir be part and parcel of India. ‘The Daily Telegraph’, Lagos, September 14, 1965 noted that “Pakistan has committed what in international law is aggression”. So India had a legitimate right to fight back. The statement added that “the demanded plebiscite on Kashmir is and insult to India”. Why should a foreign country demand a plebiscite in a territory of India?

The whole world including Muslim countries supported India saying Pakistan is the aggressor and it should stop aggression in Kashmir which was constitutionally India territory, and as one of the Muslim newspapers wrote : “India recognizes the right of the 60 million Muslim community in India to its own way of living. With its secular administration India has secured equal rights to all without making any discrimination against minorities. It is for this reason that during the armed conflict Indian Muslims acted in the same manner as the Hindus while fighting against the Muslim Pakistan army”.¹⁹

At the end it is concluded that a part of the territory of India has been invaded, is held by the enemy, and they are asking what Indians are doing to defend that territory. The government of India failed in its defence; therefore, some proposed that Indians should march their armies. Furthermore, when aggression seemed to be condemned and the United Nations seemed incapable of finding a political solution, some concluded that the Kashmir issue no longer exists in the United Nations for them, save when it is raised by Pakistan. For others, the issue was already settled when Kashmir acceded to India.

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