



NUST INSTITUTE OF POLICY STUDIES

SOLIDARITY WITH KASHMIRIS' RIGHT OF SELF-DETERMINATION

SEMINAR REPORT

INDIAN-OCCUPIED JAMMU & KASHMIR'S DESTINY

**FREEDOM FROM
INDIAN OPPRESSION**



Report of the Seminar on Indian-Occupied Jammu & Kashmir's (IOJ&K) Destiny: Freedom from Indian Oppression

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REPORT OF THE SEMINAR

ON

**Indian-Occupied Jammu & Kashmir's
(IOJ&K) Destiny:
Freedom from Indian Oppression**

NUST INSTITUTE OF POLICY STUDIES (NIPS)



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1. Source: www.refworld.org.

2. Source: Ministry of Foreign Affairs of Pakistan, <http://mofa.gov.pk/latest-letters-by-foreign-minister/>.

3. Source: Published in Dawn on September 14, 2019, <http://www.dawn.com/news/1505094/binding-resolution>.



1. Executive Summary

NUST Institute of Policy Studies (NIPS) organized the seminar on “Indian-Occupied Jammu & Kashmir’s (IOJ&K) Destiny: Freedom from Indian Oppression” on Monday, January 06, 2020, in commemoration of the Right to Self-Determination Day observed worldwide by Kashmiris on January 05 every year. The speakers and participants of the seminar expressed solidarity with the freedom struggle of Kashmiris against Indian occupation and underscored the right to self-determination of Kashmiris in line with the UN Security Council (UNSC) resolutions.⁴

The seminar highlighted the terrible plight of Kashmiris in IOJ&K, especially in the wake of India’s revocation of Article 370 of its own constitution.⁵ The speakers stressed that India’s actions violated the UNSC resolutions. The seminar brought to light the fact that India’s problem with Muslims and Pakistan ran deeper than just the dispute of Kashmir. It was stressed that while Pakistan saw the Kashmir dispute as the crux of its problems with India, the fundamentalist Hindu mindset of India in general and the Indian state in particular viewed Kashmir as but one part of the historic Muslim problem of the Subcontinent which, from the Indian perspective, could be sorted out through nothing short of either conversion or destruction of Muslims in India as well as severe debilitation of Pakistan.

This perverse thinking, it was discussed, existed because Hindutva or Hindu

religious fundamentalism considered India was the birthright of Hindus in which other peoples and other faiths had no rightful or equal share. In this sense, Hindutva considered Pakistan a historical mistake which needed to be rectified. India’s attitude and policy toward Pakistan was, therefore, revanchist at its root in myopic disregard of the logic of history. Deliberations of the seminar further underscored that Pakistan’s desire for peaceful co-existence and peaceful, just, and fair resolution of the Kashmir dispute had always been frustrated by Indian jingoism and would never be reciprocated as long as India remained hostage to its anti-Pakistan and anti-Muslim obsession tied to the extremist Hindu mindset which was holding India captive under the Modi regime.

The seminar witnessed a thorough discussion on the legal-technical aspects of the Kashmir dispute. In this regard, the need to sponsor specialized research on various legal technicalities of the issue was emphasized. It was stated that the UNSC resolutions were not just recommendatory in nature. Rather, they had a binding character and so needed to be considered binding by all parties to the dispute as well as the international community.⁶ It was stressed that Pakistan needed to advocate and argue the resolution of Kashmir issue at all forums on the basis of the binding character of these resolutions.

It was suggested that Pakistan needed to develop national legal talent and capacity in international law so that the possibilities of pro-Pakistan interpretation of technical

4. See Appendix 1 for key UNSC resolutions on Kashmir.

5. See Appendix 2 for details.

6. See Appendix 3 for details.



aspects of international law as bearing on Kashmir issue could be maximally explored and utilized.

The seminar established that the significance of comprehensive national development of Pakistan was a major enabling condition for the peaceful resolution of Kashmir issue. It was argued that on their own, growth and development would not suffice for the resolution of the Kashmir issue but they could create conditions for the formulation of a consolidated response on the part of Pakistan aimed at the peaceful resolution of the dispute through the improvement of Pakistan's bargaining position and the increase of its relative power.

The seminar also highlighted the need for exhaustive scenario planning focused on identifying legal, constitutional, social, political, economic, and strategic requirements for creating favorable conditions for the resolution of Kashmir issue in line with the UNSC resolutions.

Key recommendations of the seminar included: the formation of a high-level working group on Kashmir including representatives of state, government, business, politics, academia, and civil society; the utilization of Pakistani diaspora for advancing Pakistan's stance on Kashmir globally; the articulation of a discourse that highlighted the legally binding rather than recommendatory character of UNSC resolutions on Kashmir; incentivizing Kashmir issue-related academic and policy research at public and private research institutions; and sensitizing effectively despite all odds the Muslim world to Pakistan's correct position on Kashmir.

The opening remarks were delivered by Pro-Rector NUST, Major General Jahangir Khan (Retd.). The panel of speakers consisted of: Founder and President Research Society of International Law (RSIL) and leading legal expert of Pakistan, Ahmer Bilal Soofi; Ambassador Afrasiab Mehdi Hashmi Qureshi (Retd.); and Head of Research NIPS, Ali Shah. The seminar was moderated by DG NIPS and Principal of NUST School of Social Sciences and Humanities, Dr Ashfaque Hasan Khan, and attended by scholars, veteran diplomats, think tank community, media persons, civil society representatives, scholars, and students.

2. Opening Remarks

Major General Jahangir Khan (Retd.),
Pro-Rector NUST

We have gathered here today to express our whole-hearted solidarity with our Kashmiri brethren who observe the January 05 every year as the Right to Self-Determination Day.

This day serves as the token of that eventual freedom from Indian occupation which, by Allah's grace, we all know in the deepest recesses of our hearts, will be the fruit of the decades-long great sacrifices of Kashmiri Muslims.

It is to be noted with great concern that more than 70 years after it was recognized in principle by the United Nations, the right to self-determination of the peoples of Indian-Occupied Jammu & Kashmir (IOJ&K), remains unfulfilled. This right has been denied by Indian intransigence and the bloody and brutal system of repression in Kashmir.



This year's commemoration of Kashmiris' inalienable right to self-determination highlights the terrible fact that India's oppression of Kashmiris has increased manifold in the wake of the inhuman lockdown and siege of millions of Kashmiris that followed India's dastardly revocation of Article 370 of its own constitution.

This fundamentally illegal Indian attempt at annexation violated not only the UN resolutions but also served to highlight the fact that the IOJ&K is a disputed region which calls for urgent and just resolution.

Together with the misbegotten Citizenship Amendment Act recently passed by the Indian Parliament, the revocation of Article 370 only exposes the mala fide domestic and regional intentions of India. These baleful intentions are the result of India's long-standing antagonism of Pakistan on the one hand, and the customary anti-Muslim sentiments of the Indian state and society of India, on the other. Both have acquired a vicious virulence under the present Modi regime. These ill-considered actions remind the world that the Indian Muslims, especially the Kashmir Muslims in the IOJ&K, are bearing the brunt of the mad frenzy of violence that the regime of Hindutva has unleashed. In fact, in so far as Kashmiri Muslims are concerned, as the world knows well, they were the original victims of the non-stop deliberate organized repression and violence perpetrated and perpetuated by the Indian state post 1947.

This violence, originally born out of Hindutva's anti-Muslim bloodlust, was bound to expand to look for new victims; it is now increasingly devastating other minorities in India.

It can be plainly observed for quite some time now that the Indian occupation of Kashmir has completely corrupted the conscience of Indian leaders and Indian peoples. It has also warped their domestic and regional priorities. Anyone with a modicum of insight can see that Kashmir's occupation will continue to haunt India as long as IOJ&K's destiny is not determined in line with the UN resolutions.

As the Prime Minister of Pakistan has conveyed emphatically, eloquently, and consistently, the people of Pakistan stand firmly behind their Kashmiri brethren and fully support their political struggle against Indian occupation in the pursuit of their inalienable right to self-determination.

I am convinced that the great sacrifices of Kashmiris in their freedom struggle against India will compel the logic of history to work in their favor eventually.

3. Moderator's Remarks

Dr Ashfaque Hasan Khan, DG NIPS & Principal, NUST School of Sciences & Humanities

January 05 every year is observed worldwide by Kashmiris as the Right to Self-Determination Day in commemoration of their right to choose their own fate in accordance with the UNSC resolutions.

It is the day when they ask all the civilized nations of the world to understand the terrible suffering and pain they have endured under the heel of Indian occupation. They also want the world to understand that they are not willing to



give up their just struggle for freedom from Indian oppression, no matter what.

They do not demand financial aid, loans or grants. All the resilient people of IOJ&K ask from the international community is the honest and fair recognition of their right to self-determination.

Mr Mohandas Karamchand Gandhi, in his speech on January 04, 1948, clearly admitted the disputed nature of Kashmir, biased though that speech was in favor of India's legally and morally untenable position. However, Mr Gandhi clearly recognized the fact of the Kashmir dispute and desired for the leadership of India and Pakistan to resolve the dispute peacefully through negotiations. It is interesting to note that Mr Gandhi never said in that speech that Kashmir was an integral part of India or even that it was India's internal issue. He clearly proceeded in his speech from the premise that Kashmir was a disputed territory.

The attitude of the international community, save the first few years of the dispute, has been regrettably lackadaisical. The case of Afghans particularly illustrates this international nonchalance. One does expect that at least Afghans would identify with Kashmiris in IOJ&K considering they themselves continue to suffer from a long conflict but the former, in deference to their Indian interlocutors, are completely silent on the issue, fully knowing that Pakistan's position on Kashmir is historically, politically, legally, and morally correct.

India's brazen revocation of Article 370 and 35A of its own constitution somehow capitalized on the habitual indifference of

the global community. One could say that this lack of commitment to peace in South Asia may have encouraged India into taking this action. India then flagrantly characterized an illegal step as the correction of a historical mistake. It needs to be noted that the historical mistake was on the part of India to begin with and what India believes to be a correction is in fact an even greater and more tragic blunder.

This move finally sounded the knell of the so-called Nehruvian democratic secular India and marked India's descent into Hindutva's fundamentalism and extremism. Even seasoned Indian politicians, legal experts, and scholars like P. Chidambaram, A. G. Noorani, Ramachandra Guha, and the Nobel laureate Amartya Sen criticized the revocation and considered it a disastrous mistake.

As if this revocation was not enough, India dashed ahead and passed the Citizenship Amendment Act 2019 leading to a severe domestic social and political backlash in the form of widespread multi-state protests. These Indian actions are suicidal as they have already put brakes on India's impressive economic growth. In short, social polarization and economic recession are the combined effects of India's insane approach to social engineering, which will lead to a massive failure of India's negative domestic and regional policies.



4. Views of Panelists

4.1. Hindutva and Kashmir Issue

Ambassador Afrasiab Mehdi Hashmi Qureshi (Retd.), Senior Political Analyst & Author

I have studied India for a long time and have also lived there for an extended period in official capacity as a Pakistani diplomat. My knowledge of India is, therefore, both first-hand and scholarly, based on painstaking research and direct lived experience of that country’s society and culture.

Beyond a shadow of doubt, August 05, 2019, represents a black day in an unbroken continuity of such dark days going back to October 26, 1947, when India invaded and then justified its illegal control of Jammu and Kashmir through the shady Instrument of Accession supposed to have been signed by the Maharaja of Kashmir and the government of India.

The annulment of the special status of Kashmir through the revocation of Article

370 marks the irreversible alienation of Kashmiris from India. India has lost IOJ&K in essence in the very process of trying to absorb the disputed territory. This step alone is enough to expose the true intentions of India which were never to enter sincerely into an honest dialogue with Pakistan for the express purpose of resolving the Kashmir dispute peacefully. This retrospectively reveals that all Indian pretensions to dialogue were nothing but a subterfuge to divert attention of the world community from its aggressive designs.

What is extremely worrisome is that the situation of total siege and lockdown in Srinagar and the rest of the IOJ&K is hiding the true extent of the human rights violations of Kashmiris at the hands of Indian forces. The actual scale of the tragedy may be far higher than currently being reported by media and human rights organizations. It is also noteworthy that none of the major powers have condemned India for its brutal measures. This shows that the international community is virtually powerless or



uninterested in compelling any change in India's behavior. India wants to solve the problem of Kashmir not by dialogue but by killing the issue, by aggression against Kashmiris, and if possible, against Pakistan.

In its diplomatic and great power posturing, India tends to convince itself and the world that its foreign policy looks beyond Pakistan and that India's policy is not Pakistan-centric. However, the fact of the matter is that Indian strategic thinking has been historically obsessed with Pakistan. The current Indian regime does not represent any exception to this historic continuity. Rather, this historic obsession with undermining Pakistan has become intensified in India's Modi years. Pakistan haunts Indian strategic thinking to such a great extent that India has enslaved itself to a rabid anti-Pakistan agenda. This aberration of the Indian state is proving to be its own ruination. Its anti-Muslim hatred is consuming itself.

From 1947 till date, Rashtriya Swayamsevak Sangh (RSS), the arch-fundamentalist Hindu organization of India, has been involved directly or indirectly in every major episode of expansionism or communal violence perpetrated by the Indian state, whether it were the communal riots after partition in 1947, the occupation of Jammu & Kashmir in 1947, the invasion of Hyderabad Deccan in 1948, or the destabilization of East Pakistan leading up to the creation of Bangladesh in 1971.

The RSS is heavily involved and implicated in the ongoing violation of the human rights of Kashmiris in IOJ&K as well as the oppression of minorities in the rest of

India. The currently ruling party of India is the political wing of this sociopolitical organization that has its tentacles spread across the Indian business, society, politics, and culture. In the crazed ideology of RSS, anything and anyone that is not Hindu deserves to be converted or destroyed. The state backing of this ideology has empowered this ideology of hatred and violence like never before. It has enabled this ideology to utilize the state apparatuses for its violent ends.

RSS views the multicultural, multi-faith Indo-Pak Subcontinent as an aberration and wants to return it to a mythical Hindu-only puristic past. It knows the impossibility of its mad dream that is all the more horrendous for its attempts to enact that mythical time of yore. The Citizen Amendment Act 2019 is the deformed birth of the same warped mindset that wants to bring about an India peopled exclusively by Hindus and ruled by high-caste Hindus alone.

This ideology of hate and violence looks at Pakistan as a tragic historical accident rather than viewing it objectively and correctly as the fruit of the struggle waged by the Muslims of Indo-Pak subcontinent for their legitimate right to self-determination and a separate homeland in which they could live free of any fear of the majoritarian hatred of the kind that is being currently unleashed on the minorities of India by the RSS-dominated Modi regime.

India is deeply frustrated with the continued existence of Pakistan. Every success of Pakistan in any field is seen as a personal affront to Hindu ideology by the fanatics of RSS. Thinking of Hitler's



Brown Shirts is, therefore, not just a convenient metaphor when one thinks of RSS fanatics. It is actually a scientific and an exact descriptor of the kind of policies and mindset embodied by the rank and file of RSS.

The world is dangerously languishing in a self-inflicted amnesia and does not like to recall the connection between PM Modi and 2002 Gujarat riots and the massacre of Muslims in those riots. Let us not forget that RSS led the carnage against Muslims in 2002. The forgetfulness of the world community right now is the sign of an impotence brought on by the shifting demands of regional geopolitics.

We must prepare at all levels to confront and defeat this great risk. This preparation must include, among other things, awakening the world community to the danger posed by Hindutva to regional and global peace and stability. The facts and truth are on our side. We are a resourceful and resilient nation. I am confident that we will emerge victorious in our struggle against the forces of chaos and disorder in the region.

4.2. Legal Aspects of Kashmir Issue

Ahmer Bilal Soofi, Founder & President,
Research Society of International Law (RSIL)

There is a dire lack of sustained research on the legal aspects of the Kashmir dispute. This vacuum needs to be filled by credible policy research institutions specializing in multidimensional research on Kashmir, but especially on technical and legal facets of the problem in historical context. The legal approach to policy research needs to be extended to other major problems of comprehensive national

socioeconomic development, diplomacy, and foreign relations. Research Society on International Law (RSIL) was founded in order to fill this policy gap.

I would like to share and record that RSIL has attracted and trained legal talent of Pakistan in order to build national capacity in the field of international law since its establishment. International law cuts across a variety of areas of international relations whether it be international trade, international conventions and treaties, diplomatic relations, conduct and management of conflict, and human rights.

International law can also yield important insights and leads for the just and fair progress in Kashmir dispute in accordance with the UN Charter and UN Security Council resolutions. Kashmir indeed represents a unique case study in the domain of public international law or law of nations which we commonly refer to as international law. This case study links together dispute resolution and the right to self-determination.

A brief mention of the UN Charter is important here. Although the right to self-determination formed an element of various earlier treaties and conventions, yet it was in the UN Charter in which in 1945 it was formally enshrined as an inalienable right of people and of nations together with other rights such as fundamental human rights and equal rights of individuals and nations of varying sizes. As per the Charter, in the case of nations, this right remained relevant in conditions leading to and following political independence.

It was further linked to the achievement



and maintenance of territorial integrity. This meant that the boundaries and borders regarded to have come into force as the exercise of the right to self-determination were considered sacrosanct and inviolate as per the Charter. This represented a legal milestone and a strong basis for ending inter-state violence related to territorial aggrandizement.

If a nation tried to change the status quo by the use of force, it will be considered an unlawful use of force, and, therefore, impermissible as well as subject to appropriate action by the world community represented by the UN. Therefore, past or present Indian actions in Jammu and Kashmir are untenable and in violation of the UN Charter because they veritably constitute breaches of peace and acts of aggression. The revocation of the special status is likewise a violation of international law.

It also needs to be understood that self-determination is not a limitless concept; it is a determinate principle. It means that self-determination will be sanctioned or exercised in any given set of circumstances or principles, and other things remaining equal, will not be prejudicial to the sovereignty and territorial integrity of nations. For instance, in the case of Kashmir, the right to self-determination will be exercised in accordance with the UN Security Council resolutions recognized by both India and Pakistan.⁷

Self-determination is particularly important in the case of Kashmir because this right co-exists with a territorial dispute that grew out of the failure to apply

the principles of partition justly in 1947. Similarly, the right of Palestinians to self-determination is a valid and legitimate right because it co-exists with a territorial dispute that arose in the first place as a result of the violation of their right.

The co-existence of a territorial dispute and the unfulfilled right to self-determination makes for a unique case in favor of self-determination. In the case of Kashmir, there are three parties to the dispute, whereas in the case of Palestine, there are two parties mainly. In both cases, however, the title to territory is disputed and the UN has tried to develop two different tracks of dispute resolution for these cases.

This brings us to the urgent need to cultivate national legal talent in international law so that a critical mass of experts in international law can be created. Pakistan's position on Kashmir as well as other issues of relevance to international law will be improved considerably if there are world-class legal experts interpreting international conventions, treaties, and resolutions in ways that are beneficial to Pakistan.

For instance, there have been efforts to confuse the status of the Security Council resolutions related to Kashmir by saying that UNSC resolutions on Kashmir are not binding but only optional because these resolutions stand under the Chapter VI of the UN Charter. This confusion was created because early resolutions at the UN Security Council were generally passed without specific reference to the chapters of the UN Charter. This

7. See Appendix 1 for key UNSC resolutions on Kashmir.



practice changed later. Therefore, recent resolutions like the UNSC Resolution 1267 on Al Qaeda and Taliban, Resolution 1373 on counterterrorism, and Resolution 1540 on non-proliferation specifically refer as being passed under Chapter VII of the Charter and so their enforcement is deemed necessary.

We need to realize and register that the status of Kashmir resolutions is not recommendatory but binding. For example, Resolution 39 that mandated the formation of the UN Commission for India and Pakistan (UNCIP) in no uncertain terms, and, since the commission was indeed established, could not be viewed merely as recommendatory. Similarly, Resolution 47, needs to be considered and treated as binding. Also, Resolution 91 that established the UN Military Observer Group in India and Pakistan (UNMOGIP) was binding not recommendatory. These resolutions became binding in light of the Article 25 of the UN Charter making it mandatory for the UN member states “to accept and carry out the decisions of the Security Council in accordance with the present Charter.” This naturally applies to all resolutions of the Security Council.⁸

All technical-legal work on Pakistan’s position on Kashmir should interpret Kashmir resolutions in ways that strengthen Pakistan’s position. We need to invoke Chapter VII of the Charter in the context of these resolutions. There is a need for a lot of in-depth research in this regard. I am sure a dynamic and close reading of the UN Charter and all the relevant resolutions will offer a treasure-trove of insights for jurists, diplomats,

statesmen, and experts in Pakistan with specific respect to Kashmir dispute.

Pakistan should approach the UN Security Council with firm confidence in the binding character of the latter’s Kashmir resolutions and demand appropriate action. However, this presupposes a thorough debate and broad-based domestic stakeholder consensus.

4.3. Building Comprehensive National Power and Kashmir Issue

Ali Shah, Head of Research, NIPS

Our reaction to the Indian revocation of Article 370 typifies the business-as-usual mode of doing things. Though the state, government, and the people of Pakistan recovered quickly from the initial surprise sprung by the Indians on August 05, 2019, and we moved to mount a vigorous and effective diplomatic, political, and popular campaign in protest against India’s unjustifiable actions and in defense of our Kashmiri brethren in IOJ&K, yet the Pakistani response was largely reactive and hastily put together instead of having been the targeted outcome of a patient, painstaking, consultative, and comprehensive process of policy thinking and policymaking on Kashmir. This response has indeed successfully sensitized the world to the plight of the Kashmiris but has so far failed to change either India’s irrational behavior or its ill-conceived policy.

Pakistan’s stance on Kashmir is undoubtedly on strong legal grounds but still the advocacy of this strong position

8. See Appendix 3 for details.



remains weak. This means mere technical-legal strength is not sufficient. In order for the legal argument to carry the day, national political power is crucial. Political power in turn rests on military power and economic strength or wealth creation capabilities of nations. In short, we require concentrated and comprehensive national power to seek favorable resolution of Kashmir issue.

Unfortunately, it is the latter kind of power that Pakistan lacks in. While we have all the required elements, we have not unified and transformed these elements into national political power. Our economy is our classic Achilles's heel. The lack of political power resting on the secure foundations of military and economic power prevents us from making use of our essentially strong legal position on Kashmir.

The preparation of Pakistan for enabling a successful resolution in line with the UNSC resolutions calls for two urgent tasks.

The first is the acquisition of comprehensive national power. Since Pakistan's defense is impregnable, the building of national power means becoming economically strong, politically united, and socially advanced. This means we need to promote sustained and impressive economic growth and development, political unity, and unbiased social mobility.

We need to realize that the revocation of Article 370 represents a material change in the Kashmir dispute. This material change means that there will not be any short-term solution to Kashmir issue. Pakistan needs to get ready and prepare

for the long haul.

We need to think in the long term just like our Chinese friends. Their leaders still think that the complete modernization and development of China may take 12 to 24 generations. We need to build national stamina for performing great tasks that lie before us. We should build both national development capacity and actual development at the same time. This means we need to focus on world-class human resource development, industrial upgradation, and S&T development and modernization.

For instance, the state and people of Pakistan should give themselves a timeline or a deadline, of say, 10, 20, or 30 years, for the resolution of Kashmir issue, and then focus all their energies on growth and development. We collectively need to realize that a Pakistan that has a GDP of, say, USD 1 trillion, USD 2 trillion or USD 4 trillion, 10, 20 or 30 years hence will be in a stronger position to influence positive and favorable change in Kashmir issue than a Pakistan that is still barely USD 500 billion in GDP 10 or 20 years from now.

In the meantime, we should be fully ready to utilize and benefit from any change in the status quo. This favorable situation may come about as a result of resourceful and bold response to a difficult situation. When the opportunity arises, we should be willing and ready to exploit it proactively.

The second task consists of the need for iterative future-based scenario planning with regard to the Kashmir dispute. There has to be state-society and public-private partnerships in this marathon predictive exercise which should focus on different



possible futures into which the Kashmir conflict and dispute could evolve.

We need to imagine different types of positive and negative outcomes with respect to the resolution of Kashmir in line with UNSC resolutions. For instance, supposing that Kashmir dispute was resolved tomorrow in Pakistan's favor, we would need to identify the kind of constitutional, political, and economic measures required for seamless and willing merger of Kashmir. We need to think about the domestic, regional, and global implications of such a merger. We would also need to think of the process of phased demilitarization, plebiscite administration and management, and dealing with post-plebiscite developments. We should also be ready to deal with any negative outcome. In this sense, dealing with the consequences of India's revocation of

Article 370 is a major test.

We also need to move from formal national consensus on Kashmir to a substantive national consensus. The latter consists of all apparatuses of the state, all departments of the government, all segments of the population, all political forces, all market forces, etc., acting together in a concerted manner for the realization of Pakistan's Kashmir policy.

The guarantee for successfully achieving our goals is hopefulness. We should be collectively confident that we will achieve our goals.

Our planning should be anticipatory. We should get out of the reactive rut. Pakistan needs to design a response for India's Kashmir policy that smartly manipulates Indian geopolitical constraints and



compulsions. This response needs to be part of a comprehensive Kashmir policy that is long term in nature including steps and tactics for immediate and short-term utilization and bridging medium-term components.

In the absence of such a comprehensive, nation-wide, and systematic preparation for achieving the core development and foreign policy objectives, we will always be at the mercy of circumstances and react to rather than anticipate events.

5. Q&A Session

The remarks of the panelists were followed by an interactive session consisting of interventions from the audience. In response to a question about why India did not absorb East Pakistan and instead favored the creation of Bangladesh in 1971, the panel explained that the combination of geopolitical tact, the moral force of global opinion, and the principles of international law dictated, as a better option from Indian perspective, the formation of a new country founded on the principle of the right to self-determination. In so far as India was concerned, what mattered to India was the dismemberment of Pakistan which was achieved by the formation of Bangladesh without incurring the international condemnation that would have followed upon the annexation of East Pakistan. It was also mentioned in passing that it was entirely possible that annexation would have led to severe resistance on the part of Pakistan so on balance the creation of a new state seemed more practicable and cost-effective from India's standpoint.

A member of the audience objected to

the long-term approach proposed by the panel and underscored that pro-active measures needed to be taken in view of the dire condition of the Kashmiris in IOJ&K. The panel considered that Pakistan's commitment to peace demanded the exploration of all avenues for the peaceful resolution of the Kashmir issue coupled with a firm resolve to repel any misadventure by the adversary. The panel also highlighted the powerful diplomatic initiative spearheaded by the Prime Minister of Pakistan that had been undertaken to focus the attention of the world community on the plight of Kashmiris in IOJ&K. It was also rightly pointed out that the current condition of Indian Muslims was a testament to the historical correctness of the Two-Nation Theory of the founding fathers of Pakistan.

A member of the audience observed that economic growth and development will not be enough to resolve the Kashmir issue. The panel responded that the whole situation needed to be appraised holistically. While no single element of national power would influence the situation exclusively and predominantly, yet the combined effect of these elements, including a strong economy, could appreciably tilt the overall balance of forces in Pakistan's favor. The panel recognized that there was perhaps no direct correlation between economic growth and conflict or dispute resolution. However, the panel did stress that economic strength directly translated into political power and strategic influence that could improve the international standing of countries ultimately proving effective as a diplomatic asset too. The panel mentioned the brilliant diplomacy of Pakistan was routinely neutralized by



its chronic economic vulnerability.

In response to a question about the role of diplomacy in international affairs, the panel responded that diplomacy was a dynamic and versatile element of state power that could have both hard and soft uses. The panel recognized the key contributions of the diplomatic corps of Pakistan in representing Pakistan brilliantly in all major international forums and skillfully executing the country's foreign policy.

A member of the audience considered that Pakistan's diplomacy had been somewhat diffident and unduly as well as excessively concerned about the reactions of major powers rather than primarily concerned about the national interest of Pakistan. The panel responded that the fact that Pakistan, like any other country, had to take into account the reactions of different states to its actions did not mean that core interests of survival and security were being compromised in any way. The panel further clarified that in so far as the Kashmir issue was concerned, since any dispute resolution will not take place in isolation so it was important to assess the reactions of a range of international actors including major powers. The panel stressed that this assessment of others' actions was not the same thing as prioritizing their interest over our own.

In response to a question about the impact of 1972 Simla Agreement on Kashmir dispute, the panel stated that different circumstances had impacted Pakistan's position on Kashmir at different points in time. However, the crowning achievement of Pakistani diplomacy with respect to Simla Agreement was

the preservation and protection of the fundamental position of Pakistan achieved from a considerably weak bargaining position in 1972. Regardless of the spin India may like to put on the Agreement, the fact of the matter is that the internationally recognized position on Kashmir issue is that it has to be resolved in line with the UNSC resolutions. This certainly presupposes a certain degree of international involvement.

In response to a question about the impact of the revocation of Article 370 on the Kashmir dispute, the panel stated that it constituted a material change in the situation and demanded from Pakistan a comprehensive and elaborate plan but such a plan could not be immediately in the offing. Nonetheless, what was certain was that India's actions were bound to compel deliberations aimed at strategic reorientation. This was also bound to throw up new ways of dealing with the problem under new circumstances.

6. Conclusion and Recommendations

The seminar highlighted the need for a long-term strategy for the resolution of the Kashmir issue in light of the material change in the status quo introduced by the revocation of the special status of IOJ&K. This long-term strategy had to begin with a comprehensive national-level predictive planning effort involving continuous research into legal, constitutional, political, economic, and strategic aspects of the Kashmir dispute. The revocation was a strategic move by India and any knee-jerk short-term response from Pakistan was bound to be counterproductive. However, in the short term the diplomatic initiative



aimed at exposing Indian atrocities and grave human rights violations was a step in the right direction. An opportunity for a favorable change could also be presented as a result of any misstep of the adversary.

The following recommendations were proposed during the deliberations and discussion during the seminar:

1. Pakistan should highlight and advocate, especially at the United Nations, that the Security Council resolutions on Kashmir are binding rather than merely recommendatory.
2. High-level national consensus should be built at the political level consisting of a clear timeline and plan of action including the formulation and selection of a range of viable legal and diplomatic options on Kashmir. This consensus should be civil-military, parliamentary, and societal.
3. Pakistan should move from a formal national consensus to a substantive national consensus on Kashmir in which all forces in the country are acting in unison in the same direction for the peaceful resolution of Kashmir issue. All state apparatuses, all government organizations, all segments of the population, all political forces, all market forces, big business, and all schools of thought should be called upon to play their due part in order to explore and materialize desirable options for the successful resolution of Kashmir issue. The comprehensive role of Pakistani diaspora in this regard should be considered and leveraged. The starting point for forging such

a substantive consensus should be a high-level broad-based working group on Kashmir consisting of state, political, business, and societal representation and chaired by the Prime Minister.

4. Pakistan should devise a long-term strategy for the resolution of Kashmir issue which in itself should be a part of the bigger national strategy of growth, development, modernization and building comprehensive national power.
5. Think tanks, relevant government departments, law schools, and policy centers in the country should be encouraged into undertaking issue-based research into different aspects of the Kashmir dispute. Academic research at undergraduate, graduate, and post-graduate levels should be encouraged. Government and private research organizations should appropriately incentivize this research. This research should focus, among other things, on investigating the determinants and conditions of successful cases of peaceful dispute resolution and dispute management in Africa, Asia Pacific, EU, and Latin America.
6. Several scenarios regarding the resolution of Kashmir issue should be outlined in detail in multi-stakeholder sessions organized through public-private collaboration in which the interests of different domestic and global parties and forces should be assessed. The aim should be to arrive at an accurate set of prioritized scenarios and rank ordering of



- different combinations of these different types of interests based on how they relate to Pakistan's official position on Kashmir.
7. Pakistan should study closely and objectively the situation on ground in IOJ&K including its contemporary demographic realities and also aim for asymmetric advantage acquisition by leveraging the geopolitical constraints of India.
 8. Pakistan's diplomatic initiative focused on Kashmir should assess the different kinds of responses that great, middle, and small powers in general are expected to demonstrate toward Pakistan's position on Kashmir, especially between 2020 and 2025. This assessment should account for the geopolitical compulsions and interstate dealings of relevant great, middle, and small powers.
 9. As the Muslim world collectively does not seem to be sensitized effectively on the issue of Kashmir, Pakistan should find a way to unite the collective opinion of the Muslim world collectively behind its position on Kashmir.
 10. While Kashmiris in IOJ&K overwhelmingly want it to become a part of Pakistan, this desire needs to be complemented by fast-paced development in Azad Jammu & Kashmir that creates an irresistible development pull on our brethren in IOJ&K.



APPENDICES

Appendix 1

Key UN Security Council Resolutions on Kashmir ⁹

38 (1948). Resolution of 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 1948 by its President to each of the parties [1] and of their replies thereto,[2] in which they affirmed their intention to conform to the Charter of the United Nations.

1. Calls upon both the Government of India and the government of Pakistan to take immediately all measures within their power (including public appeals to

9. Source: www.refworld.org.



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;

2. 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.

Adopted at the 229th meeting by 9 votes to none, with 2 abstentions (Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics).

[1] See Official Records of the Security Council, Third Year, Nos. 1-15, 226th meeting, pp. 4-5 (document S/636).

[2] *Ibid.*, Third Year, Supplement for January, February and March 1948, documents S/639 and S/640.

39 (1948). Resolution of 20 January 1948

[S/654]

The Security Council,

Considering that it may investigate any dispute or any situation which might, by its continuance, endanger the maintenance of international peace and security and that, in the existing state of affairs between India and Pakistan, such an investigation is a matter of urgency, Adopts the following resolution:

A. A Commission of the Security Council is hereby established, 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 so selected.[1] Each representative on the Commission shall be entitled to select his alternates and assistants.

B. The Commission shall proceed to the spot as quickly as possible. It shall act under the authority of the Security Council and in accordance with the directions it may receive from it. It shall keep the Security Council currently informed of its activities and of the development of the situation. It shall report to the Security Council regularly, submitting its conclusions and proposals.

C. The Commission is invested with a dual function: (1) to investigate the facts pursuant to Article 34 of the Charter of the United Nations; (2) to exercise, without interrupting the work of the Security Council, any mediatory influence likely to smooth away difficulties; to carry out the directions given to it by the Security Council; and to report how far the advice and directions, if any, of the Security Council have been carried out.

D. The Commission shall perform the functions described in clause C: (1) in regard to the situation in the Jammu and Kashmir State set out in the letter of the representative of India addressed to the President of the Security Council, dated 1 January 1948,[2] and in the letter from the Minister of Foreign Affairs of Pakistan addressed



to the Secretary-General, dated 15 January 1948;^[3] and (2) in regard to other situations set out in the letter from the Minister of foreign Affairs of Pakistan addressed to the Secretary-General, dated 15 January 1948, when the Security Council so directs.

E. The Commission shall take its decision by majority vote. It shall determine its own procedure. It may allocate among its members, alternate members, their assistants, and its personnel such duties as may have to be fulfilled for the realization of its mission and the reaching of its conclusions.

F. The Commission, its members, alternate members, their assistants, and its personnel shall be entitled to journey, separately or together, wherever the necessities of their tasks may require, and, in particular, within those territories which are the theatre of the events of which the Security Council is seized.

G. The Secretary-General Shall furnish the Commission with such personnel and assistance as it may consider necessary.

Adopted at the 230th meeting by 9 votes to none, with 2 abstentions (Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics).

[1] By its resolution 47 (1948), the Council decided to increase the membership of the Commission to five. The composition of the Commission is given below, following that resolution.

[2] Official Records of the Security

Council, Third Year, Supplement for November 1948, document S/1100, annex 28.

[3] Ibid., annex 6.

47 (1948). Resolution of 21 April 1948

[S/726]

The Security Council,

Having considered the complaint of the Government of India concerning the dispute over the State of Jammu and Kashmir,

Having heard the representative of India in support of that complaint and the reply and counter-complaints of the representative of Pakistan,

Being strongly of the opinion that the early restoration of peace and order in Jammu and Kashmir is essential and that India and Pakistan should do their utmost to bring about a cessation of all fighting,

Noting with satisfaction that both and Pakistan desire that the question of the accession of Jammu and Kashmir to India or Pakistan should be decided through the democratic method of a free and impartial plebiscite,

Considering that the continuation of the dispute is likely to endanger international peace and security,

Reaffirms its resolution 38 (1948) of 17 January 1948;

Resolves that the membership of the Commission established by its resolution



39 (1948) of 20 January 1948 shall be increased to five and shall include, in addition to the membership mentioned in that resolution, representatives of . . . and . . . , and that if the membership of the Commission has not been completed within ten days from the date of the adoption of this resolution the President of the Council may designate such other Member or Members of the United Nations as are required to complete the membership of five;

Instructs the Commission to proceed at once to the Indian subcontinent and there place its good offices and mediation at the disposal of the Governments of India and Pakistan with a view to facilitating the taking of the necessary measures, both with respect to the restoration of peace and order and to the holding of a plebiscite, by the two Governments, acting in co-operation with one another and with the Commission, and further instructs the Commission to keep the Council informed of the action taken under the resolution; and, to this end,

Recommends to the Governments of India and Pakistan the following measures as those which in the opinion of the Council are appropriate to bring about a cessation of the fighting and to create proper conditions for a free and impartial plebiscite to decide whether the State of Jammu and Kashmir is to accede to India or Pakistan:

A. Restoration of Peace and order

1. The Government of Pakistan should undertake to use its best endeavours:
 - (a) To secure the withdrawal from the State

of Jammu and Kashmir of tribesmen and Pakistani nationals not normally resident therein who have entered the State for the purpose of fighting, and to prevent any intrusion into the State of such elements and any furnishing of material aid to those fighting in the State;

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

B. The Government of India should:

(a) When it is established to the satisfaction of the Commission set up in accordance with the Council's resolution 39 (1948) that the tribesmen are withdrawing and that arrangements for the cessation of the fighting have become effective, put into operation in consultation with the Commission a plan for withdrawing their own forces from Jammu and Kashmir and reducing them progressively to the minimum strength required for the support of the civil power in the maintenance of law and order;

(b) Make known that the withdrawal is taking place in stages and announce the completion of each stage;

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



following principles:

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

(ii) That as small a number as possible should be retained in forward areas;

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

3. The Government of India should agree that until such time as the Plebiscite Administration referred to below finds it necessary to exercise the powers of direction and supervision over the State forces and police provided for in paragraph 8, they will be held in areas to be agreed upon with the Plebiscite Administrator.

4. After the plan referred to in paragraph 2 (a) above has been put into operation, personnel recruited locally in each district should so far as possible be utilized for the re-establishment and maintenance of law and order with due regard to protection of minorities, subject to such additional requirements as may be specified by the Plebiscite Administration referred to in paragraph 7.

5. If these local forces should be found to be inadequate, the Commission, subject to the agreement of both the Government of India and the Government of Pakistan, should arrange for the use of such forces of either Dominion as it deems effective for the purpose of pacification.

B. Plebiscite

6. The Government of India should undertake to ensure that the Government of the State invite the major political groups to designate responsible representatives to share equitably and fully in the conduct of the administration at the ministerial level while the plebiscite is being prepared and carried out.

7. The Government of India should undertake that there will be established in Jammu and Kashmir a Plebiscite Administration to hold a plebiscite as soon as possible on the question of the accession of the State to India or Pakistan.

8. The Government of India should undertake that there will be delegated by the State to the Plebiscite Administration such powers as the latter considers necessary for holding a fair and impartial plebiscite including, for that purpose only, the direction and supervision of the State forces and police.

9. The Government of India should, at the request of the Plebiscite Administration, make available from the Indian forces such assistance as the Plebiscite Administration may require for the performance of its functions.

10.(a) The Government of India should agree that a nominee of the Secretary-General of the United Nations will be appointed to be the Plebiscite Administrator.

(b) The Plebiscite Administrator, acting as an officer of the State of Jammu and Kashmir, should have authority to nominate his assistants and other subordinates and to draft regulations



governing the plebiscite. Such nominees should be formally appointed and such draft regulations should be formally promulgated by the State of Jammu and Kashmir.

(c) The Government of India should undertake that the Government of Jammu and Kashmir will appoint fully qualified persons nominated by the Plebiscite Administrator to act as special magistrates within the State judicial system to hear cases which in the opinion of the Plebiscite Administrator have a serious bearing on the preparation for and the conduct of a free and impartial plebiscite.

(d) The terms of service of the Administrator should form the subject of a separate negotiation between the Secretary-General of the United Nations and the Government of India. The Administrator should fix the terms of service for his assistants and subordinates.

(e) The Administrator should have the right to communicate directly with the Government of the State and with the Commission of the Security Council and, through the Commission, with the Security Council, with the Governments of India and Pakistan and with their representatives with the Commission. It would be his duty to bring to the notice of any or all of the foregoing (as he in his discretion may decide) any circumstances arising which may tend, in his opinion, to interfere with the freedom of the plebiscite.

11. The Government of India should undertake to prevent, and to give full support to the Administrator and his staff in preventing, any threat, coercion or intimidation, bribery or other undue

influence on the voters in the plebiscite, and the Government of India should publicly announce and should cause the Government of the State to announce this undertaking as an international obligation binding on all public authorities and officials in Jammu and Kashmir.

12. The Government of India should themselves and through the Government of the State declare and make known that all subjects of the State of Jammu and Kashmir, regardless of creed, caste or party, will be safe and free in expressing their views and in voting on the question of the accession of the State and that there will be freedom of the press, speech an assembly and freedom of travel in the State, including freedom of lawful entry and exit.

13. The Government of India should use and should ensure that the Government of the State also use their best endeavours to effect the withdrawal from the State of all Indian nationals other than those who are normally resident therein or who on or since 15 August 1947 have entered it for a lawful purpose.

14. The Government India should ensure that the Government of the State releases all political prisoners and take all possible steps so that:

(a) All citizens of the State who have left it on account of disturbances are invited, and are free, to return to their homes and to exercise their rights as such citizens;

(b) There is no victimization;

(c) Minorities in all parts of the State are accorded adequate protection.



15. The Commission of the Security Council should at the end of the plebiscite certify to the Council whether the plebiscite has or has not been really free and impartial.

C. General provisions

16. The Governments of India and Pakistan should each be invited to nominate a representative to be attached to the Commission for such assistance as it may require in the performance of its task.

17. The Commission should establish in Jammu and Kashmir such observers as it may require of any of the proceedings in pursuance of the measures indicated in the foregoing paragraphs.

18. The Security Council commission should carry out the tasks assigned to it herein.

Adopted at the 286th meeting.[1]

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* *

The five members of the United Nations Commission for India and Pakistan were: CZECHOSLOVAKIA (nominated by India on 10 February 1948); BELGIUM and COLOMBIA (appointed by the Council on 23 April 1948 - see the decision below); ARGENTINA (nominated by Pakistan on 30 April 1948); UNITED STATES OF AMERICA (designated by the President of the Council on 7 May 1948, in the absence of agreement between Argentina and Czechoslovakia on the member to be designated by them).

Decision

At its 287th meeting, on 23 April 1948, the Council, pursuant to its resolution 47 (1948), appointed Belgium and Colombia as the additional members of the United Nations Commission for India and Pakistan.

Adopted by 7 votes to none, with 4 abstentions {Belgium, Colombia, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics}.

51 (1948). Resolution of 3 June 1948

[S/819]

The Security Council,

1. Reaffirms its resolutions 38 (1948) of 17 January, 39 (1948) of 20 January and 47 (1948) of 21 April 1948;

2. Directs the United Nations Commission for India and Pakistan to proceed without delay to the areas of dispute with a view to accomplishing in priority the duties assigned to it by resolution 47 (1948);

3. Directs the Commission further to study and report to the Security Council when it considers it appropriate on the matters raised in the letter of the Foreign Minister of Pakistan, dated 15 January 1948,[1] in the order outlined in paragraph D of Council resolution 39 (1948).

Adopted at the 312th meeting by 8 votes to none, with 3 abstentions (China, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics).



[1] See Official Records of the Security Council, Third Year, Supplement for November 1948, document S/1100, annex 6.

80 (1950). Resolution of 14 March 1950

[S/1469]

The Security Council,

Having received and noted the reports [2] of the United Nations Commission for India and Pakistan established by its resolutions 39 (1948) of 20 January and 47 (1948) of 21 April 1948,

Having also received and noted the report of General A. G. L. McNaughton[3] on the outcome of his discussions with the representatives of India and Pakistan which were initiated in pursuance of the decision taken by the Security Council on 17 December 1949,[4]

Commending the Governments of India and Pakistan for their statesmanlike action in reaching the agreements embodied in the United Nations Commission's resolutions of 13 August 1948[5] and 5 January 1949[6] for a cease-fire, for the demilitarization of the State of Jammu and Kashmir and for the determination of its final disposition in accordance with the will of the people through the democratic method of a free and impartial plebiscite, and commending the parties in particular for their action in partially implementing these resolutions by (1) the cessation of hostilities effected 1 January 1949, (2) the establishment of a cease-fire line on 27 July 1949, and (3) the agreement that Fleet Admiral Chester W. Nimitz shall be

Plebiscite Administrator,

Considering that the resolution of the outstanding difficulties should be based upon the substantial measure of agreement on fundamental principles already reached, and that steps should be taken forthwith for the demilitarization of the State and for the expeditious determination of its future in accordance with the freely expressed will of the inhabitants,

1. Calls upon the Governments of India and Pakistan to make immediate arrangements, without prejudice to their rights or claims and with due regard to the requirements of law and order, to prepare and execute within a period of five months from the date of this resolution a programme of demilitarization on the basis of the principles of paragraph 2 of General McNaughton's proposal [7] or of such modifications of those principles as may be mutually agreed;
2. Decides to appoint a United Nations Representative for the following purposes who shall have authority to perform his functions in such place or places as he may deem appropriate:
 - (a) To assist in the preparation and to supervise the implementation of the programme of demilitarization referred to above and to interpret the agreements reached by the parties for demilitarization;
 - (b) To place himself at the disposal of the Governments of India and Pakistan and to place before those Governments or the Security Council any suggestions which, in his opinion, are likely to contribute to the expeditious and enduring solution of the dispute which has arisen between the



two Governments in regard to the State of Jammu and Kashmir;

(c) To exercise all of the powers and responsibilities devolving upon the United Nations Commission for India and Pakistan by reason of existing resolutions of the Security Council and by reason of the agreement of the parties embodied in the resolutions of the United Nations Commission of 13 August 1948[5] and 5 January 1949;[6]

(d) To arrange at the appropriate stage of demilitarization for the assumption by the Plebiscite Administrator of the functions assigned to the latter under agreements made between the parties;

(e) To report to the Security Council as he may consider necessary, submitting his conclusions and any recommendations which he may desire to make;

3. Requests the two Governments to take all necessary precautions to ensure that their agreements regarding the cease-fire shall continue to be faithfully observed, and calls upon them to take all possible measures to ensure the creation and maintenance of an atmosphere favourable to the promotion of further negotiations;

4. Extends its best thanks to the members of the United Nations Commission for India and Pakistan and to General A. G. L. McNaughton for their arduous and fruitful labours;

5. Agrees that the United Nations Commission for India and Pakistan shall be terminated, and decides that this shall take place one month after both parties have informed the United Nations

Representative of their acceptance of the transfer to him of the powers and responsibilities of the United Nations Commission referred to in paragraph 2

(c) above.

Adopted at the 470th meeting by 8 votes to none, with 2 abstentions (India, Yugoslavia).[8]

[2] Official Records of the Security Council, Third Year, Supplement for November 1948, document S/1100: *ibid.*, Fourth Year, Supplement for January 1949, document S/1196; and *ibid.*, Fourth Year, Special Supplement No. 7.

[3] *Ibid.*, Fifth Year, Supplement for 1 January through 31 May 1950. document S/1453.

[4] *Ibid.*, Fourth Year, Resolutions and Decisions of the Security Council. 1949, p. 7.

[5] *Ibid.*, Third Year, Supplement for November 1948, document S/1100, para. 75.

[6] *Ibid.*, Fourth Year, Supplement for January 1949, document S/1196, para. 15.

[7] *Ibid.*, Fifth Year, Supplement for 1 January through 31 May 1950, document S/1453, p. 14.

[8] One member (Union of Soviet Socialist Republics) was absent.



91 (1951). Resolution of 30 March 1951

[S/2017/Rev.1]

The Security Council,

Having received and noted the report of Sir Owen Dixon, the United Nations Representative for India and Pakistan,[1] on his mission initiated by Security Council resolution 80 (1950) of 14 March 1950,

Observing that the Governments of India and Pakistan have accepted the provisions of the United Nations Commission for India and Pakistan resolutions of 13 August 1948[2] and 5 January 1949[3] and have reaffirmed their desire that the future of the State of Jammu and Kashmir shall be decided through the democratic method of a free and impartial plebiscite conducted under the auspices of the United Nations,

Observing that on 27 October 1950 the General Council of the “All Jammu and Kashmir National Conference” adopted a resolution recommending the convening of a constituent assembly for the purpose of determining the “future shape and affiliations of the State of Jammu and Kashmir”; observing further from statements of responsible authorities that action is proposed to convene such a constituent assembly and that the area from which such a constituent assembly would be elected is only a part of the whole territory of Jammu and Kashmir,

Reminding the Governments and authorities concerned of the principle embodied in its resolutions 47 (1948) of 21 April 1948, 51 (1948) of 3 June 1948 and 80 (1950) of 14 March 1950 and the

United Nations Commission for India and Pakistan resolutions of 13 August 1948 and 5 January 1949, that the final disposition of the State of Jammu and Kashmir will be made in accordance with the will of the people expressed through the democratic method of a free and impartial plebiscite conducted under the auspices of the United Nations,

Affirming that the convening of a constituent assembly as recommended by the General Council of the “All Jammu and Kashmir National Conference” and any action that assembly might attempt to take to determine the future shape and affiliation of the entire State or any part thereof would not constitute a disposition of the State in accordance with the above principle,

Declaring its belief that it is the duty of the Security Council in carrying out its primary responsibility for the maintenance of international peace and security to aid the parties to reach an amicable solution of the Kashmir dispute and that a prompt settlement of this dispute is of vital importance to the maintenance of international peace and security,

Observing from Sir Owen Dixon’s report that the main points of difference preventing agreement between the parties were:

- (a) The procedure for and the extent of demilitarization of the State preparatory to the holding of a plebiscite, and
- (b) The degree of control over the exercise of the functions of government in the State necessary to ensure a free and fair plebiscite,



1. Accepts, in compliance with his request, Sir Owen Dixon's resignation and expresses its gratitude to Sir Owen for the great ability and devotion with which he carried out his mission;
 2. Decides to appoint a United Nations Representative for India and Pakistan in succession to Sir Owen Dixon;
 3. Instructs the United Nations Representative to proceed to the subcontinent and, after consultation with the Governments of India and Pakistan, to effect the demilitarization of the State of Jammu and Kashmir on the basis of the United Nations Commission for India and Pakistan resolutions of 13 August 1948 and 5 January 1949;
 4. Calls upon the parties to co-operate with the United Nations Representative to the fullest degree in effecting the demilitarization of the State of Jammu and Kashmir;
 5. Instructs the United Nations Representative to report to the Security Council within three months from the date of his arrival on the subcontinent; if, at the time of this report, he has not effected demilitarization in accordance with paragraph 3 above, or obtained the agreement of the parties to a plan for effecting such demilitarization, the United Nations Representative shall report to the Security Council those points of difference between the parties in regard to the interpretation and execution of the agreed resolutions of 13 August 1948 and 5 January 1949 which he consider must be resolved to enable such demilitarization to be carried out;
 6. Calls upon the parties, in the event of their discussions with the United Nations Representative failing in his opinion to result in full agreement, to accept arbitration upon all outstanding points of difference reported by the United Nations Representative in accordance with paragraph 5 above, such arbitration to be carried out by an arbitrator, or a panel of arbitrators, to be appointed by the President of the International Court of Justice after consultation with the parties;
 7. Decides that the military observer group shall continue to supervise the cease-fire in the State;
 8. Requests the Governments of India and Pakistan to ensure that their agreement regarding the cease-fire shall continue to be faithfully observed and calls upon them to take all possible measures to ensure the creation and maintenance of an atmosphere favourable to the promotion of further negotiations and to refrain from any action likely to prejudice a just and peaceful settlement;
 9. Requests the Secretary-General to provide the United Nations Representative for India and Pakistan with such services and facilities as may be necessary in carrying out the terms of this resolution. Adopted at the 539th meeting by 8 votes to none, with 3 abstentions (India, Union of Soviet Socialist Republics, Yugoslavia).
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- [1] See Official Records of the Security Council, Fifth Year, Supplement for September through December 1950, document S/1791 and Add.1.



[2] Ibid., Third Year, Supplement for November 1948, document S/1100, para. 75.

[3] Ibid., Fourth Year, Supplement for January 1949, document S/1196, para. 15.

96 (1951). Resolution of 10 November 1951

[S/2392]
The Security Council,

Having received and noted the report of Mr. Frank Graham, the United Nations Representative for India and Pakistan,[1] on his mission initiated by Security Council resolution 91 (1951) of 30 March 1951, and having heard Mr. Graham's address to the Council on 18 October 1951,[2]

Noting with approval the basis for a programme of demilitarization which could be carried out in conformity with the previous undertakings of the parties, put forward by the United Nations Representative in his communication of 7 September 1951 to the Prime Ministers of India and Pakistan,[3]

1. Notes with gratification the declared agreement of the two parties to those parts of Mr. Graham's proposals which reaffirm their determination to work for a peaceful settlement, their will to observe the cease-fire agreement and their acceptance of the principle that the accession of the State of Jammu and Kashmir should be determined by a free and impartial plebiscite under the auspices of the United Nations;

2. Instructs the United Nations Representative to continue his efforts to obtain agreement of the parties on a plan for effecting the demilitarization of the State of Jammu and Kashmir;

3. Calls upon the parties to co-operate with the United Nations Representative to the fullest degree in his efforts to resolve the outstanding points of difference between them;

4. Instructs the United Nations Representative to report to the Security Council on his efforts, together with his views concerning the problems confided to him, not later than six weeks after this resolution comes into effect.

Adopted at the 566th meeting by 9 votes to none, with 2 abstentions (India, Union of Soviet Socialist Republics).

[1] Official Records of the Security Council, Sixth Year, Special Supplement No. 2, document S/2375.

[2] Ibid., Sixth Year, 564th meeting.

[3] Ibid., Sixth Year, Special Supplement No. 2, document S/2375, annex 2

122 (1957). Resolution of 24 January 1957

[S/3779]
The Security Council,

Having heard statements from representatives of the Governments of India and Pakistan concerning the dispute



over the State of Jammu and Kashmir,

Reminding the Governments and authorities concerned of the principle embodied in its resolutions 47 (1948) of 21 April 1948, 51 (1948) of 3 June 1948, 80 (1950) of 14 March 1950 and 91 (1951) of 30 March 1951, and the United Nations Commission for India and Pakistan resolutions of 13 August 1948[1] and 5 January 1949,[2] that the final disposition of the State of Jammu and Kashmir will be made in accordance with the will of the people expressed through the democratic method of a free and impartial plebiscite conducted under the auspices of the United Nations,

1. Reaffirms the affirmation in its resolution 91 (1951) and declares that the convening of a constituent assembly as recommended by the General Council of the "All Jammu and Kashmir National Conference" and any action that assembly may have taken or might attempt to take to determine the future shape and affiliation of the entire State or any part thereof, or action by the parties concerned in support of any such action by the assembly, would not constitute a disposition of the State in accordance with the above principle;

2. Decides to continue its consideration of the dispute.

Adopted at the 765th meeting by 10 votes to none, with 1 abstention (Union of Soviet Socialist Republics).

[1] Ibid., Third Year, Supplement for November 1948, document S/1100, para. 75.

[2] Ibid., Fourth Year, Supplement for January 1949, document S/1196, para. 15.

126 (1957). Resolution of 2 December 1957

[S/3922]
The Security Council,

Having received and noted with appreciation the report of Mr. Gunnar V. Jarring, the representative of Sweden,[6] on the mission undertaken by him pursuant to its resolution 123 (1957) of 21 February 1957,

Expressing its thanks to Mr. Jarring for the care and ability with which he has carried out his mission,

Observing with appreciation the expressions made by both parties of sincere willingness to co-operate with the United Nations in finding a peaceful solution,

Observing further that the Governments of India and Pakistan recognize and accept the provisions of its resolution 38 (1948) of 17 January 1948 and of the resolutions of the United Nations Commission for India and Pakistan dated 13 August 1948[7] and 5 January 1949,[8] which envisage in accordance with their terms the determination of the future status of the State of Jammu and Kashmir in accordance with the will of the people through the democratic method of a free and impartial plebiscite, and that Mr. Jarring felt it appropriate to explore what was impeding their full implementation,

Concerned over the lack of progress



towards a settlement of the dispute which his report manifests,

Considering the importance which it has attached to demilitarization of the State of Jammu and Kashmir as one of the steps towards a settlement,

Recalling its previous resolutions and the resolutions of the United Nations Commission for India and Pakistan on the India-Pakistan question,

1. Requests the Government of India and the Government of Pakistan to refrain from making any statements and from doing or causing to be done or permitting any acts which might aggravate the situation, and to appeal to their respective peoples to assist in creating and maintaining an atmosphere favourable to the promotion of further negotiations;

2. Requests the United Nations Representative for India and Pakistan to make any recommendations to the parties for further appropriate action with a view to making progress towards the implementation of the resolutions of the United Nations Commission for India and Pakistan of 13 August 1948 and 5 January 1949 and towards a peaceful settlement;

3. Authorizes the United Nations Representative to visit the subcontinent for these purposes;

4. Instructs the United Nations Representative to report to the Security Council on his efforts as soon as possible.

Adopted at the 808th meeting by 10 votes to none, with 1 abstention (Union of Soviet

Socialist Republics).

[6] Ibid., Twelfth Year, Supplement for April, May and June 1957, document S/3821.

[7] See footnote 4.

[8] See footnote 5.



Appendix 2

Letter of Pakistan's Foreign Minister to UNSC – August 06, 2019¹⁰



FOREIGN MINISTER

Ministry of Foreign Affairs
Islamabad, Pakistan

06 August 2019

Excellency,

I write to you on a matter of utmost urgency, in continuation of my earlier letter dated 1 August 2019, where I drew your attention to the Indian designs in Indian occupied Jammu and Kashmir (IOK) and Pakistan's concerns about Indian attempts to perpetuate its illegal occupation of the territory.

In a further and grave violation of the UNSC Resolutions, on 5 August 2019 the Indian Government scrapped Article 370 of the Indian Constitution and provision 35A. This pre-meditated action is meant not only to strengthen India's illegal occupation of IOK by abrogating the special status of the occupied territory, it is in fact tantamount to its unlawful annexation.

As I had underscored in my letter of 1 August, the abolishment of Article 370 was preceded by a massive security clamp down in IOK last week through deployment of additional 38,000 para-military forces (bringing the number of additional forces deployed in the recent months to 180,000), imposition of curfew, house arrest of Kashmiri leaders and a total communication lock down. Cumulatively, an iron curtain has been placed on IOK to push through the illegal and unlawful actions, in deliberate defiance of international legality. These actions have heightened the deep sense of fear and insecurity among the Kashmiri population.

India is attempting to change the demography of IOK with a clear objective to undermine the UN plebiscite envisaged in the relevant UNSC Resolutions as a solemn commitment to the people of Jammu & Kashmir and to Pakistan and India. This constitutes a grave violation of the UNSC Resolutions and international law.

Since 1989, around 100,000 Kashmiris have been martyred, more than 22,000 women widowed, 108,000 children orphaned and more than 12,000 women raped by Indian occupation forces in IOK. India continues to try to divert the attention of the international community from the deteriorating human rights and humanitarian situation in IOK by escalating tensions along the Line of Control (LoC) /Working Boundary (WB), including through recent use of cluster munitions targeting civilians. These Indian actions pose a grave and destabilizing threat to the already volatile situation in South Asia.

Jammu and Kashmir remains an internationally recognized dispute, pending on the agenda of the UN Security Council. A number of relevant UN Security Council Resolutions state that the final disposition of the Jammu and Kashmir dispute will be made in accordance with the will of the people expressed through the democratic method of a free and impartial plebiscite under the auspices of the United Nations.

In line with the United Nations Security Council Resolution 38 of 1948 which calls upon India and Pakistan 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

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10. Source: Ministry of Foreign Affairs of Pakistan, <http://mofa.gov.pk/latest-letters-by-foreign-minister/>.



under consideration by the Council, and consult with the Council thereon.' I bring to your urgent attention these Indian actions. The UN Security Council has the responsibility to ensure that the substance and spirit of its resolutions are not violated by any party to the dispute.

Pakistan condemns and rejects these illegal actions including the Indian attempts to willfully undermine the internationally recognized disputed status of Jammu & Kashmir and deny the inalienable right to self-determination to the Kashmiri people, as affirmed by international law and UNSC' resolutions.

As mandated by the UN Security Council Resolutions, Pakistan remains willing to hold a fair, free and transparent plebiscite under the auspices of the UN to ascertain the wishes of the Kashmiri people. It is Indian intransigence which continues to hold hostage, peace and development, of more than 1.5 billion people in South Asia. Pakistan will continue to extend political, diplomatic and moral support to the indigenous, legitimate Kashmiri struggle for the realization of the right to self-determination granted to them by the UN Security Council.

Given the gravity of the situation arising from the Indian actions that constitute deliberate breach of UN Security Council resolutions and carry serious implications for peace and security in South Asia, I urge you to bring these developments to the attention of the UN Security Council. The Security Council has a primary responsibility for maintenance of international peace and security as well as to ensure full compliance with its resolutions. I further call upon you and the UN Security Council to take all necessary steps, as provided in the UN Charter, to ensure that India returns to full compliance of relevant UNSC resolutions by reversing all steps that interfere with the settlement of the Jammu & Kashmir dispute.

Please accept, Excellency, the assurances of my highest consideration.


(Makhdoom Shah Mahmood Qureshi)

His Excellency Mr. Antonio Guterres,
Secretary General to the United Nations,
New York

The President United Nations Security Council
New York

Her Excellency Ms. Maria Fernanda Espinosa Garces,
President, UN General Assembly,
New York



Appendix 3

Binding Resolutions¹¹

by

Ahmer Bilal Soofi

In a recent seminar in Islamabad on the Kashmir dispute, a senior official remarked that the United Nations Security Council (UNSC) resolutions on Kashmir were passed under Chapter VI of the UN Charter and not under Chapter VII, and are therefore not binding but only recommendatory. This view needs to be corrected.

The resolutions passed on Kashmir from 1947 to 1957 cannot be termed as recommendatory only. What we need to be clear about is that, in its initial years, the practice of the UNSC was not to mention the title of the chapter under which it was passing the resolution. During this time, it was the content and the substance of the resolution that would determine the nature of implementation. If one looks at the UNSC's practice in its first decade of existence, only a handful of resolutions mention the title of the chapter, whereas the majority of resolutions that were acted upon by the member states did not mention any reference to a chapter of the UN Charter. The states' practice seemed to be that the nature of recommendations and measures suggested or decided by the UNSC would be determinative of the chapter or chapters under which the resolution was passed.

The resolutions of UNSC passed in respect

of the Kashmir dispute belong to this era of UNSC practice. Hence one finds that, in the 17 resolutions passed by the UNSC during 1947 to 1957 on the Kashmir dispute, none makes a specific reference to the chapter under which it was passed. With this background, to assume that all resolutions relating to the Kashmir dispute were passed under Chapter VI would be an incorrect conclusion to draw. After all, there is no reference to either Chapter VI or Chapter VII in any of the 17 resolutions.

Most of the resolutions passed on the subject of the Kashmir dispute provide for very specific steps to be taken by both India and Pakistan. For example, UNSC Resolution 47 (adopted on April 21, 1948) spans over four pages. It refers to the earlier Resolution 39 (adopted on Jan 20, 1948) whereby the UN Commission for India and Pakistan (UNCIP) was established and authorised to investigate the dispute of the facts submitted for resolution to the UNSC.

The setting up of an independent body by the UNSC is a specific step that was acted upon, and it is not possible to imagine a resolution that establishes a standalone body be viewed as being only recommendatory in character. In Resolution 47, the mandate of UNCIP

11. Source: Ahmer Bilal Soofi, "Binding Resolutions," *Dawn*, September 14, 2019, <https://www.dawn.com/news/1505094/binding-resolutions>.



was extended and additional powers were conferred on it. A clear and elaborate programme was laid down for the activities of the commission. The resolution also addresses the governments of India and Pakistan, and directed progressive demilitarisation. It also called for the establishment of a provisional government. The resolution is very minute in its details and passed with a clear intention of leaving no specifics out. The nature, intent and impeccability of the resolution lead ineluctably to the conclusion that it was meant to be implemented by both states.

It will be defying logic to assume that the UNSC resolution establishing UNCIP (which, further exercising delegated powers, passed a resolution on Nov 9, 1948, having three parts dealing with the ceasefire line) is merely recommendatory — when the same has been acted upon! This resolution led to the Cease-Fire Line Agreement (Karachi Agreement 1949). These later developments confirm that the resolutions were binding in nature and were operationalised in a manner that could only be imputed to binding resolutions.

Another way of confirming their mandatory nature is to view these resolutions as decisions of the UNSC. The relevant portions of the said resolutions were binding on India and Pakistan under Article 25 of the UN Charter which provides as follows, “The members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter”. The ICJ in its Namibian Advisory Opinion also supported the position that a UNSC resolution would be binding where the language, discussion

preceding the passage of the resolution, and the provisions of the UN Charter referred to in the resolution indicated that it was binding. Based on the ICJ’s opinion, to view resolutions on Kashmir as being merely recommendatory places an unnecessarily restrictive interpretation that is belied by the specific nature of measures which have been decided in these various resolutions on Kashmir.

It may be highlighted that the UNSC has now changed its practice and specifically mentions the chapter pursuant to which it is passing or adopting the resolution. For example, UNSC Resolution 1373 of 2001 relating to terrorism mentions Chapter VII just before the operative paragraphs. Likewise, Resolution 1267 of 1999 relating to Al Qaeda and the Taliban mentions in its preamble a similar reference. Further, Resolution 1540 of 2004 addressing the issue of non-proliferation makes it a point to state that it is acting under Chapter VII of the UN Charter. But this is a more recent trend, which was not the case in the practice of the UNSC while passing resolutions during the first few years after 1945.

Based on the above, the resolutions passed in the case of Kashmir have a binding character and cannot be referred to as exclusively recommendatory in nature. Pakistan should approach the UN with absolute confidence that it remains the responsibility of the UNSC to implement its binding resolutions. Whether Pakistan has the political clout to have the resolutions enforced remains another matter, but from a legal point of view Pakistan’s policymakers should be clear among themselves that the UNSC resolutions on the Kashmir dispute should



not be de-emphasised on the grounds that they are simply recommendatory.



REPORT OF THE SEMINAR ON

INDIAN-OCCUPIED JAMMU & KASHMIR'S DESTINY

FREEDOM FROM INDIAN OPPRESSION

